



## Decision Summary BA20009

This document summarizes my reasons for issuing Approval BA20009 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA20009. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On June 16, 2020, LoneSpruce Ag Inc. (LoneSpruce) submitted a Part 1 application to the NRCB to expand an existing beef CFO and permit the use of the previously constructed, but unpermitted pens.

On January 11, 2016, LoneSpruce self-reported unauthorized construction and expansion of an existing beef feedlot and applied to a permit this expansion. At the time of this application it was determined that pens 17-21 lacked engineering information to confirm that liner requirements were met. As such, Approval BA18023 was issued permitting the previously constructed pens (with the exception of pens 17-21 which were not allowed to be used unless the applicant obtained a permit for them) and approved the increase in livestock numbers for the approved pens.

Since Approval BA18023 was issued, the applicant has obtained additional engineering information for the unpermitted pens 17-21. Application BA20009 seeks to permit pens 17-21, and increase the permitted livestock.

The Part 2 application was submitted on November 30, 2020. On January 13, 2021, I deemed the application complete.

The proposed expansion involves:

- Changing type of livestock from beef feeders to beef finishers and increasing livestock numbers to 4,200
- Permitting the use of pens 17-21

#### a. Location

The existing CFO is located at E½ 16-53-11 W4M in the County of Two Hills, roughly 11 km from Musidora, AB. The CFO is sited on an undulating knob and kettle terrain with several potholes in the area. The nearest common body of water is a spill over seasonal drainage (a pothole) 167 metres to the north of the CFO.

#### b. Existing permits

To date, the CFO has been permitted under NRCB Approval BA18023. That permit allowed the construction and operation of a 3,000 beef feeder CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval BA20009.

## **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 The County of Two Hills, which is the municipality where the CFO is located, and to The County of Minburn which has a boundary within the affected party radius.

The NRCB gave notice of the application by public advertisement in the Vegreville News Advertiser on January 13, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, 35 letters were sent to people identified by both the County of Two Hills and the County of Minburn 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) and Alberta Environment and Parks (AEP). No reply was received from either agency.

## **4. Municipal Development Plan (MDP) consistency**

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

## **5. AOPA requirements**

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

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence
- 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 summarized in part 10, the application meets all relevant AOPA requirements. The variance that is required to address the AOPA requirements around 100 metre water well setback are discussed in the following parts of this decision summary.

## **6. 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.” The County of Two Hills is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Gary Buchanan, the director of planning and development with the County of Two Hills, provided a written response on behalf of the county. Mr. Buchanan stated that the application is consistent with the land use provisions of the municipal development plan. The application’s consistency with the county’s municipal development plan is addressed in Appendix A, attached. In the county’s response it was requested that the applicant be required to enter into a road use agreement. The NRCB jurisdiction under AOPA is limited and does not include roads which are under municipal authority. However, the county presumably may require that agreement, on its own.

Mr. Davin Gegolick, a development officer with the County of Minburn, provided a written response on behalf of the county. As noted in section 2, the county is a directly affected party.

Mr. Gegolick stated that the County of Minburn had no concerns with the application.

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

The party who submitted responses owns or resides 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 raised concerns regarding environmental impacts, ongoing compliance and on-going relationships, air quality, and increased traffic. These concerns are addressed in Appendix B.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (See NRCB Operational Policy 2016-7: Approvals, part 6.2). Ms. Dolores and Mr. Leo Nolette provided an MDS waiver and are a directly affected party.

## **7. Environmental risk of CFO facilities**

When reviewing a new approval 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](http://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 LoneSpruce's existing CFO facilities were assessed in 2018 using the ERST. According to that assessment, 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 pens 17-21, using the NRCB's risk screening tool, and determined that they pose a low risk to groundwater and surface water.

## **8. Variances**

The applicant applied for a variance of the requirement for a water well to be at least 100 m away from a manure storage facility. I determined that the existing pens 17-21, which were previously constructed, are located within the required AOPA setback from existing water wells. As explained in Appendix C, I am prepared to issue a variance to the 100 metre water well setback due to each wells construction and location in reference to the pens.

## **9. Other factors**

Because the approval 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.

Mr. Buchanan also listed the setbacks required by the county's land use bylaw (LUB) and noted that he was unsure if the proposed facilities meet these setbacks. He also stated if the applicant didn't meet they would need to request a relaxation to this setback for the new development. Using google earth it was determined that the road setback for the new development is met.

I have considered the effects the proposed MSF may have on natural resources administered by provincial departments. No response was received from AEP in regard to the application furthermore the application meets AOPAs technical requirements.

Finally, I considered the effects of the proposed expansion 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. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed.

