



## Decision Summary LA24030

This document summarizes my reasons for issuing Approval LA24030 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24030. 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 25, 2024, Hutterian Brethren Church of Cluny (Cluny Colony) submitted a Part 1 application to the NRCB to permit already constructed, two new facilities and to expand animal numbers at an existing multi species CFO.

In June 2024, an NRCB inspector identified unauthorized construction of a feedlot facility at this CFO. An AOPA warning (#18626) was issued, and Cluny Colony was instructed to obtain a permit for this facility.

The Part 2 application was submitted on October 24, 2024. On October 30, 2024, I deemed the application complete.

The proposed expansion involves:

- Adding 2,500 beef feeders
- Removing 200 swine feeders and 250 sheep
- Acquire permission to use already constructed feedlot pens with a total footprint of 61 m x 182 m (west pens) plus 121 m x 188 m (east pens)
- The construction of two catch basins 45 m x 32 m x 2.5 m deep and 35 m x 22 m x 2.5 m deep
- The applicant also requested a variance under section 17 of AOPA of the prohibition against constructing manure storage facilities (MSF) and manure collection areas (MCA) less than 100 metres away from water wells. That variance request is discussed in Appendix B and section 8, below.

#### a. Location

The existing CFO is located at N½ & SE 7-22-20 W4M, SW 8-22-20 W4M, SE 12-22-21 W4M in Wheatland County. The feedlot and proposed catch basins are located on N½ 7-22-20 W4M. The CFO is roughly 8 km northeast of the Village of Cluny. The proposed site is in the Crowfoot Creek Valley. The terrain is slightly sloping north towards Crowfoot Creek which runs along the north and west side of the feedlot. The shortest distance between the facilities and the creek is 33 m.

## **b. Existing permits**

The existing CFO is permitted under Approval LA09018A, allowing the operation of a 250 milking cow dairy (plus dries and replacements), 200 swine feeders, 250 sheep, 9000 chicken layers (plus associated pullets), 19200 chicken broilers, 1500 ducks, 500 geese, and 600 turkeys.

## **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

The proposed CFO facilities are located within 100 m of Crowfoot Creek. Therefore, Wheatland County as well as EAP and the Western Irrigation District have been notified.

For the size of this CFO the specified distance is 1.5 miles. (The NRCB refers to this distance as the “notification distance”.)

A copy of the application was sent to Wheatland County.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in Strathmore Times newspaper in circulation in the community affected by the application on October 30, 2024, and
- sending 26 notification letters to people identified by Wheatland County as owning or residing on land within the notification distance.

The full application was also made available 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 Transportation & Economic Corridors (TEC) and Western Irrigation District.

I also sent a copy of the application to Prairie Sky Royalty Ltd., Pioneer Gas Coop Ltd., and Lynx Energy ULC which are right of way holders on these lands.

I did not receive any responses from any of the persons or 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 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. The request for a variance has been granted as discussed 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 protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 11 and in Appendix C, the application meets all relevant AOPA requirements.

The variance that is required to address the AOPA requirements around distances of MSFs and MCAs to a water well is discussed in the following parts of this decision summary.

#### **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." Wheatland County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Suzanne Hayes, a development 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 land use provisions of the municipal development plan. The application's

consistency with the land use provisions of Wheatland County's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received a joint response from two individuals.

The two people who submitted a joint response own or reside on land within the 1.5 miles notification distance for affected persons. Because of their location within this distance, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1)

The directly affected party Rick and Debra Gorden, did not raise any specific concerns but stated that this application should not be approved. Because their response does not provide any details of the nature of their concerns and reasons for their opposition, I am not able to address their response any further.

## **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. There may be circumstances where, because of the proximity of a shallow aquifer or a close water well an approval officer may require groundwater monitoring for the facility (see Appendix B).

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](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 9.17.

In this case, the risks posed by Cluny Colony's existing CFO facilities were assessed in 2009. The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2009 risk assessment, a new version of the ERST was developed. For this reason, I reassessed the risks posed by those CFO's existing facilities, that have the highest potential to pose a risk to groundwater and surface water. I determined that the dairy EMS has the highest potential to pose a risk to groundwater because it is the deepest facility. It also has the highest potential to pose a risk to surface water due to its closeness to a common body of water. My reassessment found that the EMS poses a low risk to both groundwater and surface water. I therefore presume that all other existing facilities also pose a low risk and no further assessment is required.

## **9. Variances**

The applicant applied for a variance of the requirement for a water well to be at least 100 m away from a manure collection area (MCA). I determined that the feedlot pens, which were

constructed without a permit, are located within the required AOPA setback from an existing water well. As explained in Appendix B, I am prepared to issue a variance to the 100 m water well setback due to the construction of the well and the upslope location of the water well in respect to the feedlot pens. The existing water well monitoring condition in Approval LA09018A will be carried over. Because this condition states that all water wells within 100 m of a MSF/MCA shall be tested, it automatically includes the well in proximity to the feedlot pens (see Appendix B, below).

## 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 also listed the setbacks required by Wheatland County's land use bylaw (LUB) and noted that it is not clear if the application meets these setbacks. I confirmed that all facilities meet the setbacks listed in the LUB.

I have considered the effects the proposed facilities may have on natural resources administered by provincial departments. I am 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 any pending 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.

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.

