

Decision Summary LA21021

This document summarizes my reasons for issuing Authorization LA21021 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21021. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On April 19, 2021, the Hutterian Brethren of Murray Lake (Murray Lake) submitted a Part 1 and Part 2 application to the NRCB to construct a poultry barn (25 m x 45 m), and an exercise and scratch pen (20 m x 20 m) for chicken layers, ducks and geese, at an existing multi species CFO.

The exercise and scratch pen will be used seasonally and is intended to be used strictly as an exercise pen/scratch area. Because of this, the facility is therefore considered to be an “ancillary structure,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure does not need to be permitted under the act.

An NRCB permit is required for the poultry barn.

On April 19, 2021, I deemed the application complete.

a. Location

The existing CFO is located at S½ 31-10-6 W4M, NW 29-10-6 W4M & SW 32-10-6 W4M in Cypress County, roughly 7.5 km southeast of the Hamlet of Seven Persons, Alberta. The terrain adjacent to the proposed expansion is flat and slopes slightly towards the north.

b. Existing permits

The CFO currently holds Approval LA18047 and Authorization LA20035 which allow Murray Lake to operate a mixed species CFO with a capacity for 12,000 beef finishers, 600 swine farrow to finish, 150 milking cows (plus associated dries and replacements), 300 chicken layers, 25,000 chicken broilers, 800 ducks and 300 geese.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is located or is to be located
- 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 municipality entitled to divert water from that body within 10 miles downstream
- any other municipality whose boundary is within a notification distance. In this case, the notification distance is three miles from the CFO

A copy of the application was sent to Cypress County, which is the municipality where the CFO is located.

3. Notice to other persons or organizations

Under NRCB policy, 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 St. Mary River Irrigation District (SMRID). I received responses from AEP, Alberta Transportation, and the SMRID. No concerns with the application were raised.

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 construction is consistent with the land use provisions of Cypress 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 construction:

- 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 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 8, the application meets all relevant AOPA requirements.

7. Responses from municipality

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." Cypress County is an affected party (and directly affected) because the proposed facility is located within its boundaries.

Ms. Kaylene Simpson, a planning supervisor with Cypress County, provided a written response on behalf of Cypress County. Ms. Simpson stated that the application is located outside of Cypress County's CFO exclusion area. The application's consistency with Cypress County's municipal development plan is addressed in Appendix A, attached. Cypress County' raised concerns regarding road use and asked that Murray Lake enter into a road use agreement with the county.

Under NRCB policy, approval officers will not include conditions in permits requiring operators to enter into a road use agreement with the municipality. The reason for this policy is that roads are a "municipal responsibility and are not located on the CFO site." (See NRCB Operational Policy 2016-7: Approvals, part 8.9.) Additionally, this application is for an authorization under the AOPA. In the case of authorizations, submissions from directly affected parties are restricted to addressing whether the application meets the requirements under the AOPA. The condition of surrounding roads is not a requirement of AOPA and as such cannot be addressed further by this application. I did forward a copy of the county response to Murray Lake for their information and review.

Ms. Simpson also listed the setbacks required by Cypress County's land use bylaw (LUB). The application appears to meet these setbacks.

8. Environmental risk of facilities

When reviewing a new authorization application for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool 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 done 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 Murray Lake's existing CFO facilities were assessed in 2018, and 2020. According to those assessments, the facilities, including the originally permitted animal shelter, posed a low potential risk to surface water and groundwater.

The circumstances have not changed since those assessments were done and re-assessment of the existing facilities is not required. I assessed the proposed poultry barn and determined that it also poses a low potential risk to groundwater and surface water.

9. Terms and conditions

Authorization LA21021 permits the construction of the poultry barn.

Authorization LA21021 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization LA21021 includes conditions that generally address construction deadlines, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

10. Conclusion

Authorization LA21021 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21021.

Authorization LA21021 must be read in conjunction with Murray Lake's NRCB issued Approval LA18047 and Authorization LA20035 which remain in effect.

June 3, 2021

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA21021

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may approve an application for an authorization only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.).

Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, section 22(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”).

Murray Lake’s CFO is located in Cypress County and is therefore subject to that county’s MDP. Cypress County adopted the latest revision to this plan in August 2018, under Bylaw #2015/26.

Section 3.2 of the MDP addresses “intensive agriculture.” As defined in section 1.4(b) of the MDP that term appears to include CFOs (e.g., “concentrated rearing of livestock and poultry”).

As relevant here, section 3.2(b) states that “[p]ursuant to the Agricultural Operations Practices Act, the County may designate areas where confined feeding operations are to be encouraged or excluded.” Section 3.2(c) then states that new CFOs “will be excluded from the areas shown on Figure No. 2.”

The CFO site is not within the CFO exclusion area shown on Figure No. 2, so the proposed CFO expansion is consistent with sections 3.2(b) and (c) of the county’s MDP.

Section 3.2 (d) specifies that “confined feeding operations are to be located where access to the site is to be gained from gravel, new high-grade roads or unless the confined feeding operator is willing to develop or upgrade the road to a gravel, new high-grade road at their own expense”. In the county’s response to the application notice, they also indicated council had passed a motion asking the NRCB to require Murray Lake to upgrade haul roads to “high grade standard”.

These terms are not defined and such roadways are not expressly identified in the MDP. This policy is not likely a land use provision as it requires discretionary judgement on what constitutes a gravel, or new high-grade road and therefore is not relevant to my MDP consistency determination. Additionally, in this case the application is for an authorization at an existing CFO and will have no impact on the location of the existing CFO which 3.2(d) aims to address.

Section 3.2(e) addresses CFO’s located within the Tri-Area Intermunicipal Development Plan Area (IDP) as identified in Figure No. 2. The proposed expansion is located outside of this area so the application is consistent with this provision.

No other MDP policies are relevant to Murray Lake's application. Therefore, it is my determination that the proposed CFO expansion is consistent with the MDP's land use provisions. The county's response confirms this conclusion.

APPENDIX B: Explanation of conditions in Authorization LA21021

Authorization LA21021 includes several conditions, discussed below:

1. Conditions in Authorization LA21021

a. Construction Deadline

Murray Lake proposes to complete construction of the proposed new poultry barn by December 30, 2021. This time-frame is considered to be unreasonable for the proposed scope of work as it only allows for one building season and does not allow for any potential building delays which may be encountered. In my experience, two full construction seasons would be more appropriate for the proposed scope of work. The deadline of December 30, 2022 is therefore included as a condition in Authorization LA21021.

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, Authorization LA21021 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the poultry barn 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. Murray Lake to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the poultry barn.

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. Authorization LA21021 includes a condition stating that Murray Lake shall not place livestock or manure in the manure storage or collection portions of the new poultry barn, until NRCB personnel have inspected the poultry barn, and confirmed in writing that it meets the authorization requirements.