

## Decision Summary RA19004

This document summarizes my reasons for issuing Approval RA19004 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA19004. That document 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.

### 1. Background

On February 20, 2019, Lone Pine Hutterian Brethren (Lone Pine) submitted a Part 1 application to the NRCB to expand the dairy operation at an existing multi-species confined feeding operation (CFO). The Part 2 application was submitted on March 4, 2019. On March 14, 2019, I deemed the application complete.

The proposed CFO expansion involves:

- Increasing livestock numbers from 130 to 200 milking cows (plus associated dry cows and replacements)
- Constructing a heifer barn (97.5 m x 36.6 m)
- Constructing a solid manure storage pad (15.2 m x 9.1 m)

Under AOPA, this type of application requires an approval. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see [www.nrcb.ca](http://www.nrcb.ca).)

#### a. Location

The existing CFO is located at SW 7-39-17 W4M in the County of Stettler, roughly 4km northeast of Botha, Alberta. The terrain of the CFO’s site is level to gently sloping.

#### b. Existing permitted livestock and facilities

The CFO is currently permitted under NRCB Approval RA13003. This approval allowed the construction and operation of the following:

- 500 sow farrow to finish
- 130 milking cow dairy (associated replacements and dries also allowed on site)
- 30,000 layer chickens (associated pullets also allowed)
- 400 beef finishers
- 4000 broiler chickens
- 450 geese
- 900 ducks

The CFO’s existing permitted facilities are listed in an Appendix of Approval RA19004.

### 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. The County of Stettler is an affected party (and therefore also a directly affected party) because the CFO 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 sent a notice of the application to Black Press Media to be published in the Stettler Independent March 14, 2019 edition; however, the notice was erroneously published in a different municipality’s newspaper. As a result, the NRCB re-published a notice of the application in the Stettler Independent, on March 21, 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 the County of Stettler, Alberta Health Services (AHS), Alberta Environment and Parks (EP), and Alberta Agriculture and Forestry (AF). The NRCB sent 15 courtesy letters to people identified by the County of Stettler as owning or residing on land within the affected party radius. The NRCB later sent 15 updated courtesy letters with the revised newspaper information and the new deadline to submit a response.

### **3. Responses from the municipality and referral agencies**

I received responses from the county, EP, AHS, and AF.

Ms. Jacinta Donovan, a development officer with the County of Stettler, provided a written response on behalf of the county. As noted in section 2, the County of Stettler is a directly affected party.

Ms. Donovan stated that the application is consistent with the county’s municipal development plan (MDP). The application’s consistency with the county’s MDP is addressed in Appendix A, attached.

Ms. Donovan also listed the setbacks required by the County of Stettler’s land use bylaw (LUB) and noted that the application seems to meet these setbacks. Additionally, she indicated that the

CFO site and all lands within 1,600 m of the CFO, are zoned as 'Agricultural' under the county's (LUB).

The NRCB also received a response from a senior water administration technologist at EP indicating that the water sources for the dairy's expansion are from a surface water dam, and a regional waterline (for washing/cleaning). EP indicated that if the annual water use supplied by the dam exceeds 57,000 cubic metres per year (for all water uses from the dam), then additional licensing will be required. EP emailed this response directly to the applicant.

The NRCB received a response from an environmental health officer on behalf of AHS, indicating that the department has no objections to this application.

An AF inspector indicated that AF has no concerns with the application.

#### **4. Responses from other directly affected parties**

The NRCB received three responses from four individuals.

All of the four people who submitted responses own or reside on land within the 1.5 mile radius for affected persons. Because of their location within this radius, they are presumed to be directly affected by the application.

The directly affected parties raised concerns regarding:

- Water supply and consumption
- Groundwater contamination
- Colony has reached capacity
- Impact into the environment by removal of trees, and increase of traffic and dust on the road.

These concerns are addressed in Appendix B.

#### **5. Environmental risk screening of existing and proposed facilities**

When reviewing a new approval application for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool provides for a numeric scoring of risks, which can fall within either a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Guides 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 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 Lone Pine's existing CFO facilities were assessed in 2013. According to that assessment, the facilities posed a low risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

I also assessed the proposed new heifer barn and the solid manure storage pad, using the NRCB's risk screening tool, and determined that they pose a low risk to groundwater and surface water.

## 6. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 7.<sup>1</sup>

In addition, the proposed CFO expansion is consistent with the land use provisions of the County of Stettler's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed CFO 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

In addition, I assessed the effects of the proposed CFO modification 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 have carefully considered the concerns raised by the directly affected parties, and in my view, those concerns have been adequately addressed by the application and conditions. I also determined that the application's effects on the economy and community are acceptable, and that the proposed CFO expansion is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipal development plan. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

## 7. Terms and conditions

Approval RA19004 specifies the total new permitted livestock capacity as:

- 200 milking cows (plus associated dry cows and replacements)
- 500 sow farrow to finish
- 30,000 layer chickens (associated pullets also allowed)
- 400 beef finishers
- 4000 broiler chickens
- 450 geese
- 900 ducks, and permits the construction of a heifer barn and a solid manure storage pad.

