



Decision Summary LA19020A

This document summarizes my reasons for issuing Approval LA19020A, an amended version of Approval LA19020, under the *Agricultural Operation Practices Act (AOPA)*. Additional reasons are in Decision Summary LA19020 and Technical Document LA19020A. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On December 3, 2020, the Hutterian Brethren Church of Sandhill (Sandhill) submitted an amendment application to the NRCB to amend Approval LA19020.

The proposed amendment to Approval LA19020 involves:

- Changing the location of the previously permitted but not yet constructed layer barn to a new location. There are no proposed changes to the size of the barn, type of liner, etc.
- Removing condition 4a and 4b which require the decommissioning of the existing layer barn. This was proposed because the previously permitted layer barn would have been constructed on the same footprint requiring the existing barn to be demolished.
- Convert the existing layer barn to house broiler chickens.

On January 8, 2021, I deemed the application complete.

The application does not include any other changes to permitted livestock numbers or any other CFO facilities.

a. Location

The existing CFO is located at Section 30-27-24 W4M, Sec 13-27-25 W4M & NW 18-27-24 W4M in Wheatland County, roughly 11 km southeast of Beiseker, Alberta. The relocated proposed layer barn is to be constructed on SW 30-27-24 W4M. The terrain is undulating, with high relief.

b. Existing permits

The CFO is currently permitted under NRCB Approval LA19020. This approval allows the construction and operation of a mixed species CFO with:

- 200 milking cows (plus associated dries and replacements)
- 40 feeder hogs
- 1,500 beef finishers
- 1,500 beef feeders
- 20,000 chicken layers
- 10,000 chicken broilers
- 1,200 ducks

- 500 geese
- 500 ewes with lambs

The CFO's existing permitted facilities are listed in the appendix to Approval LA19020A.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are "affected" by an approval application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

- In the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a person or municipality entitled to divert water from that body within 10 miles downstream
- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified distance is 1.5 miles. (The NRCB refers to this distance as the "affected party radius.")

A copy of the application was sent to Wheatland County, which is the municipality where the CFO is located, and to Rocky View County which has a boundary within the affected party radius.

The NRCB provided notice of the amendment application in the Strathmore Times on January 8, 2021 and the Rocky View Weekly on January 12, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, 35 letters were sent to people identified by Wheatland County and Rocky View County as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and the Western Irrigation District.

I received responses from Alberta Transportation, and the Western Irrigation District. No response was received from AHS or AEP.

Mr. Gerry Benoit, development and planning technologist, provided a response on behalf of Alberta Transportation. In his response, he indicated that the proposed development does not fall within the control distance of a provincial highway and does not require a roadside development permit with their department.

Ms. Chrissy Mills, land and contracts administrator, provided a response on behalf of the

general manager, David McAllister, of Western Irrigation District (WID). In her response, she indicated that the WID was appreciative that the applicant has increased the setback to the creek from the previous location and provided no other comments in regards to the application.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), Lower Athabasca Regional Plan, I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed modification is consistent with the land use provisions of the Wheatland County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed modification:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

With the terms and conditions from Approval LA19020 except for those modified by this decision, the application meets all relevant AOPA requirements. The exemption that are required to address the AOPA requirements around water well setbacks are discussed in the following parts of this decision summary.

7. Responses from municipalities and other directly affected parties

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application, and are entitled to request an NRCB Board review of the approval officer's decision. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the act as "directly affected." Wheatland County is an affected party (and directly affected) because the proposed modification is located within its boundaries.

Ms. Cindy Ramsay, safety code technician with Wheatland County, provided a written response on behalf of the county. Ms. Ramsay stated that the application is consistent with Wheatland County's land use provisions of the municipal development plan. The application's consistency with Wheatland County's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received a response from one party consisting of four people.

All of the 4 people who submitted a joint response own or reside on land within the 1.5 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected party’s response can be considered both a letter of support and concern. As such, I will consider this a letter of concern regarding traffic, dust and noise. These concerns are addressed in Appendix B.

No responses were received from any other organization, person or party.

8. Environmental risk of CFO facilities

When reviewing an application for an existing CFO, NRCB approval officers assess the CFO’s existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB’s environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, which can fall within either a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In this case, the risks posed by Sandhill’s existing CFO facilities were assessed in 2014, 2017 and 2019 using the ERST. According to those assessments, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO’s existing facilities is not required.

I also assessed the risks posed by the new layer barn in the new proposed location using the NRCB’s risk screening tool, and determined that it poses a low risk to groundwater and surface water.

9. Exemptions

I determined that the new location for the layer barn is within the required 100 metre AOPA setback from a water well. As explained in Appendix C, an exemption to the 100 metre water well setback is warranted due to the construction and location from the layer barn. While an exemption from the 100 metre water well setback is warranted, to provide further protection for users, the water well monitoring condition from previously issued NRCB Approval LA19020, requiring testing of all water wells within 100 m of a CFO facility, is being carried forward into this amendment LA19020A.

10. Other factors

Because the amendment application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Ms. Ramsay also listed the setbacks required by Wheatland County's land use bylaw (LUB) in her response to this application. The application appears to meet all of these requirements.

Finally, I considered the effects of the proposed amendment on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. The application is also consistent with the MDP and LUB where the proposed amendment is presumed to have an acceptable effect on the economy and community. In my view, these presumptions are not rebutted and the directly affected parties' concerns have been addressed.

I also presumed that the proposed amendment to the permit is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted because Wheatland County's response states that the application is consistent with their MDP.

