

Decision Summary LA24010

This document summarizes my reasons for issuing Approval LA24010 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24010. 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 11, 2024, Hutterian Brethren Church of Waterton (Waterton Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO

The Part 2 application was submitted on March 12, 2024. On March 27, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing dairy numbers from 80 to 140 milking cows (plus associated dries and replacements)
- Increasing chicken layer numbers from 6,000 to 25,000
- Increasing chicken pullet numbers from 1,500 to 15,000
- Decreasing swine farrow to finish numbers from 180 to 80
- Constructing a new chicken layer barn (21 m x 76 m) with (attached) solid manure storage (21 m x 11 m) to replace the existing barn

The existing chicken layer barn will be used to house the additional pullets.

In addition, the heifer pens, located to the west of the dairy barn and consisting of three pens with shelter and one larger pen of irregular shape, were constructed smaller than originally permitted in Authorization LA10062A. The permitted total dimensions were 11,201 m². The constructed footprint is approximately 8000 m². I will therefore take the opportunity to amend the dimensions to reflect what has been constructed.

a. Location

The existing CFO is located at S ½ 3-4-28 W4M in the Municipal District (MD) of Pincher Creek, roughly 12 km east of the Hamlet of Twin Butte, Alberta, on the southwest end of Waterton reservoir. The Topography of the area is hummocky and terraced towards the flood plain of the Waterton River. The Waterton River runs along the southside of the CFO. The closest facility to Waterton River is a feedlot, located approximately 100 m north of the Waterton River.

b. Existing permits

To date, Waterton Colony has a deemed permit in addition to NRCB issued Authorizations LA10062A, LA08032A, and LA06005D. Collectively, these permits allow Waterton Colony to construct and operate an 80 dairy cow (plus associated livestock); 180 swine sow farrow to finish; 6,000 chicken layers; 1,500 chicken broiler/pullets; 2,000 cow finishers; 1,000 ducks; 500 geese; 600 sheep CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA24010.

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 "notification distance".)

One of the CFO facilities is located within 100 m of a bank of a river – the Waterton River. The two municipalities downstream are Pincher Creek and Cardston County. Both were notified of this application.

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in Shootin' the Breeze newspaper in circulation in the community affected by the application on March 27, 2024, and
- sending 17 notification letters to people identified by the MD of Pincher Creek and Cardston County as owning or residing on land within the notification distance.

The full application was also made available at the NRCB's Lethbridge office for viewing during regular business hours.

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 Environment and Protected Areas (EPA), Alberta Agriculture and Irrigation (AGI), and Alberta Transportation & Economic Corridors (TEC).

I also sent a copy of the application to Chief Mountain Gas Co-op, Fortis AB Ltd., Alberta Wind Energy Corporation which have Right of Ways on this land.

The NRCB received a response from Ms. Leah Olsen, a planning technologist with TEC; and Mr. Jeff Gutsell, hydrogeologist with EPA.

- Ms. Olsen stated that a permit from TEC is not required.
- Mr. Gutsell stated that there are no groundwater or surface water diversion authorization in S 1/2 3-4-28 W4 and that it is unclear where the legal source of water for the current animals or people onsite is obtained from. He continued to state that there are 3 water wells on those quarter sections. One is for chemistry, one is a spring, and one is a water well (ID 2095692) which does not seem to be licensed. He requested Waterton Colony to assess their water needs and contact EPA to discuss option to obtain a legal water source. A copy of the response has been forwarded to Waterton Colony for their information and action.

No other responses were received from organizations that were notified of this 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), 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 MD of Pincher Creek's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

The proposed expansion is also consistent with the intermunicipal development plan between the MD of Pincher Creek and Cardston County (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 of manure storage facilities and manure collection areas

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." The MD of Pincher Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Laura McKinnon, a development officer with the MD of Pincher Creek, provided a written response on behalf of the MD of Pincher Creek. Ms. McKinnon stated that the application is not consistent with the MD of Pincher Creek's land use provisions of the municipal development plan because the CFO is located within a CFO exclusion area. I determined that the proposed chicken layer barn with solid manure storage is consistent with the MD of Pincher Creek MDP as the application is not for a new CFO. My MDP consistency determination is detailed in Appendix A, attached.

Cardston County is also a directly affected party because it shares a boundary with the MD of Pincher Creek and Waterton Colony is within the intermunicipal planning area for the two municipalities. Mr. Joe Thomas, development officer with Cardston County, provided a written response, stating that all the land in that area is currently zoned as Agriculture and that there are no concerns or objections for this proposal. Because Cardston County provided a response, and is part of the IDP, I determined that they are a directly affected party.

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

The one person who submitted a response owns or resides on land within the 1.5 mile notification distance for affected persons. Because of this person's location within this distance, and because this person submitted a response, this person qualifies for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 7.2.1)

The directly affected party raised concerns regarding manure contaminated runoff from the proposed chicken barn and lack of adequate manure storage capacity. These concerns are addressed in Appendix B.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. The information on this file supports the assumption that risks to groundwater and surface water are low.

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 9.17.