## 11. Terms and conditions

Approval LA24030 specifies the cumulative permitted livestock capacity as:

- 2,500 beef feeders,
- 250 milking cows (plus associated dries and replacements),

- 9,000 chicken layers,
- 19,200 chicken broilers,
- 1,500 ducks,
- 500 geese,
- 600 turkeys,

and permits the use of the already constructed feedlot pens with a total footprint of 61 m x 182 m plus 118 m x 186 m, and the construction of two catch basins 45 m x 32 m x 2.5 m deep and 35 m x 22 m x 2.5 m deep.

Approval LA24030 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 LA24030 includes conditions that generally address a construction deadline, monitoring, 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 permit with Approval LA24030: Approval LA09018A (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 in Approval LA09018A are carried forward into the new approval.

## 12. Conclusion

Approval LA24030 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24030.

Cluny Colony's NRCB-issued Approval LA09018A is therefore superseded, and its content consolidated into this Approval LA24030, unless Approval LA24030 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA09018A will remain in effect.

January 22, 2025

(Original signed)  
Carina Weisbach  
Approval Officer

## Appendices:

- A. Consistency with the municipal development plan
- B. Variance
- C. Explanation of conditions in Approval LA24030

## 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.)

Cluny 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 2022, under Bylaw #2022-11.

The relevant section can be found in section 3.1 Agriculture: section 3.1.3 which 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 notified the county and considered their response (see section 7 of this Decision Summary).

In my view, the text in 4.2.2 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 9.2.4, 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 Direct Control District 3. 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.

The constructed feedlot and both proposed catch basins meet all applicable setbacks.

Based on my analysis, I determined that the development is consistent with the MDP and the county’s LUB.

## APPENDIX B: Variance

The feedlot pens are located less than 100 m from a water well. During a site visit I confirmed that one water well is located approximately 14 m south of the feedlot pens. This is in conflict with section 7(1)(b) of the Standards and Administration Regulation (SAR).

Because the manure collection area (MCA) has already been constructed (unauthorized), an exemption under section 7(2) of the SAR is not available. 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 the circumstances a variance is appropriate in this case.

Approval officers must not grant variances lightly or in the absence of substantive evidence that they will produce equivalent levels of protection (see Board Decision 03-04, *AAA Cattle Ltd.* p 24). I will consider whether a variance is warranted in this case.

On October 4, 2024, the CFO operator requested a variance to the water well setback requirement on the grounds that the location of the water well, which is upslope from the feedlot pens, provides the protection needed to prevent manure contaminated runoff from getting close to the water well.

To determine if a variance is warranted, I 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 MCA. In this case I presume that the risks of direct aquifer contamination from the MCA are low if the MCA otherwise meets AOPA's technical requirements to control runoff and leakage. However, when determining whether an MCA 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. 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.

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

The following factors were relevant to determine the protection of the aquifer in relation to the water well:

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

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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).



The water well:

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 14 m south of the feedlot pens is likely EPA water well ID # 295127. This well is reported to have been installed in 1996 with an above ground casing and has a screened zone from 10.06 m to 11.58 m below ground level across stratigraphy. This well is reported to be used for domestic purposes. I note that in my conversations with the applicant, the water well is presently only used for livestock. The well's log identifies protective layers from ground surface to 2.44 m (brown clay) and 3.05 m to 10.97 m below ground level (blue clay). The well has a bentonite seal from ground surface to 7.62 m below ground level. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage. The well is up-gradient of the MCA.

Although the water well is not very far from the feedlot pens (14 m), the direction of surface water flow is northwards, away from the water well. It is therefore unlikely that manure contaminated runoff can reach the water well. For further protection, a condition will be added that requires the construction of a berm between the feedlot pens and the water well. I would also like to point out that the water well monitoring condition in Approval LA19018A will be carried forward as discussed above.

Based on the reasons discussed above, I am of the opinion that a variance is warranted.

## **APPENDIX C: Explanation of conditions in Approval LA24030**

Approval LA24030 includes several conditions, discussed below, and carries forward all conditions from Approval LA09018A. Construction conditions from historical Approval LA09018A are listed in the appendix to Approval LA24030.

### **1. New conditions in Approval LA24030**

#### **a. Construction above the water table**

Sections 9(2) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

Based on this information, the proposed catch basin (east) does not meet the one metre requirement of sections 9(2). However, because the height of the water table can vary over time, the lack of adequate depth to water table indicated in Cluny Colony’s report does not mean that there will be an inadequate depth at the time of construction. In addition, the adjacent borehole does not show the water table within drilling depth (6 m below ground level). To address this variability and ensure that the depth requirement is met at the time of construction, a condition is included requiring Cluny Colony to cease construction and notify the NRCB immediately if the water table is encountered during construction.

#### **b. Construction of berm between the feedlot pens and the water well**

In order to further protect the adjacent water well that is located 14 m south of the feedlot pens, a condition will be added to the approval requiring Cluny to construct a berm to prevent any possible manure contaminated surface water to reach the water well. The berm shall be constructed by August 31, 2025.

#### **c. Construction Deadline**

Cluny Colony proposes to complete construction of the proposed new catch basins by December 31, 2026. On my opinion, this timeframe is too long considering that the feedlot pens are populated and close to a common body of water (Crowfoot Creek). I will therefore shorten the proposed timeline to construct the catch basins to one construction season. The deadline of September 30, 2025, is included as a condition in Approval LA24030.

#### **d. 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 LA24030 includes a condition requiring:

- i. Cluny Colony to provide evidence or written confirmation from a qualified third party that the location and dimensions of the two catch basins are as approved in this permit

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 LA24030 includes a condition stating that Cluny Colony shall not allow manure contaminated runoff to enter the catch basins until NRCB personnel have inspected the new catch basins and confirmed in writing that they meet the approval requirements.