



Decision Summary BA24006

This document summarizes my reasons for issuing Approval BA24006 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA24006. 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 9, 2024, Hutterian Brethern Church of Scotford (Scotford Colony) submitted a Part 1 application to the NRCB to construct a new CFO.

The Part 2 application was submitted on July 17, 2024. On July 31, 2024, I deemed the application complete.

The proposed CFO involves:

- Permitting:
 - Chicken layers – 30,000
 - Chicken pullets- 25,000
 - Chicken broilers – 100,000
 - Turkey toms - 500
 - Ducks – 2,000
 - Geese - 500
- Constructing a layer barn with attached manure pad (under roof) –152 m x 24 m total (manure pad 9 m x 24 m)
- Constructing 2 broiler barns with attached manure pads – 137 m x 23 m (each) (manure pads 6 m x 23 m)

The application also notified the NRCB of the proposed construction of attached offices/control rooms (20 m x 24 m and 9 m x 15 m). These facilities are “ancillary structures,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because they will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, these structures are part of the CFO but do not need to be permitted under the Act.

a. Location

The proposed CFO is located at NW 11-59-21 W4M in Thorhild County, roughly 6 km north west from the hamlet of Radway AB. The terrain is flat sloping to the south east with the nearest surface water body being a wetland 544 m to the west.

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

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

For the size of this CFO the specified distance is 0.5 miles. (The NRCB refers to this distance as the “notification distance”.)

A copy of the application was sent to Thorhild County, which is the municipality where the CFO is to be located.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Review newspaper which is in circulation in the community affected by the application on July 31, 2024, and
- sending 8 notification letters to people identified by Thorhild County as owning or residing on land within the notification distance.

The full application was 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.

A referral letter and a copy of the complete application were emailed to Alberta Environment and Protected Areas (EPA). I did not receive a response from EPA to the 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.

There is no ALSA regional plan for the area where the proposed CFO is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of the Thorhild 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 CFO:

- 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/protective layers of manure storage facilities and manure collection areas

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

7. Responses from 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.” Thorhild County is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Mr. David Blades, the manager of planning and development with Thorhild County, provided a written response on behalf of the County. Mr. Blades stated that the application is consistent with the County’s land use provisions of the municipal development plan. The application’s consistency with the land use provisions of the 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 one other response from 2 individuals.

The two respondents do not own or reside on land within the 0.5 mile notification distance. I do not consider either to be directly affected by the approval application. Appendix B sets out my reasons for not considering them directly affected. (See NRCB Operational Policy 2016-7: Approvals, part 7.2.1)

The respondents raised concerns regarding groundwater licensing, groundwater contamination, quality of life, and odour and air quality. (See Appendix B.)

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low potential risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require groundwater, surface water monitoring or an exemption monitoring for a facility. In this case a determination was made, and monitoring is not required as the facilities meet AOPA groundwater and surface water protection requirements,

and there is no shallow aquifer nearby and no porous subsurface materials.

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.

Mr. Blades listed the setbacks required by the County's land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments.

I am not aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* or section 109 of the *Water Act* in respect of the subject of this application.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed August 25, 2024).

Finally, I considered the effects of the proposed CFO 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 CFO 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.

10. Terms and conditions

Approval BA24006 specifies the cumulative permitted livestock capacity as:

- Chicken layers – 30,000
- Chicken pullets- 25,000
- Chicken broilers – 100,000
- Turkey toms - 500
- Ducks – 2,000
- Geese - 500

The approval also permits the construction of the layer and broiler barns with attached manure pads.

Approval BA24006 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 BA24006 includes conditions that generally address construction deadlines, document submission and construction inspections. For an explanation of the reasons for these conditions, see Appendix C.

11. Conclusion

Approval BA24006 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA24006.

October 18, 2024

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Explanation of conditions in Approval BA24006

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.)

Scotford’s CFO is to be located in Thorhild County and is therefore subject to that county’s MDP. Thorhild County adopted the latest revision to this plan in 2016, under Bylaw #1195-2015.

Section 4.1 of the MDP relates to the Agricultural Use Area (which includes the CFO site), and includes the following relevant sections:

4.1.1.2the primary use of the Agricultural Use Area is for extensive agriculture and confined feeding operations...

4.1.3.3 Minimum distance separations for CFOs shall conform to standards set out in the Agricultural Operations Practices Act.

4.1.3.4 CFOs will be discouraged from locating in environmentally sensitive areas where slope instability and or groundwater contamination may be of concern.

The application meets the minimum distance separation requirements of AOPA (see Technical Document BA24006) and is not located within an environmentally sensitive area where slope instability and/or groundwater contamination would be a concern. The risk to surface water and groundwater was assessed for the proposed CFO facilities and as the facilities meet AOPA requirements they are assumed to be low risk.

For these reasons, I conclude that the application is consistent with the land use provisions of Thorhild County’s MDP.

APPENDIX B: Determining directly affected party status

A person who is not specified in section 5 of the Part 2 Matters Regulation as an affected party can also qualify for directly affected party status. However, they have the burden to demonstrate they are directly affected by the application. The following individuals that submitted a response to the application may fall under this category:

- Derrick and Stephanie Hrycun – NE 9-59-21 W4M

In order to meet their burden of proof, the person has to demonstrate all the following five elements (see NRCB Operational Policy 2016:7 Approvals, part 7.2.1):

1. A plausible chain of causality exists between the proposed project and the effect asserted;
2. The effect would probably occur;
3. The effect could reasonably be expected to impact the party;
4. The effect would not be trivial; and
5. The effect falls within the NRCB regulatory mandate under AOPA.

The concerns raised were groundwater licensing, groundwater contamination, quality of life, and odours and air quality.

The party expressed concern over odours and negative effects on their quality of life. Odours and other related nuisances are determined to be acceptable by ensuring the minimum distance of separation is met. The proposed facilities meet the required MDS to all. The party does not reside within MDS or within the 0.5 mile affected party radius. In my view, odours from the operation could not reasonably be expected to impact these individuals.

The party is concerned about the depletion of groundwater due to increased use. Environment and Protected Areas (EPA) is responsible for licensing the use of groundwater and surface water in the province. The water licensing process often 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 receiving AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. Water supply does not fall within the NRCB's regulatory mandate.

Concern was expressed regarding possible groundwater contamination. The decision summary and Technical Document BA24006 set out how 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. As noted above, because the proposed CFO facilities meet or exceed the AOPA requirements, I concluded that the proposed facilities pose a low potential risk to groundwater and therefore the effect is not likely to occur.

I have weighed whether the concerns raised meet all five elements on the test provided above for the individuals to meet their burden of proof for being directly affected by this application. After careful consideration and for the following reasons, in my view, the five elements of the test have not been met.

Using these factors, I conclude that the party is not considered directly affected.

APPENDIX C: Explanation of conditions in Approval BA24006

Approval BA24006 includes several conditions, discussed below:

a. Construction Deadline

Scotford Colony proposes to complete construction of the proposed new barns by end of 2027. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2027 is included as a condition in Approval BA24006.

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 BA24006 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the broiler barns, layer barn, and manure storage pads to meet the specification for category C (solid manure – wet) (manure storage pads broiler barns) and category D (solid manure – dry) (barns and manure storage pad layer barn) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Scotford Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the broiler barns, layer barn, and manure storage pads.

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 BA24006 includes conditions stating that Scotford Colony shall not place livestock or manure in the manure storage or collection portions of the new facilities until NRCB personnel have inspected each facility and confirmed in writing that they meet the approval requirements.