

Decision Summary LA22023

This document summarizes my reasons for issuing Approval LA22023 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22023. 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 March 18, 2022, Hutterian Brethren of Sunshine (Sunshine Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on April 11, 2022. On April 20, 2022, I deemed the application complete.

The proposed expansion involves:

- Constructing a pullet barn (61 m x 18.3 m),
- Removing 3000 feeder pigs
- Increasing milking cows (plus associated dries and replacements) from 40 to 85
- Increasing chicken layers from 25,000 to 35,000
- Increasing chicken broilers from 60,000 to 75,000
- Increasing chicken pullets from 10,000 to 30,000
- Increasing sheep from 550 to 700
- Increasing ducks from 700 to 1,200
- Increasing geese from 200 to 400
- Increasing beef finishers from 0 to 500.

The new pullet barn will be replacing two existing pullet barns. It will be constructed over the footprint of one of the existing barns requiring that barn to be decommissioned prior to construction. The second existing barn will be decommissioned once the new barn has been constructed and is able to be populated.

The existing hog barns at this CFO have been converted into a chicken broiler operation and are no longer operated as hog barns. The operator therefore requested to remove the permitted 3,000 feeder pigs from its permitted animal numbers.

a. Location

The existing CFO is located at NW 8-24-18 W4M, SW 17-24-18 W4M, & SE 18-24-18 W4M in Wheatland County, roughly 13 km east of Hussar, Alberta. The topography at the site is undulating.

b. Existing permits

The NRCB has issued Approval LA04047, consolidating one of the municipal permits (development permit 2001-25) and NRCB issued Authorization LA03027. However, it did not consolidate or cancel development permit 2000-75, permitting the construction of a 2,400 sow (farrow to wean) barn. As the barn permitted in development permit 2000-75 has never been built, the animal numbers permitted at this CFO have never included 2,400 sow (farrow to wean) in any of the subsequently issued NRCB permits, and the permitted animal numbers at this CFO have never been disputed by Sunshine Colony. Because of this, I presume that this permit can be considered abandoned under section 29 of AOPA and will be cancelled rather than being consolidated into this approval.

In addition to Approval LA04047, the NRCB also issued Approval LA10021, and Authorizations LA11014 and LA11033. Collectively, these NRCB permits allow Sunshine Colony to construct and operate a 3,000 swine feeder, 40 milking cows (plus associated dries and replacements), 25,000 chicken layers, 60,000 chicken broilers, 10,000 chicken pullets, 550 sheep, 700 ducks, and 200 geese CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA22023.

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.")

The CFO is not located near any common bodies of water nor within 100m of a river stream or canal.

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

The NRCB gave notice of the application by public advertisement in two weekly newspapers in circulation in the community affected by the application. In this case, public advertisement was in the Strathmore Times on April 20, 2022 and the Bassano Times on April 25, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, four letters were sent to people identified by Wheatland County and the County of Newell 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 Agriculture, Forestry and Rural Economic Development (AFRED), and Alberta Transportation (AT).

The NRCB received a written response from Trevor Richelhof, development/planning technologist with AT. Mr. Richelhof stated that a permit from his department is not required, and that the department does not have any concerns with this application.

No other responses were received

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 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 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 springs, and common bodies of water but not to two water wells. An exemption has been granted (see below)
- 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

The exemption that is required to address the AOPA requirements pertaining the distance to two water wells is 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 expansion is located within its boundaries.

Ms. Suzanne Hayes, an approval officer with Wheatland County, provided a written response on behalf of Wheatland County. Ms. Hayes stated that the application is consistent with Wheatland County's municipal development plan land use provisions. The application's consistency with the Wheatland County's municipal development plan is addressed in Appendix A, attached.

The County of Newell is also a directly affected party because its borders are within the 1.5 mile notification radius. It also has an intermunicipal development plan with Wheatland County. No response was received from the County of Newell.

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, 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 Sunshine Colony's existing CFO facilities were assessed in 2010. The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2010 risk assessment, an updated version of the ERST was developed. For these reasons, I reassessed the risks posed by the CFO's facilities that have the highest potential to pose a risk to surface and groundwater. These were the dairy – dry cow pens, the dairy EMS and the poultry layer barn. The dry cow pens are an uncovered manure collection and storage area and close to a well, the EMS is the deepest facility and the closest to the UGR, the layer barn is the facility closest to a water well. My assessment found that these facilities and the proposed chicken pullet barn pose a low risk to groundwater and surface water.