In this case, the risks posed by Waterton Colony's existing CFO facilities were assessed in 2008 (hog barns, feedlot, and the chicken barns) and 2012 (new dairy barn, new cow pens for dairy, catch basin). The previously assessed facilities were not reassessed at that time (Authorization LA10062A). The assessments indicated that the potential risks to surface water and groundwater were low.

Since the 2008 risk assessment, a new version of the ERST was developed. For this reason, I reassessed the risks posed by the CFO's existing hog barns, feedlot, and the chicken barns. The assessment found that the potential risks to surface water and groundwater remains low.

9. Other factors

Because I determined that 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. McKinnon also listed the setbacks required by the MD of Pincher Creek's land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the proposed chicken barn may have on natural resources administered by provincial departments. I was not made aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application or written decision of the Environmental Appeals Board / the Director under the *Water Act* in respect of the subject of this application.

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 Operational Policy 2016-7: *Approvals*, part 9.10.9, 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 Operational Policy 2016-7: *Approvals*, part 9.10.9, 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 because the MDP provisions do not include existing CFOs and seem to refer only to new CFOs. This

interpretation was confirmed by the MD of Pincher Creek in their second response, received on May 21, 2024.

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 9.10.9). In my view, this presumption is not rebutted for the same reasons explained in the previous paragraph.

10. Terms and conditions

Approval LA24010 specifies the cumulative permitted livestock capacity as 140 milking cows (plus associated dries and replacements), 80 swine farrow to finish, 25,000 chicken layers, 15,000 chicken pullets, 2,000 beef finishers, 1,000 ducks, 500 geese, and 600 sheep and permits the construction of the new chicken layer barn with solid manure storage.

Approval LA24010 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 LA24010 includes conditions that generally address a construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA24010: Authorizations LA06005D, LA08032A, and LA10062A (see NRCB Operational Policy 2016-7: Approvals, part 11.5). 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. All conditions from the historical permits are carried forward into the new approval.

11. Conclusion

Approval LA24010 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24010.

Waterton Colony's deemed, unwritten permit, and NRCB-issued Authorizations LA06005D, LA08032A, and LA10062A are therefore superseded, and their content consolidated into this Approval LA24010, unless Approval LA24010 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Waterton Colony's deemed permit, and NRCB-issued Authorizations LA06005D, LA08032A, and LA10062A will remain in effect.

May 24, 2024

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns raised
- C. Explanation of conditions in Approval LA24010

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.

“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 9.2.7.)

Waterton Colony’s CFO is located in the MD of Pincher Creek and is therefore subject to that county’s MDP. The MD of Pincher Creek adopted the latest revision to this plan in October 2021, under Bylaw #1330-21.

The relevant sections applying to this application can be found in section 11. CFOs.

Section 11.1 states that CFOs shall not be approved in areas shown on Map 3 – CFO exclusion areas. The list includes areas adjacent to water bodies including the Waterton River with the argument that as a headwater community, the municipality has a duty to keep source water clean for its residents and downstream populations.

This CFO is within an area designated a CFO exclusion zone and is adjacent to a major water body. But Waterton Colony is an existing CFO, established prior to January 1, 2002, when AOPA came into effect. The policy is silent on the point if expansions of existing CFOs are included in this provision. I therefore interpret this section as referring to the establishment of new CFOs only. I also asked the MD for clarification on this interpretation. In the second letter issued by the MD on May 21, 2024, Ms. McKinnon stated that *“the application is not consistent with the MDP and is within the CFO exclusion area. However, the MDP does not speak to excluding expansion, therefore this would be permitted”*.

In addition, although this CFO is in the vicinity of the Waterton River, the new chicken barn is fully under roof and runoff is not expected to occur.

Section 11.2 lists all applicable setbacks.

The proposed barn meets all of these setbacks.

Section 11.3 refers to a reciprocal MDS applied by the MD when approving other land uses.

This is likely not a land use provision. Therefore, I will not discuss this any further.

Section 11.4 requests the NRCB to avoid locations considered as ‘Environmentally Significant Areas’ as defined in the MDP document.

The definition of 'Environmentally Significant Areas' is based on the Cottonwood Report 'Environmentally Significant Areas in the Oldman River Region – MD of Pincher Creek' February 1987.

The CFO is located within an area identified in this report (Map 1) as of regional significance. However, this CFO is an existing CFO that proposed to construct a new chicken barn to replace an existing older facility.

The CFO is close to but not located within the flood plain. The topography in this area is terraced. The proposed chicken barn is significantly higher in elevation than the flood plain of the Waterton River.

This section is therefore met.

Section 11.5 refers to the IDP and that municipalities should consult those planning documents where appropriate.

This is likely not a land use provision. Therefore, I will not discuss this any further.

Section 11.6 states that the MDP should prevail over other planning documents in case of conflict.

This is likely not a land use provision. Therefore, I will not discuss this any further.

Section 11.7 states that CFOs that are no longer in operations are encouraged to volunteer relinquish their permit as a CFO.

This is likely not a land use provision. Additionally, the application is to expand the CFO which is still in operation. Therefore, I will not discuss this any further.

