

Decision Summary LA21002

This document summarizes my reasons for issuing Approval LA21002 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21002. 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 January 29, 2021, Baker Hutterian Brethren (Baker Colony) submitted a Part 1 application to the NRCB to expand an existing an existing multi species CFO and to construct 2 covered manure storage sheds.

The Part 2 application was submitted on February 3, 2021. On February 16, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 30,000 chicken layers (plus associated pullets) to 40,000 chicken layers (plus associated pullets)
- Constructing two covered manure storage pads – 5 m x 5 m x 4 m high each

a. Location

The existing CFO is located at N½ 23-005-10 W4M in the County of Forty Mile, roughly 8 km south of Nemiskam, Alberta. The topography slopes gently to the south toward an intermittent creek, which in turn, flows to Pakowki Lake which is located approximately 12 km southeast of the site.

b. Existing permits

The CFO is currently permitted by Approval LA20016 which allows for the operation of a multi-species CFO with 30,000 chicken layers (plus associated pullets), 550 swine (farrow to finish), 5,000 chicken boilers, 1,200 ducks, and 100 turkeys. The CFO's existing permitted facilities are listed in the appendix of Approval LA21002.

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 County of Forty Mile, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Forty Mile Commentator on February 16, 2021. The full application was made available for viewing during regular business hours, and was posted on the NRCB website for public viewing. As a courtesy, eight letters were sent to people identified by the County of Forty Mile 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), and Alberta Transportation.

Responses were received from AEP and Alberta Transportation. The comments received from AEP were forwarded to Baker Colony for their information and follow up. Baker confirmed they source their water from the South-East Alberta Water Co-op.

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), 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 expansion is consistent with the land use provisions of the County of Forty Mile'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 expansion:

- 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 water wells, 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.

7. Responses from the municipality 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 Forty Mile is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Ogden, a development officer, provided a written response on behalf of the County of Forty Mile. Mr. Ogden raised no concerns with the application. The application's consistency with the County of Forty Mile's municipal development plan is addressed in Appendix A, attached.

No responses were received from any other person, organization, or member of the public.

8. 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.) 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 Baker Colony's existing CFO facilities were assessed in 2016 and 2020 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 those assessments were done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

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. Ogden also listed the setbacks required by the County of Forty Mile's land use bylaw (LUB). The application meets these setbacks.

I have also 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 of acceptability is not rebutted.

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.

10. Terms and conditions

Approval LA21002 specifies the cumulative permitted livestock capacity as 40,000 chicken layers (plus associated pullets), 550 swine farrow to finish, 5,000 chicken broilers, 1,200 ducks, and 100 turkeys and permits the construction of the two covered manure storage pads.

Approval LA21002 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.

In addition to the terms described above, Approval LA21002 includes conditions that generally address the construction deadline, and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated Approval LA20016 with Approval LA21002 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbour's 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. All conditions from Approval LA20016 have been carried forward.

11. Conclusion

Approval LA21002 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21002.

Baker Colony's NRCB-issued Approval LA20016 is therefore superseded, and its content is consolidated into Approval LA21002, unless Approval LA21002 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA20016 will remain in effect.

April 9, 2021

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21002

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may grant an approval only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

Baker Colony’s confined feeding operation (CFO) is located in the County of Forty Mile and is therefore subject to that county’s MDP. The county adopted the latest revision to this plan on September 2009 under Bylaw 9/2009. The portions of that MDP that are applicable to this application are discussed below.

Part 3.2 of the MDP, titled “Intensive Agriculture”, is most relevant to CFOs. As relevant here, section 3.2(b) of the MDP states that, pursuant to AOPA, the county “may designate areas where confined feeding operations are to be encouraged or discouraged”. Section 3.2(c) then states that CFOs “will be excluded from the areas shown on Figure 3.1 unless otherwise approved by the County”. This section likely refers to Map 3.1, titled: Confined Feeding Operation Exclusions Area Map. Baker Colony’s CFO is not within any of the exclusion zones marked on this map.

One other relevant section is 3.2(d) which states: “The County expects developers to implement those technologies that are most effective at reducing adverse effects on the environment, especially with respect to odour and groundwater contamination.” By referring to acceptable technologies rather than acceptable land uses, this section is likely not a “land use provision” and therefore is likely not relevant to my MDP consistency determination. At any rate, regulations under AOPA require a minimum distance separation to nearby residences, which is a method of reducing conflicts due to nuisance and odour. The regulations also include several requirements to protect groundwater. The application meets or exceeds all AOPA requirements and I therefore conclude that it is consistent with section 3.2(d) of the MDP.

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

The CFO is also subject to the County of Forty Mile Land Use Bylaw #10/2009 (LUB) which is referenced in the MDP. Under that bylaw, the subject land is currently zoned as Agricultural District. CFOs are not listed as either a permitted or discretionary use under this zoning. However, the general purpose of this district is “to permit activities associated with the primary production of agricultural goods and services,” which implicitly includes CFOs. In addition, Schedule B of the LUB, titled “Protection of existing confined feeding operations,” makes it clear that the county contemplates the occurrence of CFOs within the Agricultural District. Based on these provisions, I conclude that the county considered CFOs to be an acceptable land use within the Agricultural District, notwithstanding that CFOs are not expressly listed as either permitted or discretionary land uses.

APPENDIX B: Explanation of conditions in Approval LA21002

Approval LA21002 includes all conditions contained in Approval LA20016 as well as several new conditions, discussed below:

1. New conditions in Approval LA21002

a. Construction Deadline

Baker Colony proposes to complete construction of the proposed two new covered manure storage pads by June 1, 2022. This time-frame only allows for one complete building season. In my opinion, at least two construction seasons would be more reasonable for the proposed scope of work. The deadline of June 1, 2023 is therefore included as a condition in Approval LA21002.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Approval LA21002 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the manure storage sheds to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Baker Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the manure storage sheds.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA21002 includes a condition stating that Baker Colony shall not place livestock or manure in the manure storage or collection portions of the new manure storage sheds until NRCB personnel have inspected the sheds and confirmed in writing that they meet the approval requirements.