9. Exemptions

I determined that the proposed pullet barn is located within the required AOPA setback from two water wells. As explained in Appendix B, an exemption to the 100 metre water well setback is warranted due to their location upslope from the chicken pullet barn. A water well monitoring condition is already in place and as such will be carried forward into Approval LA22023.

10. 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.

Ms. Hayes stated that the application meets the municipal setbacks to a county road right of way and the property lines.

I have considered the effects the proposed chicken pullet barn may have on natural resources administered by provincial departments. I did not receive any comments from any of the referral agencies that suggest otherwise.

There are no written decisions of the Environmental Appeals Board / the Director under the *Water Act* in respect of the subject of this application as far as I am aware.

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 on the environment are acceptable because the application meets all of AOPA's technical requirements with an exemption. 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.

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.

11. Terms and conditions

Approval LA22023 specifies the cumulative permitted livestock capacity as 100 milking cows (plus associated dries and replacements), 35,000 chicken layers, 75,000 chicken broilers, 30,000 chicken pullets, 700 sheep, 1,200 ducks, 400 geese, and 500 beef finishers and permits the construction of the pullet barn.

Approval LA22023 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 LA22023 includes conditions that generally address a construction deadline, monitoring, document submission, decommissioning and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA22023: Approval LA04047, Approval LA10021, and Authorizations LA11014 and 11033 (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 B discusses which conditions from the historical permits are or are not carried forward into the new approval.

12. Conclusion

Approval LA22023 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22023.

Sunshine Colony's deemed municipal development permit #2000-75 is cancelled for the reason explained above, and NRCB-issued Approval LA04047, Approval LA10021, and Authorizations LA11014 and 11030 are superseded, and their content consolidated into this Approval LA22023, unless Approval LA22023 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA04047, Approval LA10021, and Authorizations LA11014 and 11030 will remain in effect.

June 3, 2022

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Exemptions from natural water and well(s) setbacks
- C. Explanation of conditions in Approval LA22023

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.)

Sunshine Colony’s CFO is located in Wheatland County and is therefore subject to that county’s MDP. Wheatland County adopted the latest revision to this plan in 2018, under Bylaw #2013-18 Amendment 2018-40.

Section 3.1.3.1. of the MDP states that the county shall act as referral agency and respond in accordance with the MDP and LUB when the Natural Resources conservation Board is processing applications for CFO’s. In my interpretation, this is not a land use provision. Therefore, I will not consider this section in my consistency determination, Regardless, I provided notice to the county regarding the application.

As relevant here, section 3.1.3.2 of the MDP states that the county encourages CFOs on parcels on land of 160 acres or more. I interpret this to apply to new CFOs. Sunshine Colony’s CFO is an existing CFO. I therefore interpret this provision to not apply to this CFO.

In my view, the text in 4.4.2 of Wheatland County’s MDP also provides a clear intent to adopt provisions from the land use bylaw (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also consider Wheatland County’s Land Use #2016-01 (with its last amendment on March 24, 2020 under Bylaw 2020-04). Under that bylaw, the subject land is currently zoned as Agricultural General District. Confined feeding operations are not listed as a permitted, discretionary or prohibited use. There is a general listing “Agricultural Operation” which does not require a permit. Section 4.2.7 of Part 4 specifies these as ‘an agricultural operation as defined in the Act on a parcel designated AG. This is understandable as Section 8.6 of the LUB states that the NRCB has full authority over CFOs and manure storage facilities and that applicants/landowners are responsible for obtaining the necessary permits required by the NRCB under AOPA.

Sunshine Colony’s CFO is also in the area included in the Intermunicipal Development Plan (IDP) between Wheatland County and Newell County and therefore subject to this IDP. Wheatland County and Newell County adopted the latest revision to this plan in May 2015 and was consolidated on November 8, 2018, by County of Newell under Bylaw No. 1926-18 and November 6, 2018, by Wheatland County under Bylaw No. 2018-30.

The relevant land use policies can be found in section 4.3 – Land Use Policies, CFO.

Policy 4.3.1 states that existing CFOs are allowed to continue to operate under acceptable operating practices and within the requirements of AOPA and Regulations.

Sunshine Colony meets all aspects of this policy.

Policy 4.3.2 requires the counties to notify each other should they receive an NRCB application for comments.

This is likely not a land use provision. At any rate, Notification went out to both counties. Newell County was notified because it is within the AOPA notification radius.

I therefore conclude that Application LA22023 is consistent with Wheatland County's MDP and Wheatland County/Newell County's IDP.

