

Decision Summary LA24019

This document summarizes my reasons for issuing Approval LA24019 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24019. 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 April 15, 2024, Evergreen Hutterian Brethren and Evergreen Colony Farming Co. Ltd. (referred to collectively as Evergreen Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on April 30, 2024. On May 8, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken layer numbers from 30,000 to 60,000
- Increasing chicken pullet numbers from 30,000 to 60,000
- Constructing a chicken layer barn (with attached solid manure storage) – 167.7 m x 43.9 m (550 ft. x 144 ft.)
- Converting an existing layer barn into a chicken pullet barn
- Decreasing dairy cows (plus associated dries and replacements) from 150 to 5

The proposed conversion of the existing layer barn into a pullet barn will not involve an alteration to the structure's manure collection and storage liner. Therefore, the proposed barn conversion does not require a permit amendment under AOPA.

NRCB Approval LA16008 permitted the construction of a pullet barn and a second broiler barn (Broiler Barn 2). The extended construction completion deadline for these facilities has passed and the applicant has indicated that due to a change in management plans, that they would not be constructing these facilities. Therefore, these facilities are being amended out of this permit and the chicken broiler numbers are being reduced from 110,000 to 60,000 (Operational Policy 2015-1: Construction Deadlines, part 4). Additionally, Approval LA16008 amended out a dairy barn that was permitted in Approval LA04013A to house 150 milking cows plus associated dries and replacements but did not adjust animal numbers accordingly. Therefore, Evergreen Colony proposed to reduce their permitted milking cows plus associated dries and replacements from 150 to 5 with this application.

Evergreen Colony also indicated in this application that the proposed new layer barn will be designed to be converted to an organic chicken layer barn, which requires access to an outdoor exercise area. The proposed new layer barn will be designed to have outdoor exercise areas on both sides of the barn, each measuring 167.7 m x 41.1 m. Poultry will not be fed or watered in

these vegetated areas, nor will they be used to store or collect manure. Therefore, the outdoor exercise areas do not require a permit under AOPA.

a. Location

The existing CFO is located at E½ 27-7-15 W4M in the Municipal District (MD) of Taber, roughly 25 km southeast of Taber, Alberta. The terrain is mostly level. The closest water body is an intermittent creek located more than 1 km to the Southwest of the CFO.

b. Existing permits

The CFO is currently permitted under NRCB Approval LA16008, which superseded all previous permits. This permit allows for the operation of a multi-species CFO with the following animal numbers:

- 600 swine farrow to finish
- 30,000 chicken layers (plus associated pullets)
- 110,000 chicken broilers
- 500 ducks
- 500 geese
- 500 turkey broilers
- 150 milking cows (plus associated dries and replacements)

The CFO's existing permitted facilities are listed in the appendix of Approval LA24019 (with the broiler barn 2 and pullet barn removed).

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".)

None of the CFO facilities are located within 100 m of a bank of a river, stream or canal.

A copy of the application was sent to the MD of Taber, which is the municipality where the CFO is located, and to the County of Warner, which has a boundary within the notification distance.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- advertisement in the Taber Times newspaper in circulation in the community affected by

- the application on May 8, 2024, and
- sending 17 notification letters to people identified by the MD of Taber and the County of Warner as owning or residing on land within the notification distance.

The full application was made available for viewing in the NRCB's Lethbridge office 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), and Alberta Transportation & Economic Corridors (TEC).

I also sent a copy of the application to the South East Alberta Water Co-op Ltd. and Forty Mile Gas Co-op Ltd. as they are utility right-of-way holders on the subject land.

I received responses from Leah Olsen, a development/planning technologist with TEC, and Jeff Gutsell, a hydrogeologist with EPA.

Leah Olsen stated that a permit will not be required from Transportation and Economic Corridors for the proposed development.

