



Decision Summary LA19007

This document summarizes my reasons for issuing Approval LA19007 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA19007. 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.

1. Background

On February 22, 2019, Hutterian Brethren Church of Jenner (Jenner Colony) submitted a Part 1 application to the NRCB to expand an existing multi species confined feeding operation (CFO). The Part 2 application was submitted on February 25, 2019. On March 12, 2019, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken layer numbers from 20,000 to 39,000
- Increasing chicken pullet numbers from 20,000 to 39,000
- Adding 60 beef finishers
- Removing 500 swine (farrow to finish)
- Constructing a new chicken layer barn (70.1 m x 19.4 m)

The location of the new chicken layer barn overlaps with the existing pullet barn. Therefore, in order to build the new chicken layer barn, the existing pullet barn will have to be decommissioned.

Under AOPA, this type of application requires an approval.

a. Location

The existing CFO is located at SE 35-021-09 W4M in Special Area No. 2, roughly 8 km north of Jenner, Alberta. The terrain is undulating to rolling.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval LA09016B, together with Authorization LA12012. These permits allow the construction and operation of a CFO with:

- 500 sow farrow to finish;
- 115 milking cows (plus associated dries and replacements);
- 20,000 chicken layers;
- 20,000 chicken pullets;
- 6,000 chicken broilers;
- 300 geese;
- 1,000 turkeys; and
- 1,000 ducks.

The swine housing facilities (hog barns) have not been built (see Appendix B, attached for further detail).

The CFO's existing permitted facilities are listed in the appendix of Approval LA19007.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct 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:

- the municipality where the CFO is 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 individuals who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For this application, the distance is 1.5 miles. (The NRCB refers to this distance as the "affected party radius.")

Municipalities that are affected parties are defined by the act to be "directly affected" and are entitled to provide evidence and written submissions. While "municipality" is not defined in AOPA, the NRCB interprets a Special Area as a "municipality" for the purposes of the Part 2 Matters Regulation. Special Area No. 2 has authority over land use for the area including the location of Jenner Colony's CFO. Special Area No. 2 is an affected party (and therefore also a directly affected party) because the proposed expansion is located within its boundaries.

All other parties who receive notice of the application may request to be considered "directly affected." Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be "directly affected" if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer's decision on the approval application.

The NRCB published notice of the application in the Brooks Bulletin on March 12, 2019 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to Special Area No. 2, Alberta Health Services (AHS), Alberta Environment and Parks (EP). Eight courtesy letters were sent to people identified by Special Area No. 2 as owning or residing on land within the affected party radius.

3. Responses from special areas and referral agencies

I received a response from Special Area No. 2 and EP. No response was received from AHS. The NRCB also did not receive any comments from individuals or non-government parties.

Ms. Brett Richards, an administrator with Special Area No. 2, provided a written response on behalf of Special Area No. 2. As noted in section 2, Special Area No. 2 is a directly affected party.

Ms. Richards stated that she has no concerns with this application.

The application's consistency with Special Areas Land Use Order, is addressed in Appendix A, attached.

The NRCB also received a response from Ms. Laura Partridge, a senior water administration officer with EP. Ms. Partridge stated that there is no existing *Water Act* licensing at the legal land location and asked Edward Hofer, a representative of Jenner Colony, to contact her immediately. Water licensing is not under the jurisdiction of the NRCB and is solely administered by EP. For this reason I will not further discuss this matter. Ms. Partridge provided Jenner Colony with a copy of EP's statement.

4. Environmental risk screening of existing and proposed facilities

When reviewing new approval applications 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, 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 Jenner Colony's existing CFO facilities were assessed in 2009 with some facilities assessed in 2010, 2012 (duck barn), and 2015 (new pullet barn). These assessments indicated that the risks to surface water and groundwater were low.

Since the 2009 and 2010 risk assessments, the NRCB developed a new, updated version of the ERST. For these reasons, I re-assessed the risks posed by the CFO's existing facilities that were assessed in 2009 and 2010. My re-assessment found that the risk of these facilities remains low.