APPENDIX B: Exemption from water well setbacks

1. Water Well Considerations

The proposed pullet barn is to be located less than 100 m from two water wells. I have confirmed that two water wells are located approximately 51 m and 88 m respectively from it during a site visit and confirmed by measurements from aerial photos. This conflicts with section 7(1)(b) of the *Standards and Administration Regulation (SAR)* under AOPA.

Section 7(2), however, 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), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the pullet barn are presumed to be low if the applicant's proposed pullet barn 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 wells:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 51 m west of the new pullet barn does not correlate to any of AEP's water well IDs. For this reason, I assumed water well ID 122200 as worst case scenario. This well is reported to have been installed in 1973 and has a perforated or screened zone from 36.58 m to 44.20 m below ground level across stratigraphy. It has an above ground casing with a concrete pad around. This well is used for non-domestic purposes. I note that in my conversations with the applicant, the water well is only used presently for the layer operation. The well's log identifies layers from ground surface or 24.38 m (sandy clay) and another clay layer from 31.39 m to 33.53 and 33.83 m to 36.88 m below ground level. The well has a driven seal, however there is no information on the depth of placement of the seal. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a concrete pad. The well is up-gradient of the pullet barn.

The second water well is well located approximately 88 m north of the new pullet barn does not correlate to any of AEP's water well IDs. For this reason, I assumed the same water - water well ID 122200 - as worst case scenario.

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 likely as seen in Technical Document LA22023.

Despite the above, I am of the opinion that the current monitoring condition – condition 2 of Approval LA10021 should be carried forward.

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

APPENDIX C: Explanation of conditions in Approval LA22023

Approval LA22023 includes several conditions, discussed below, and carries forward a number of conditions from Approval LA04047, Approval LA10021, and Authorizations LA11014 and 11030. Construction conditions from historical Approval LA04047, Approval LA10021, and Authorizations LA11014 and 11030 are identified in the appendix to Approval LA22023.

Approval LA22023 includes several conditions, discussed below:

1. New conditions in Approval LA22023

a. Construction Deadline

Sunshine Colony proposes to complete construction of the proposed new pullet barn by December 31, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2024 is included as a condition in Approval LA22023.

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 LA22023 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the pullet 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. Sunshine Colony to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA22023 includes a condition stating that Sunshine Colony shall not place livestock or manure in the manure storage or collection portions of the new pullet barn until NRCB personnel have inspected the pullet barn and confirmed in writing that it meets the approval requirements.

c. Decommissioning of second existing pullet barn

Sunshine Colony proposed to decommission the second pullet barn, located immediate south of the layer barn once the new pullet barn has been constructed. A condition will be included that requires Sunshine Colony to decommission this barn according to Technical Guideline Agdex 096-90 – Closure of Manure Storage and Manure Collection Areas for facilities posing a low risk to groundwater and surface water.

2. Conditions not carried forward from Approval LA04047

Approval LA22023 includes the terms and conditions in Approval LA04047, except those noted below.

I note that Approval LA10021 modified the ground water well monitoring condition included in Approval LA04047 and stated that: “*Where there is a conflict between permit terms and conditions, the most recent permit will prevail*”. Condition 9 of Approval LA04047 is therefore

replaced by condition 2 of Approval LA10021 and will not be carried forward into this approval.

I also note that the water well monitoring and leakage detection reporting conditions carried forward, will be reworded to line up with current standards of monitoring conditions issued by the NRCB. The respective monitoring statements will be attached to the approval.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #1, 2, 3, 4, 13, and 14 from Approval LA04047 should be deleted and therefore are not carried forward to Approval LA22023. My reasons for deleting these conditions are as follows:

Conditions 1-4 are redundant and are repeated in their entirety in the opening paragraph of this approval which states: "*The permit holder shall comply with the requirements of the Agricultural Operation Practices Act (AOPA) and the regulations passed pursuant to that act.*" I therefore will not carry these conditions forward individually

Condition 13, requiring record keeping and soil testing of manure applications, is also redundant because it is also included in the opening paragraph of this approval which requires the permit holder to adhere to AOPA and its regulations.

Condition 14 states: "Mortality Disposal – The operator must manage livestock mortalities in accordance with the Livestock Disease Act, Destruction of Dead Animals regulation.

Livestock mortalities are directly regulated by AFRED under the Animal Health Act (see Operational Policy 2016-7: Approvals) Given AFRED's regulatory role, concurrent oversight of dead animal disposal by the RNCB would be inefficient and might lead to inconsistency with AFRED's requirements.