11. Terms and conditions

Rather than issuing a separate "amendment" to Approval LA19020, I am issuing a new Approval LA19020A with the amendment included. Approval LA19020A therefore contains all the terms and conditions in LA19020, with the exception of the conditions associated with decommissioning of the existing layer barn due to the relocation of the proposed layer barn and the conversion of the existing layer barn to house broilers.

12. Conclusion

Approval LA19020A is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19020A. Approval LA19020A replaces Approval LA19020.

Approval LA19020 is therefore superseded, unless Approval LA19020A is held invalid following a review and decision by the NRCB.

March 2, 2021

(Original signed)

Julie Wright
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by a directly affected party
- C. Exemption from water well setback

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 20(1.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Sandhill’s is located in Wheatland County and is therefore subject to that county’s MDP. Wheatland County adopted the latest amendment to this plan in April 2019, under Bylaw #2013-18. I determined the LUB is integrated into the MDP.

Section 3.1.3.1 of the MDP states that the county shall act as a referral agency and respond in accordance with the MDP and LUB when the Natural Resources Conservation Board is processing applications for CFOs. In my interpretation, this is not a land use provision as its procedural in nature. Therefore, it will not be considered in my consistency determination. Regardless, I notified the county.

As relevant here, section 3.1.3.2 of the MDP states that the county encourages CFOs only if they are sited on parcels of land that are 160 acres or more. Sandhill’s CFO is located on nine 160 acre parcels so it satisfies this policy.

The CFO is also subject to Wheatland County’s Land Use Bylaw #2016-01. Under that bylaw, the subject land is currently zoned as Agriculture General District. Confined feeding use is not listed as a permitted, discretionary or prohibited use. Under this zoning, confined feeding operations are a discretionary use. This is understandable as Section 8.4 of the LUB states that the NRCB has full authority over CFOs and manure storage facilities. The county states that applicants/landowners are responsible for obtaining the necessary permits required by the NRCB under the AOPA.

The county’s response did request that Sandhill honours all setbacks in the land use bylaw. Based on the plan provided in the application, the proposed facilities meet the land use bylaw setbacks.

For these reasons, I conclude that the application is consistent with the land use provisions of Wheatland County’s MDP and LUB.

APPENDIX B: Concerns raised by a directly affected party

Concerns from a directly affected party

The following individuals qualify for directly affected party status because they submitted a joint response to the application and they own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

- Kenton & Joan Ziegler SW 6-28-24 W4M
- Mike & Karen Nunns SW 6-28-24 W4M

Therefore, under NRCB policy, these individuals are presumed to be “directly affected” by the application. See NRCB Operational Policy 2016:7 – Approvals, part 6.2.

The directly affected party raised concerns regarding traffic, dust and noise.

Increased construction traffic with potential for additional dust and noise – The party mentioned a verbal agreement between themselves and the applicant regarding construction related traffic and the potential for increase dust and noise

Approval Officer’s conclusion:

Traffic on the county roads may increase as a result of the expansion of this CFO. However, Wheatland County has regulatory mandate over the management of the local roads, not the NRCB under AOPA. The county did not raise concerns over a potential increase in traffic dust or an increase in required road maintenance.

I passed on the response to the applicant. Any agreements or discussions between the party and the applicant are strictly between those parties and have no impact on my decision.

APPENDIX C: Exemption from water well setbacks

The proposed layer barn is to be located less than 100 m from a water well or water wells. I have confirmed that one water well is located approximately 72 m from it during a site visit completed on December 7, 2020 and through a review of satellite imagery. This is in conflict with the section 7(1)(b) of the *Standards and Administration Regulation (SAR)*. Section 7(2) allows for exemptions if, before construction, the applicant can demonstrate that the aquifer into which the water well is drilled is not likely to be contaminated by the manure storage facility (MSF)/manure collection area (MCA), or if required by an approval officer a groundwater monitoring program is implemented.

Under the regulation, one basis for granting an exemption is if the approval officer implements a groundwater monitoring program of the water well(s) in question.

One basis for granting an exemption is if the “aquifer into which the well is drilled is not likely to be contaminated” by the proposed MSF or MCA.

Section 7(2) of the SAR states that the 100 m setback to a water well does not apply if the facility (MSF/MCA) is not likely to contaminate the aquifer into which the water well is drilled and if required by an approval officer, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MSF/MCA are presumed to be low if the applicant’s proposed MSF/MCA meets AOPA’s technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. The distance between the well and the proposed MSF/MCA
- d. Whether the well is up- or down-gradient from the MSF/MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 8.7.1.

The water well:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 72 m SW of the proposed layer barn is likely AEP water well ID #123662. This well is reported to have been installed in 1989 and has a perforated zone from 42.67 m to 57.91 m below ground level across stratigraphy. The well has an above ground casing. I note that in my conversations with the applicant, the water well is only used presently for non-domestic purposes. The well’s log identifies protective clay layer from ground surface to 3.05 m below ground level. The well has a driven seal from ground surface to 17.37 m below ground level (across a brown shale layer). The well appeared to be in good condition at the time of my site inspection. The well is down-gradient of the layer barn.

The NRCB has developed a “water well exemption screening tool,” based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well.¹

In this case, the results of the water well exemption screening tool suggest that an exemption is more likely (see Technical Document LA19020A).

While an exemption from the 100 metre water well setback is warranted, to provide further protection for users, the water well monitoring condition from previously issued NRCB Approval LA19020 is being carried forward into this amendment LA19020A.

¹ A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.