I also assessed the proposed new chicken layer barn, using the NRCB's risk screening tool, and determined that it poses a low risk to groundwater and surface water.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.¹

In addition, the proposed expansion is consistent with the land use provisions of the Special Areas Land Use Order (LUO) (See Appendix A for a more detailed discussion of special area's planning requirements.)

1. For a summary of these requirements, please see the [2008 AOPA Reference Guide](http://www.nrcb.ca/about/documents), available on the NRCB website at www.nrcb.ca/about/documents.

With respect to the act's technical requirements, 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

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.

In addition, I assessed the effects of the proposed expansion on the environment. Consistent with NRCB policy, I presumed that these effects are acceptable because the application meets all of AOPA's technical requirements. I also presumed that the application's effects on the economy and community are acceptable, and that the proposed expansion is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with Special Areas Land Use Order. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3.)

6. Terms and conditions

Approval LA19007 specifies the new permitted livestock capacity as 39,000 chicken layers, 39,000 chicken pullets, 115 dairy cows (plus associated dries and replacements), 1,000 turkeys, 1,000 ducks, 6,000 chicken broilers, 300 geese and 60 beef finishers and permits the construction of a new chicken layer barn.

Approval LA19007 also 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 LA19007 includes conditions that:

- Set a deadline of December 31, 2021 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the chicken layer 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"
- Require written confirmation from a qualified third party that the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Jenner Colony from placing manure or livestock in the chicken layer barn until the facility has been inspected by the NRCB following its construction
- Require the decommissioning of the existing pullet barn according to guideline Agdex 096-90 August 2012.

For an explanation of the reasons for these conditions, see Appendix B, attached.

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA19007: Approval LA09016B and Authorization LA12012 (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). 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, and then cancelling all existing permits once the new permit is issued. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

In addition to containing the new terms and conditions summarized above, Approval LA19007 includes all existing terms and conditions in Approval LA09016B and Authorization LA12012, except the terms and conditions noted below. Construction conditions that are being carried forward and that have been met are identified and included in an appendix to the new approval.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that relevant parts of conditions #8, 9, and 10 from Approval LA09016B should be deleted and therefore are not carried forward as written to Approval LA19007. My reasons for deleting these conditions are provided in Appendix B, attached.

7. Conclusion

Approval LA19007 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19007.

Jenner Colony's deemed approval, NRCB-issued Approval LA09016B and Authorization LA12012 are therefore cancelled, unless Approval LA19007 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA09016B and Authorization LA12012 will remain in effect.

April 25, 2019



Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the Special Areas Land Use Order (LUO)
- B. Explanation of conditions in Approval LA19007

APPENDIX A: Consistency with the Special Areas Land Use Order

Under section 20(1) of the *Agricultural Operation Practices Act* (AOPA), an approval officer may grant an application for an amendment of an approval only if the approval officer finds that the application is consistent with the land use provisions of the applicable municipal development plan (MDP). An MDP is a statutory plan provided for under section 632 of Part 17 of the *Municipal Government Act* (MGA).

The Special Areas is not subject to Part 17 of the MGA and therefore does not have a MDP. However, under the *Special Areas Act*, the Minister of Municipal Affairs has issued a Land Use Order (LUO) to regulate and control the use and development of land and buildings within Special Areas 2, 3, and 4, and to facilitate orderly and economic development within those areas. Under these circumstances, I find that the LUO is equivalent to a MDP for the purpose of AOPA's MDP consistency requirement.

The applicant's confined feeding operation (CFO) is located in Special Area No. 2 and is therefore subject to that area's LUO. (Special Areas No. 2, 3 and 4 adopted the latest revision to this order on March 3, 2015, as schedule C to M.O. # 007/15.)

I now turn to considering which sections of the LUO apply:

- Section 19 – A-Agricultural District - The area in which the CFO is located is zoned A. CFOs are not listed under permitted or discretionary uses. However, CFOs are specifically discussed in Appendix 2. I therefore assume that the land use provisions in section 19 of the LUO are not meant to apply to CFOs which are specifically addressed in Appendix 2.
- Appendix 2 Section 1 – 'Restricted Areas' lists several areas in which CFOs should be excluded. The CFO is not located in or near any of the sites listed under subsections 1(1) and 1(2). However, subsection 1(3) states that CFOs shall be excluded 800 metres from the bank of the Red Deer River. Further, within this setback, CFOs shall be excluded from 150 metres from the top of slope of the river banks, or any associated coulee complex, of the Red Deer River.

