

From: [Fiona Vance](#)
To: [Laura Friend](#); jgrant@county.wetaskiwin.ab.ca
Cc: [Bill Kennedy](#); [Andy Cumming](#); [Francisco Echegaray](#); [Sean Royer](#)
Subject: RFR Peters RA16006XB - Approval Officer submission, materials
Date: Friday, November 25, 2022 10:16:14 AM
Attachments: [20220721 RA16006XB response Reg and Cathy Minchau \(redacted\).pdf](#)
[9.4.1 of Approvals Policy \(May 2018\).pdf](#)

Good morning,

I am legal counsel for the Approval Officer, and for NRCB Field Services, in this matter.

We take no position on the outcome of the Request for Review ("RFR") that was filed with the Board. In other words, we take no position on whether the Board should, under section 25(1) of the *Agricultural Operation Practices Act*, schedule a review.

I am providing a submission and a couple of documents with the purpose of assisting the Board in its task.

The submission is to clarify that there is no dispute with regard to slope of the land on which the rhodiola and saskatoons are planted on the SW 32-47-26 W4M, where the applicant plans to spread manure. The Approval Officer agrees that the slope of that land is to the north, toward the wetland / Lake A. I draw your attention to page 1 of Decision Summary RA16006XB, at the very bottom of the page, where the Approval Officer states [underlining added]:

The terrain where the goat barns are located is undulating with a general slope to the south and southwest. The rest of the land slopes to the north towards a wetland (known as Lake A).

We are providing:

- 1) The written response to application RA16006XB, provided by the Minchaus to the NRCB on July 21, 2022 (redacted for unnecessary personal information); and
- 2) An excerpt of part 9.4.1 of the NRCB Operational Policy 2016-7: Approvals. The full Policy is available here: <https://www.nrcb.ca/public/download/files/97525>

On this message, I have blind-copied Jos & Dorothy Peters; Reg & Cathy Minchau; Kim and Kirk Taylor; and Scott and Sylvia Middleton.

Regards,

Fiona N. Vance (*she/elle*)
Chief Legal Officer - Operations, NRCB
Fiona.Vance@nrcb.ca
(780) 422-1952

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Reg & Cathy Minchau

n and have reside on since 1972)

NW 32-47-26-W4 (own)

N1/2 of NE 32-47-26-W4 (rent)

NE 30-47-26-W4 (rent)

July 21, 2022

Attention Francisco Echegaray:
Approval Officer, Red Deer Office
Natural Resources Conservation Board (NRCB)

Re: Application RA 16006XB
Dorthy and Jos Peters
SW 32-47-26-W4

We have reviewed the NRCB Application for Amendment RA16006XB which would allow Dorthy and Jos Peters to spread their goat manure on SW 32-47-26-W4. We are definitely opposed to the NRCB approval of this application.

As we look back, Peters Lake View Farm submitted their 2015 NRCB Part 2 – Technical Requirements of Confined Feeding Operation (CFO) Application to locate an 800-head goat dairy on SW 32-47-26-W4. We objected to the location of this proposed CFO because location was elevated above and in close proximity to Lake A (a sizable 90.5 acre body of water) that the Peters share with the Middleton family to the west and ourselves to the east and north. The Peters withdrew this 2015 NRCB application when the proposed barn location was within the County of Wetaskiwin's 'CFO set-back from lake restrictions'. During July of 2015, County of Wetaskiwin declared our area as an 'agricultural disaster area due to drought'. However in late August of that summer, the Peters successfully hired RC BioSolutions Ltd. to declassify the 'lake' to a 'wetland' status because the County of Wetaskiwin had no CFO set-back restrictions concerning wetlands. Peters Lake View Farm then re-submitted their NRCB CFO application in 2016. We again submitted our objections to the CFO location and we provided more supporting documents. On May 4, 2016 the NRCB approved the Peters Lake View Farm application for their proposed CFO on SW 32-47-26-W4.