I also presumed that the proposed expansion 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 Two Hills County's response states that the application is consistent with their MDP.

## **10. Terms and conditions**

Approval BA20009 specifies the cumulative permitted livestock capacity as 4,200 beef finishers and permits the use of pens 17-21.

Approval BA20009 contains terms that the NRCB generally includes in all AOPA approvals, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval BA20009: Approval BA18023 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix D discusses which conditions from the historical permits are or are not carried forward into the new approval.

## **11. Conclusion**

Approval BA20009 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA20009.

LoneSpruce's NRCB issued Approval BA18023 is therefore cancelled, and its content consolidated into this Approval BA20009, unless Approval BA20009 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval BA18023 will remain in effect.

March 17, 2021

(Original signed)

Nathan Shirley  
Approval Officer

**Appendices:**

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Variances
- D. Explanation of conditions in Approval BA20009

## **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.)

LoneSpruce’s CFO is located in the County of Two Hills and is therefore subject to that county’s MDP. The County of Two Hills adopted the latest revision to this plan on January 16, 2019, under Bylaw #3-2018.

Policy 5.3.1 states that “[m]ost” of the land within the county is designated as an “Agricultural Use Area” as shown on Map 2. LoneSpruce’s CFO is within the Agricultural Land Use area designated on Map 2 of the MDP, and its proposed expansion is fully consistent with the “agricultural and agriculture-related” land uses for that area.

Policy 5.3.2 states that this area is, “for the most part, conserved for agricultural and agriculture-related uses.”

Policy 5.3.3 states “The primary use of the Agricultural Use Area is for extensive and intensive agricultural uses and confined feeding operations...”

Policies 5.3.1-5.3.3 are likely considered general guiding principles and sets the context regarding the planning and development of agriculture lands.

Policy 5.3.7 specifically deals with CFOs and manure storage facilities (MSFs) as defined by AOPA. Under this policy, all such facilities “must fully satisfy all the requirements and regulations adopted under ... [AOPA], specifically the minimum distance separation requirements and land base requirements.” The CFO meets the requirements as set out in AOPA and therefore meets this policy requirement.

Policy 5.3.8 states that the county will provide “input” to the NRCB on applications for new or expanded CFOs, based on the “technical and locational merits” of each application. This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see Operational Policy 2016-7, Approvals, part 8.2.5). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA and the planning and development officer stated in his response that the application is consistent with the county’s MDP.

For these reasons, the application is consistent with the land use provisions of the county's MDP.

## **APPENDIX B: Concerns raised by directly affected parties**

The following individuals qualify for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing: Dolores and Leo Nolette. See NRCB Operational Policy 2016:7 – Approvals, part 6.2

The following individuals qualify for directly affected party status because they submitted a 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:

- Derek & Charlene Weiss and Sons  
NW & SW 11-53-11 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 several issues in their statements of concern. The issues are summarized and listed below, together with my analysis of those concerns and my conclusions.

**Surface water and impacts on environment** – concern was raised regarding the potential for contamination of surface water from manure runoff from the CFO facilities.

### **Approval officer’s conclusion:**

As noted in the decision summary above, and further documented in Technical Document BA20009, the CFO meets all AOPA technical requirements. Several of these requirements are designed to protect ground and surface water, and thus to prevent CFO manure from reaching and contaminating surface water. Because the proposed CFO meets these requirements, it will not pose a material risk to surface water.

As noted above, a recent risk screening has verified that the CFO’s proposed and existing facilities pose a low risk to surface water.

The subject land is currently zoned by the county as agriculture, indicating that it is an acceptable location for agricultural activities.

**Compliance and on-going relationships** – In their submission the Weiss’s asked that the NRCB ensure the applicant remains in compliance and that they consider their neighbours while operating their site and treat them in a respectful manner.

### **Approval officer’s conclusion:**

Often, any issues that arise relating to the operation of a CFO and other disagreements can be resolved through good communication between neighbours and the CFO operator and the NRCB encourage this between landowners. Additionally, complaints about CFO-related issues can be reported to the NRCB’s 24 hour response line (1-866-383-6722) and will be followed up on by an NRCB inspector within 24 hours. The operator must adhere to all applicable regulations.

**Odours and air quality** – concern was raised over the negative effects of odours and the negative impacts on air quality and quality of life.

**Approval officer's conclusion:**

AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. LoneSpruce's meets the required MDS to neighbouring residences with one exception. The owner of that residence has signed a written waiver of the MDS requirement to their residence.

**Increased traffic including traffic noise, dust, and road wear and tear** – concern was raised about traffic in the area and the associated effects.