Jeff Gutsell stated Evergreen Hutterian Brethren has not submitted an application for a groundwater license to Alberta Environment and Protected Areas for E1/2 27-7-15-W4M to address the water needs required for the proposed feedlot expansion. He stated that there are no groundwater or surface water diversion authorizations on the subject land and an additional 2,300 cubic metres of water are required for the increase in animal numbers. He also stated that there are no water wells on the subject land and it is not located within any irrigation district. However, it is noted on land titles that there are utility right-of-ways with the South East Alberta Water Co-op Ltd. Mr. Gutsell stated that it is the responsibility of the Evergreen Hutterian Brethren to review their current agreement(s) and the volume increase required for the proposed feedlot expansion and confirm an adequate volume exists. He stated that should it be determined that additional water is required, options for obtaining a legal water source(s) for the additional diversion(s) can be discussed with Alberta Environment and Protected Areas.

I did not receive responses from any utility right of way holders.

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 Taber's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.) The location of the CFO is very close to the boundary of the Intermunicipal Development Plan (IDP) between the MD of Taber and the County of Warner, but not within the boundary. Therefore, I did not consider the land use provisions of that IDP.

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

With the terms and conditions summarized in part 10 and in Appendix B, the application meets all relevant AOPA requirements.

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 Taber is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Tom Anderson, a development officer with the MD of Taber, provided a written response on behalf of the MD of Taber. Mr. Anderson stated that the application is consistent with the MD of Taber's land use provisions of the municipal development plan and falls outside of the confined feeding operation restricted area. Mr. Anderson also stated that there are no area structure plans affecting this application and the zoning of the subject land and surrounding lands within one mile are "Rural Agricultural". Mr. Anderson noted the proposed expansion appears to meet all required municipal setbacks. In the response, Mr. Anderson also identified that the Southwest quarter of 27-7-15-W4 of the CFO falls within the Intermunicipal Development Zone with the County of Warner No. 5. However, the CFO is located on the E½ 27-7-15 W4 and therefore, is not within the Intermunicipal Development Zone. The application's consistency with the land use provisions of the MD of Taber's municipal development plan is addressed in Appendix A, attached.

The County of Warner is a municipality that is also an affected person because its boundary falls within the notification distance (see NRCB Approvals Policy part 7.2.1). The County of Warner is also therefore a directly affected party, though did not submit a response to the application.

Apart from municipalities, any member of the public may request to be considered “directly affected.”

No responses were received from any other person, organization, or member of the public.

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 porous subsurface materials, and surface water systems an approval officer may require groundwater monitoring for the facility. Based on the information in the application, as well as from a site visit, I did not identify a shallow aquifer, porous subsurface materials, or surface water systems. Therefore, groundwater monitoring is not required for this facility.

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, which can fall 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 Evergreen Colony’s existing CFO facilities were assessed in 2015 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was done. As a result, a new assessment of the risks posed by the CFO’s existing facilities is not required.

9. 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.

Tom Anderson listed the setbacks required by the MD of Taber’s land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concerns submitted under section 73 of the *Environmental Protection and Enhancement Act* or under section 109 of the *Water Act* in respect of the subject of this application.

I am not aware of a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed June 12, 2024.

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 on the environment are acceptable because the application meets all of AOPA's technical requirements. I see nothing in the information before me to suggest that effects on the environment will be unacceptable and, 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. I encountered no submissions or evidence that effects on the community and economy would be unacceptable. 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 addition, the land around the CFO is zoned Rural Agricultural. In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA24019 specifies the cumulative permitted livestock capacity as 60,000 chicken broilers, 60,000 chicken layers, 60,000 chicken pullets, 600 swine farrow to finish, 500 ducks, 500 geese, 500 turkey broilers, 5 milking cows (plus associated dries and replacements), and permits the construction of the chicken layer barn (with attached solid manure storage).

Approval LA24019 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 LA24019 includes conditions that generally address construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA24019: LA16008 (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. Appendix B

discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA24019 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24019.

Evergreen Colony's NRCB-issued Approval LA16008 is therefore superseded, and its content consolidated into this Approval LA24019, unless Approval LA24019 is held invalid following a review and decision by the NRCB's Board members or by a court, in which case Approval LA16008 will remain in effect.

June 26, 2024

(Original signed)
Kelsey Peddle
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA24019

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.)

Evergreen Colony’s CFO is located in the MD of Taber and is therefore subject to that county’s MDP. The MD of Taber adopted the latest revision to this plan on September 28, 2021, under Bylaw No. 1980.