The resulting 2016 NRCB Registration RA16006, the 2016 NRCB Amendment RA16006X and the 2016 NRCB Amendment RA16006XA approved the location of the Peters' CFO goat dairy. We did not oppose the Peters' CFO goat dairy but we objected to the location on SW 32-47-26-W4, fearing surface water and groundwater contamination with regards to the Peters' manure handling practices and their dead animal disposal. Our concerns were dismissed with the Peters and the NRCB's repeatedly stating 'no manure to be spread on SW 32-47-26-W4'.

We were taken by surprise that the NRCB office would even consider this 2022 NRCB Application for Amendment RA16006XB from Dorthy and Jos Peters. Mr. Echegaray, do you not remember the lengthy and repeated NRCB and County of Wetaskiwin proceedings which resulted in volumes of NRCB printed material given to us? Again and again and again we have the NRCB printed statements of 'no manure to be spread on SW 32-47-26-W4'.

We have made a list from NRCB documents. In the Peters' 2016 NRCB Part 2 – Technical Requirements Application, as Approval Officer you noted as AO Comments "... they (referring to applicant) will not spreading manure on the home quarter (SW 32-47-26-W4) because of berry production." On the same page, the NRCB note within Peters' application indicated that SW 32-47-26-W4 would not be used for manure application because the Peters also owned 150 acres on SE 20-47-26-W4. According to goat manure calculations, only 50 acres would be sufficient for NRCB approval. This was emphasized in your quote "Applicant has provided three times the land base required for manure spreading." (Appendix A). Again in the 2016 NRCB Decision Summary RA16006, we can point out five times, on each of page 4, page 10, page 11, and page 13 there was repetition of the Peters' promise. Then finalized on page 18 of this decision summary, the 2016 NRCB Explanation of Conditions in Registration RA16006 specified, "... a condition will be included in Registration RA 16006 stating that the permit holder shall not land spread manure at the SW 32-47-26-W4 land location." (Appendix B) This statement was repeated again in our 2016 NRCB Notice of Registration of RA16006, the Operating Condition 4 stated "the permit holder shall not spread manure on land located on the SW 32-47-26-W4". (Appendix C). Repetition in print!

In our opinion, the Peters have not kept the terms of their 2016 NRCB CFO Registration RA16006:

- The Peters' Agreement of Purchase contract (Appendix D) for the annual spring and fall manure removal was a part of the 2016 NRCB Registration RA16006. This written contract was to refute all of the neighbours' objections to the location of CFO regarding manure issues. But to our knowledge, the Peters broke this 'manure removal contract' by expecting payment for their goat manure in spite of their contract stating "purchase cost of the manure is \$0.00". Living adjacent to the Peters, we have seen the Peters' goat manure hauled away only 3 of the promised 12 times (counting from the fall of 2016 to spring of this year, 2022). Manure has been stockpiled behind the barn.

- The Peters have not contained their goats and the goat manure on concrete in their barn as promised. The proposed barn measurements used in their 2016 NRCB application were approved as adequate space for all 800 milking goats plus replacements to be confined within this barn; plus all manure storage to be on concrete within this barn. (Appendix E) Since their 2016 NRCB Approval and Registration RA16006 of the one goat barn, the Peters' have young goats in an additional shed plus exercise pen/shelter areas. More goats in more barns create more manure. This manure is stockpiled outside their barns, left for extended periods of time, and without apparent composting practices.

- Furthermore, the Peters depleted their manure stockpile last spring by their costly and extensive manure fire. The visible smoke from the on-going smoldering fire behind the barn in April, became an out-of-control fire on May 6, 2021. This fire became not only a major threat to the Middleton property and livelihood, but was also a threat to the long-term integrity of the wetlands on their land, SW 32-47-26-W4. Burning manure is a chargeable offence, violating environmental regulations.

This Peters' 2022 NRCB Application for Amendment RA16006XB has further opened feasibility issues:

- The Peters have a limited land base of only 114.03 assessed acres on SW 32-47-26-W4. (Appendix F) The remainder of this quarter of land is owned by the Crown, deemed as 'wetland', thus making it an even higher restrictive area concerning potential contamination. All of the saskatoon bushes that the Peters have planted on the Crown's wetland are in a restricted area! No manure can be spread in a wetland.