Section 11.8 states that the establishment of new CFOs is encouraged in areas with direct access to the provincial highway system and that MD might object to proposals in remote areas that impact roads and bridge infrastructure.

Apart from the fact that this is not a new CFO, this section falls likely under section 20(1.1) AOPA that states that an approval officer shall not consider any provisions respecting tests or conditions related the site fore a CFO.

Section 11.9 states that the MD reserves the right to request the NRCB to condition CFO approvals for stormwater management, road improvements, and consolidation of titles.

In the response the NRCB received from the MD, no issues were raised in respect to any of these topics. Having said that, the proposed chicken barn meets all AOPA requirements.

For these reasons, I conclude that the application is consistent with the land use provisions of the MD of Pincher Creek's MDP that I may consider.

Waterton colony is also located within the planning area of the intermunicipal development plan between the MD of Pincher Creek and Cardston county. The latest version of the IDP was adopted November 2019 under Bylaw #1308-19 and Bylaw # 726.2019.

The relevant sections are 3.2.4 to 3.2.9 Confined Feeding Operations:

3.2.4 states that CFO are allowed to continue to operate under acceptable operating practices and within the requirements of AOPA.

This is an existing CFO and is currently permitted under a deemed permit and several NRCB issued authorizations. This section is therefore met.

3.2.5 refers to the referral of permit applications to each other.

This is likely not a land use provision. Having said that, both municipalities received a copy of the application for their review.

3.2.6 speaks on the importance of the identified CFO exclusion/restricted areas within the planning area. New CFOs will not be allowed within these areas.

This is not a new CFO; therefore, this section does not apply.

3.2.7 Cardston recognizes the importance of the CFO exclusion area along the Water River and has agreed to establish a complementary restricted area within their jurisdiction.

Apart from the fact that this has not been implemented yet, the CFO is on the north side of the river and within the MD of Pincher Creek. This section therefore does not apply.

3.2.8 proposed changes of restricted areas should be circulated between both municipalities.

This is likely not a land use provision. Therefore, this issue will not be discussed any further. Having said that, the application was sent to both municipalities for their review.

3.2.9 speaks on communication between the two municipalities regarding haul route.

This is likely not a land use provision. Therefore, this issue will not be discussed any further.

For these reasons, I conclude that the application is also consistent with the land use provisions of the IDP between the MD of Pincher Creek and Cardston County that I may consider.

APPENDIX B: Determining directly affected party status and concerns raised

The following individual qualifies for directly affected party status because this person submitted a response to the application and owns or resides on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation (See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.):

Pia Blum

NE 8-4-28 W4; NW 9-4-28 W4; SW 16-4-28 W4; SE 17-4-28 W4

Concerns raised

The directly affected party raised the following concerns:

- 1) Decreased distance to water of a manure storage facility (the proposed chicken layer barn) and risk of unintended manure spills.

Both barns are under roof and are not exposed to precipitation. Therefore, no run on can enter or runoff can leave the barn itself. Manure from the layer barn will be collected throughout the year in the attached manure storage and transported to designated short term manure storage sites as needed. These sites have been preselected and meet all applicable criteria for short term manure storage sites (Authorizations LA06005, LA08032 and LA08032A).

- 2) Lack of information of available manure storage including size and condition it is in. Nine-month storage requirements should be implemented

The chicken layer barn proposed by Waterton Colony has a belt system where manure is transported from within the layer barn into a separate manure storage room on a continuous basis. The manure storage room that is part of this application has the capacity to meet the AOPA nine-month manure storage requirement. However, the manure accumulated in the manure storage room is proposed to be transported to a short-term manure storage site to facilitate the land application of the manure. Section 5 – Short term manure storage, Standard and Administration Regulation of AOPA, allows for the storage of manure. As mentioned previously, Waterton Colony is using designated short term manure storage sites that meet all applicable criteria for their solid manure.

- 3) The respondent also suggested that a viable manure storage plan should be in place to prevent the attraction of bears.

Waterton Colony has adequate manure storage for all its manure. However, bear activity is usually more closely related to the availability of food sources such as access to grain or livestock mortalities. Waterton Colony is encouraged to work closely with the responsible authorities and follow protocols to minimize bear attraction.

APPENDIX C: Explanation of conditions in Approval LA24010

Approval LA24010 includes several conditions, discussed below, and carries forward all conditions from Authorizations LA06005D, LA08032A, and LA10062 and can be found in the appendix to Approval LA24010.

1. New conditions in Approval LA24010

a. Construction Deadline

Waterton Colony proposes to complete construction of the proposed new chicken layer barn with solid manure storage in 2027/2028. This timeframe is somewhat vague. Generally, the anticipated timeframe to complete construction of that scope is approximately three construction seasons. The deadline of December 30, 2027, is included as a condition in Approval LA24010.

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 LA24010 includes conditions requiring:

- i. the concrete used to construct the liner of the manure collection and storage portion of the chicken layer barn with solid manure storage 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.”

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA24010 includes a condition stating that Waterton Colony shall not place livestock or manure in the manure storage or collection portions of the new chicken layer barn with solid manure storage until NRCB personnel have inspected the chicken layer barn with solid manure storage and confirmed in writing that they meet the approval requirements.