As relevant here, policies 5.1.13-5.1.15 of the MDP apply to CFOs.

Policy 5.1.13 states that “[c]onfined feeding operations should be discouraged in the areas shown in Map 2 as “Restricted” and as reviewed by council from time to time.” Evergreen Colony’s CFO is not within any of the “restricted” areas in Map 2 of the MDP. Therefore, the application is consistent with this policy.

Policy 5.1.14 lists four development setbacks in relation to roads and property lines. Evergreen Colony’s proposed layer barn is not within these setbacks. Therefore, the application is consistent with this policy.

Policy 5.1.15 lists items for the NRCB to consider in its review process. These items are:

- (a) The proximity of the operation to open bodies of water and the topography of the surrounding lands in order to minimize any negative impacts to drinking water supplies;
- (b) The cumulative effect of a new approval on any area near other existing confined feeding operations;
- (c) Environmentally sensitive areas shown in the report, *Municipal District of Taber Environmentally Sensitive Areas in the Oldman River Region*;
- (d) Give notice to adjacent landowners even in the case of applications for registration or authorization.

Item (a) refers to the impact of the operation on drinking water supplies. The environmental risk of the existing facilities was scored by the NRCB’s ERST and found that all of the CFO’s existing facilities pose a low potential risk to surface water and groundwater. In addition, there are no wells on the site and the closest common body of water is an intermittent creek which is located more than 1 km from the CFO. For these reasons, the CFO is unlikely to contribute to

any contamination of drinking water supplies. Therefore, the application is consistent with this policy.

Item (b) is likely not a “land use provision” because it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects. In a 2011 decision, the Board stated that consideration 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, p. 5). Therefore, I do not consider this provision relevant to my MDP consistency determination.

For item (c), Evergreen Colony’s CFO is not within any of the areas designated as of regional, provincial or national significance in the referenced report. Therefore, the application is consistent with this policy.

Item (d) is likely not a “land use provision” because of its procedural focus and thus I do not consider it relevant to my MDP consistency determination. At any rate, as explained above, the NRCB sent out notification letters to people identified by the MD of Taber and the County of Warner as owning or residing on land within the notification distance of 1.5 miles. The NRCB also gave notice in the Taber Times and on the NRCB website. The application therefore met the notification requirements of AOPA.

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

APPENDIX B: Explanation of conditions in Approval LA24019

Approval LA24019 includes several conditions, discussed below, and carries forward a number of conditions from Approval LA16008 (see sections 2 and 3 of this appendix). Construction conditions from historical permits that have been met are identified in the appendix to Approval LA24019.

1. New conditions in Approval LA24019

a. Construction Deadline

Evergreen Colony proposes to complete construction of the proposed new chicken layer barn by December 31, 2026. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2026, is included as a condition in Approval LA24019.

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 LA24019 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the chicken layer barn (with attached 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.”
- b. Evergreen Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the chicken layer barn.

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 LA24019 includes a condition stating that Evergreen Colony shall not place livestock or manure in the manure storage or collection portions of the new chicken layer barn (with attached solid manure storage) until NRCB personnel have inspected the chicken layer barn and confirmed in writing that it meets the approval requirements.

2. Conditions carried forward and modified from LA16008

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that operating conditions #7-9 from LA16008 should be carried forward and re-numbered to reflect the new construction conditions. Condition #7 is modified to reflect the presence of two permit holders. Conditions #8 and 9 are above AOPA requirements and will therefore be carried forward according to NRCB policy.

3. Conditions not carried forward from LA16008

Approval LA24019 includes the terms and conditions in LA16008, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #3-6 from LA16008 should be deleted and therefore are not carried forward to Approval LA24019. My reasons for deleting these conditions are as follows.

Conditions #3-6 of LA16008 are redundant as they relate to the construction and inspection of the broiler barn 2 and pullet barn that were not constructed prior to their construction completion deadlines. Additionally, Evergreen Colony does not intend to build these barns and they have been removed from the list of permitted facilities. Therefore, I will not be carrying forward these conditions.