Approval RA19004 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

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

the project descriptions in their application and accompanying materials.

In addition to the terms described above, Approval RA19004 includes conditions that:

- Set a deadline of November 30, 2022 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the solid manure storage pad, and the heifer barn to meet the specification for category C (solid manure – wet), and category D (solid manure – dry), respectively, in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas”
- Require written confirmation that the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Lone Pine from placing manure or livestock in the heifer barn and the solid manure storage pad until the facilities have been inspected by the NRCB following their construction

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

**a. Conditions carried forward from previously issued permits**

For clarity, and pursuant to NRCB policy, I consolidated previously issued Approval RA13003 with Approval RA19004 (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.

Therefore, in addition to containing the new terms and conditions summarized above, Approval RA19004 includes all existing terms and conditions from Approval RA13003. Construction conditions that have been met are identified and included in an appendix to Approval RA19004.

**8. Conclusion**

Approval RA19004 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA19004.

NRCB-issued Approval RA13003 is therefore cancelled, unless Approval RA19004 is held invalid following a review and decision by the NRCB’s board members or by a court, in which case Approval RA13003 will remain in effect.

May 2, 2019

(Original Signed)  
Francisco Echegaray, P.Ag.  
Approval Officer

**Appendices:**

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Explanation of conditions in Approval RA19004

## APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for 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).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

Lone Pine’s CFO is located in the County of Stettler and is therefore subject to that county’s MDP. The County of Stettler adopted the latest revision to this plan on June 25, 2014 under Bylaw 1529-14. Section 4.15 of the MDP deals specifically with CFOs. The subsections of this section that are relevant to this application are discussed below.

Subsection 4.15(d) states that the CFO site “must be located” in either the Agricultural District or the Agricultural Preserve District under the county’s land use bylaw, otherwise the county will ask the NRCB to include a condition in the permit requiring the applicant to obtain rezoning from the county. This CFO is located within the Agricultural District. Therefore, the application is consistent with this MDP policy.

Subsection 4.15(e) states that the “proposed location of a CFO structure must comply with the minimum front, side and rear yard setbacks for farm buildings as described in the land use bylaw.” The proposed heifer barn and the solid manure storage pad meet these setbacks.

Subsection 4.15(f) states that the county *may* request that the NRCB include a condition in the permit requiring the applicant to enter into a road use agreement with the county. This is likely not a land use provision. Nevertheless, the county has made no such request for this application. Further, NRCB policy is not to use AOPA permit conditions to require applicants to enter into road use agreements. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.9.)

Subsections 4.15(h) and (i) preclude new or expanding CFOs within any exclusion zones identified in an intermunicipal development plan or in any area structure, concept and outline plans listed in those subsections. Lone Pine’s CFO is not within any of these exclusion zones.

For the reasons stated above, I conclude that the application is consistent with the land use provisions of the County of Stettler’s MDP. This conclusion is supported by the county’s response letter, which stated that the application is consistent with its MDP.

In my view, the text of County of Stettler’s MDP also provides a clear intent to adopt provisions from the land use bylaw (LUB), in sections 1.0, 3.6, 4.1, 4.7, 4.15 d), 4.15 e), 4.15 g), and 4.16. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered County of Stettler’s Land Use Bylaw #1602-18 (most recently amended on November 13, 2018). Under that bylaw, the subject land is currently zoned as Agriculture.

Section 8.1 of the land use bylaw exempts CFOs from the definition of agricultural operations. However, section 90.14 of the bylaw states that the county “supports the location” of CFOs in the agricultural district, if they “comply with the relevant policies” in the county’s MDP, particularly, the exclusion zones cross-referenced in the inter-municipal development plans, and around approved area structure plans, concept plans and outline plans. The development officer’s response indicated that the subject property is not located within any areas covered by area structure plans or inter-municipal development plans.

## APPENDIX B: Concerns from directly affected parties

The following individuals own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

### **Todd and Deborah Payne**

SE and SW 14-39-18 W4M and NE 2-39-18 W4M

### **Dean Payne**

NE and NW 14-39-18 W4M

### **James Purcell**

In his response letter he stated his land location at NE/W 1-39-19 W4M, which is outside the affected party radius; however, Mr. Purcell also owns land on the SE 2-39-18 W4M, which is located within the radius.

Therefore, under NRCB policy, because they submitted responses, these individuals are presumed to be “directly affected” by the application. See NRCB Operational Policy 2016:7 – *Approvals*, part 6.2.

The individual directly affected parties raised the following concerns:

- Water supply and consumption
- Groundwater contamination
- Colony has reached capacity
- Impact into the environment by removal of trees, and increase of traffic and dust on the road.

The issues are summarized and listed below, together with my analysis and conclusions.

1. **Water supply** - the potential impact on surface and groundwater quantity was a significant concern for most of the parties. Parties expressed concerns that the CFO would remove water from the same aquifer as the surrounding communities also use. The respondents questioned if the colony has enough water presently and after the expansion. They wondered if all the water uses have been assessed to allow this expansion. Where the extra water will come from, as they heard that the colony is building a pipeline to bring water from many miles away.