**Approval officer's conclusion:**

The county has jurisdiction of local roads. The NRCB does not require applicants to enter into road use agreements with counties or municipalities. However, the county presumably may require that agreement, on its own.

## APPENDIX C: Variances

The pens are located less than 100 m from water wells. I have confirmed that 3 water wells are located approximately 83 m, 55 m, and 27 m from the nearest pen during a site visit and through the use of satellite imagery. This is in conflict with the section 7(1)(b) of the Standards and Administration Regulation (SAR).

Approval officers must not grant variances or exemptions lightly or in the absence of substantive evidence they will provide equivalent levels of protection (see Decision 03-04, *AAA Cattle Ltd.* p 24). I will consider whether a variance is warranted to the water wells for the pens separately below.

### 1. Water Well Considerations

On January 13, 2021 the CFO operator requested a variance to the water well setback requirement on the grounds that the pens are located downslope from the wells and each wells' construction.

In this case, the facility has already been constructed (without a permit). I therefore need to either deny the application or alternatively consider if a variance is warranted under AOPA's section 17(1). It is my opinion that considering a variance is appropriate in this case.

As noted above, approval officers must not grant variances lightly or in the absence of substantive evidence. In this case, I have used the same tools that I would normally use to determine if an exemption is warranted. I consider the water well exemption framework as useful for assessing the degree of protection for the water well in relation to a manure storage facility (MSF). In this case I presume that the risks of direct aquifer contamination from the MSF are low if the MSF meets (or otherwise meets) AOPA's technical requirements to control runoff and leakage. However, when determining whether a MSF that otherwise meets AOPA's technical requirements provides the same or greater protection and safety as provided for by the regulations, I also assess whether water wells themselves could act as conduits for aquifer contamination.

One indicator that a variance provides the same or greater protection and safety is if the aquifer into which the well is drilled is not likely to be contaminated by the proposed MSF or MCA.

In this case, I felt the following factors were relevant to determine the protection of the aquifer in relation to the water well (delete factors if not applicable):

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

The water wells:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 83 m north from pen 17 is likely AEP water well ID #198219. This well is reported to have been installed in 1993 with an above ground casing and drilled to a depth of 60.96 m. This well is reported to be used for non-

domestic purposes. The well's log identifies protective layer from ground surface to 22.86 m below ground level. The well has a shale trap. The well appeared to be in good condition at the time of my site inspection and its casing was protected. The well is upslope of the MSF.

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 55 m north from pen 21 is likely AEP water well ID #255282. This well is reported to have been installed in 1995 with an above ground casing and drilled to a depth of 91.44 m. The well's log identifies protective layer from ground surface to 12.19 m below ground level. The well has a shale trap and bentonite seal placed from 45.72 m to 50.29 m. The well appeared to be in good condition at the time of my site inspection and its casing was protected. The well is upslope of the MSF.

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 27 m north from pen 17 is likely AEP water well ID #1924660. This well is reported to have been installed in 2013 with an above ground casing and drilled to a depth of 131.98 m. This well is reported to be used for non-domestic purposes. The well has a bentonite seal placed from surface to 128.02 m and a driven shoe at 128.02 m. The well appeared to be in good condition at the time of my site inspection and its casing was protected. The well is upslope of the MSF.

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<sup>1</sup>. This tool is useful in gauging the level of protection of groundwater.

Because we use the water well exemption screening tool to determine if a water well is going to be impacted when an exemption is considered. The water well exemption screening tool indicates that there is a low potential for groundwater to be impacted by the MSF/MCA. It is my opinion that in this case, the water well provides an equivalent level of protection if an exemption was considered.

Based on the above information it is my assessment that varying the 100 m setback rule for pens 17-21 would offer the same degree of protection and safety as that provided for by the regulations for the following reasons:

1. All wells are located upslope from the proposed pens.
2. The wells are mounded and protected.
3. All wells have either a bentonite, shale trap or combination of both seals.
4. All wells have seals and several layers of various lithology above the withdraw depths identified on the logs.

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<sup>1</sup> A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at [www.nrcb.ca](http://www.nrcb.ca).

## **APPENDIX D: Explanation of conditions in Approval BA20009**

Approval BA20009 removes one condition from Approval BA18023, discussed below.

### **1. Conditions not carried forward from Approval BA18023**

Approval BA20009 includes the terms and conditions in BA18023, except those noted below.

1. Pens 17, 18, 19, 20, and 21 may not be used for the purposes of confining livestock or storing manure.

Application BA20009 clearly states that its purpose is to obtain a permit for pens 17-21 to allow their use. As stated above, this application is approved and therefore this condition is no longer relevant. Therefore condition 1 from Approval BA18023 is deleted and not carried forward to Approval BA20009.