The proposed chicken layer barn is not located within 800 metres of the Red Deer River or 150 metres of any top of slope of an associated coulee complex of the Red Deer River. The closest veins, one located to the west and one to the north) are a minimum of 300 metres away from the new barn.

- Appendix 2 Subsection 2(1) – 'Areas requiring mitigation' states that all proposals for CFOs located within the very high and high risk areas for groundwater contamination (Appendix 4) shall demonstrate mitigation measures.

The new chicken layer barn is outside of the area identified as very high or high risk for groundwater contamination.

- Appendix 2 Subsection 2(2) states that mitigation measures must be in place to protect surrounding environmental attributes and landscape features.

As stated in section 20(1.1) of AOPA - in considering whether an application is consistent with the MDP land use provisions, an approval officer shall not consider any provisions respecting any conditions related to the site for a CFO. Having said that, the barn is located within the overall footprint of the existing CFO and will therefore not further impact topographic features.

The same section of AOPA (section 20(1.1)) also precludes me from considering provisions in section 3 (Recommended Facility Setback) and 4 (Recommended Setback for Manure Disposal) of the LUO As stated in section 20(1.1), an approval officer shall not consider any provisions respecting the application of manure, composting materials or compost. Nevertheless, the operator is reminded that all runoff from manure spreading fields and short term manure storage sites must be contained on the Jenner Colony's property and that all setbacks to water bodies, water wells and residences must be respected. In addition, all nutrient limits for manure application must be adhered to and soils must be tested as laid out in section 24 of the Standard and Administration Regulation of AOPA.

APPENDIX B: Explanation of conditions in Approval LA19007

Approval LA19007 includes several conditions, discussed below, and carries forward all conditions from Approval LA09016B and Authorization LA12012.

1. New conditions in Approval LA19007

a. Construction deadline

Jenner Colony proposes to complete construction of the proposed new chicken layer barn by December 31, 2021. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2021 is included as a condition in Approval LA19007.

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 LA19007 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the chicken layer 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.”
- Jenner Colony to provide written confirmation, signed by 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 LA19007 includes a condition stating that Jenner Colony shall not place livestock or manure in the manure storage portions of the new chicken layer barn until NRCB personnel have inspected the barn and confirmed in writing that it meets the approval requirements.

c. Decommissioning of the existing pullet barn

Jenner Colony proposed to construct the new chicken layer barn partly on the footprint of the pullet barn. Therefore, prior to construction commencing, Jenner Colony shall decommission the pullet barn according to Agdex 096-90, August 2012 following the procedure for facilities with a low risk to groundwater and surface water.

2. Conditions not carried forward from Approval LA09016B

Construction condition 1 states: “A separate completion report for each of the proposed facilities being constructed or modified (the extension of the chicken layer barn, the new chicken pullet raising facility and the new hog barn) confirming the manure storage liner materials and construction procedures, prepared by a professional engineer, must be provided to the NRCB prior to manure or livestock entering the respective facilities. The completion reports must also include:- verification that the respective facilities are located according to the site plan provided in the application, -verification of the size including depth below grade of the new hog barn liner, - verification of cement type, strength and thickness, -verification of the water stops, rebar and sealants used in the manure liners.”

The hog barn permitted by this permit (LA09016B) has not been built yet and the construction completion deadline has expired. In addition, Jenner Colony proposed to cease their hog production and are no longer planning on constructing the permitted hog barn. For these reasons and following NRCB policy, I will amend this condition and cancel the permitted construction of the hog barn. The remainder of this condition will be carried over as is into the appendix of this approval (Approval LA09007) because the permitted construction under Approval LA09016B has occurred and all of other aspects of this condition have been met.

Similar to this, conditions 2 and 3, that determined the construction completion date and required the post construction inspection of the constructed facilities prior to populating the facilities also need to be read to exclude the hog barn.