### **Approval officer’s conclusions**

Alberta Environment and Parks (EP) is responsible for licencing the use of groundwater and surface water in the province. The water licencing process includes an opportunity for neighbours to provide input. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. (This declaration is on page 4 of Technical Document RA19004.)

EP responded to the NRCB referral letter indicating that they understand that the water sources for the dairy’s expansion are a surface water dam and a regional waterline (for washing/cleaning purposes). EP, further indicated that if the annual water use from the dam exceeds 57,000 cubic metres per year, then additional water licensing will be

required. I brought EP's comments to the colony's attention.

A copy of this decision will also be forwarded to AEP for its information.

2. **Groundwater contamination** – One of the parties raised a concern that manure effluents from a CFO of this magnitude would contaminate groundwater. He indicated that there are no good records that holding ponds actually hold this type of contaminant.

#### **Approval officer's conclusions**

As noted in the decision summary above, and documented in Technical Document RA19004, the proposed CFO facilities meet all AOPA technical requirements. Several of these requirements are designed to prevent or minimize manure leakage from CFO facilities and thus to prevent manure from reaching and contaminating groundwater. Because the proposed CFO facilities meet or exceed these requirements, I concluded that the level of groundwater risk posed by these facilities is acceptable.

As noted in section 5 of the decision summary, I assessed the CFO's existing and proposed facilities, using the NRCB's environmental risk screening tool (ERST), in order to determine the level of risk they pose to groundwater. The CFO's existing and proposed facilities pose a low risk to groundwater.

The colony has an existing liquid manure storage concrete tank (I assume this is what the respondent was referring to by "holding pond"). This manure storage tank is one of the existing facilities assessed using the ERST.

Regulations under AOPA set nutrient application limits to prevent the soils from being overloaded with nitrogen and minimize the potential for groundwater to be impacted by manure. AOPA also requires operators to test soils on farmland to which manure is applied for salts and nitrogen at least every three years, and to make these records available for inspection by the NRCB.

3. **Size of colony** – Two of the parties indicated that their properties are located in between three Hutterite colonies. Additionally one party questions how big these colonies can get, and what is the ideal colony size. They believe this colony has reached their capacity, and they need to start a new colony where there is more room.

#### **Approval officer's conclusions**

AOPA does not expressly require approval officers to consider the concentration of CFOs in an area, or other activities in the area. I observe that the NRCB's board members have directed approval officers to ignore cumulative effects in their permitting decisions. For example, in a 2011 decision, the board stated that the issue of cumulative effects is "not within the Board's regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment." (*Zealand Farms*, RFR 2011-02 at 5.)

The NRCB does not regulate the size of Hutterite colonies. Under section 20 of AOPA, an approval officer may approve an application for 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). As explained in Appendix A above, Lone Pine's application is consistent with the land use provisions of the County of Stettler's MDP, and with the county's LUB, which indicates that the CFO is an appropriate land use in the area.

4. **Impact to the environment by the removal of trees, and increase of traffic and dust on the road.** – One of the parties is concerned the impact the removal of trees might have on the wildlife population (owls and deer), and wind erosion. The same individual is concerned about the impact that the increase of traffic and dust on the road has on the environment.

**Approval officer's conclusions**

I assessed the effects of the CFO expansion on the environment. Consistent with NRCB policy, I determined that the effects of adding 70 milking cows, a barn and a solid manure storage pad are acceptable because the application meets all of AOPA's technical requirements.

AOPA does not expressly require approval officers to consider the effect of removing trees on the applicant's property.

Traffic on the county roads, and dust, may increase as a result of the CFO expansion. However, no concerns about a potential increase in traffic and dust from these roads were raised by the County of Stettler, which has jurisdiction over the management of these roads. Additionally, the County of Stettler has a policy called "Gravel Road Dust Reduction".

## **APPENDIX C: Explanation of conditions in Approval RA19004**

Approval RA19004 includes several conditions, discussed below, and carries forward a number of conditions from Approval RA13003.

### **1. New conditions in Approval RA19004**

#### **a. Construction Deadline**

Lone Pine proposes to complete construction of the proposed new heifer barn and the solid manure storage pad by January 30, 2020. This date is in the same construction season as the season when the approval is issued. In my opinion, a construction schedule that allows more than one full construction season is more practical and realistic for the proposed development. Therefore, Approval RA19004 includes a condition stating a deadline of November 30, 2022.

#### **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 RA19004 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the solid manure storage pad and the heifer barn to meet the specification for category C (solid manure – wet) and category D (solid manure – dry), respectively, in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- Lone Pine shall provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the heifer barn and the solid manure pad.

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 RA19004 includes conditions stating that Lone Pine shall not place livestock or manure in the manure storage portions of the new heifer barn, or manure on the manure storage pad, until NRCB personnel have inspected them and confirmed in writing that they meet the approval requirements.