- The expanse of Peters' residence and goat barns utilizes the only elevated area of their assessed acres. The 2016 NRCB Environmental Report stated that the location of the proposed barn sloped to the south and away from the wetlands. But note that this environmental assessment was limited to only the location of the proposed barn. We know that the run-off water from the north ditch of Hwy 616 drains north-westerly through our land (SE 32-47-26-W4), down through the Peters' adjoining land where saskatoon bushes are planted and into the wetlands on SW 32-47-26-W4. No manure can be spread on land with natural drainage into a wetland. (Appendix F again)

- This 2022 NRCB Application for Amendment RA16006XB made us aware of the August 2021 Envirowest Engineering Inc. Assessment completed for the Peters as a part of 2021 NRCB Authorization RA21018. This report confirms our fears of drainage into the wetlands. Report stated, "... *The Site* (referring to the new barn pad and former manure/compost pad on SW 32-47-26-W4) *generally slopes to the north, and surface water flow is predicted to be in this direction. The upper groundwater flow direction is predicted to be to the northwest, towards Wizard Lake.*" (Appendix G). This 2021 environmental assessment was completed on the new barn pad and on the area behind the barns where the manure has actually been stockpiled. The Peters' CFO manure contaminants have been seeping north into our wetland and report confirmed drainage to be within the Wizard Lake Watershed. Northward drainage from this area has been our objection to the location of this CFO since the Peters' first application in 2015!

- This same Envirowest Engineering Inc. Assessment Report stated "*It was determined that the naturally occurring material beneath the proposed compost pad does not meet the requirements for a natural barrier. It is recommended that a compacted clay liner or a synthetic liner be designed for this area.*" (Appendix H). Both the NRCB and Peters received this August 2021 report. To our knowledge, the needed manure barrier has not been constructed. The NRCB and the Peters have not heeded this environmental issue and have allowed the manure contaminants to continue leaching into the soil and into our wetland.

As adjacent neighbours, we definitely are objecting to Dorthy and Jos Peters' 2022 NRCB Application for Amendment RA16006XB. The 2016 NRCB conditions for approval of this CFO must be upheld. All manure containment issues must be addressed with follow-up inspections. It is evident to us that most of SW 32-47-26-W4 (Peters' home quarter of land) is not environmentally tolerable for the year-after-year spreading of manure in any form ... not then, not now, nor in the future.

Submitted by Reg & Cathy Minchau

cc: Rick Wilson, MLA for Maskwacis-Wetaskiwin Constituency, Alberta Government
Josh Bishop, Reeve and Division 4 Councilor for County of Wetaskiwin
Andy Cumming, Director, Field Services, Applications, for Natural Resources Conservation Board

A

Part 2 — Technical Requirements



Application under the Agricultural Operation Practices Act for a confined feeding operation, manure collection area and/or manure storage facility(ies)

LAND BASE FOR MANURE AND COMPOST APPLICATION (for approvals and registrations only)

Name of landowner(s)*	Legal Land Description	Area ** (usable hectares)	Soil Zone	NRCB USE ONLY Meets regulations:
Jos and Dorothy Peters	4-26-47-32-SW	120 acres	2	Will not be used (*)
Jos & Dorothy Peters	4-26-47-20 SE	150 acres	2	Yes
TOTAL		270 acres		

*If you are not the registered land owner, please attach copies of land use agreements signed by all landowners.

** Available manure spreading area (do not include required setback areas from residences, common bodies of water, water wells, etc.) (to convert from acres to hectares divide acres by 2.47)

Additional information: (attach copies of all signed land use agreements)

N/A

AO Comments:

(*) Applicant responded to statements of concerns on March 16, 2016. They have indicated that they will not spreading manure on the home quarter (SW 32-47-26 W4) because of their berry production.

A condition will be included in the permit indicating that the operator will not apply manure at this location, as committed by them.

NRCB USE ONLY

Land base required: 20 hectares (50 acres)

Hectares not suitable: 48.6 (120 acres)

Total: 60.7 Hectares available (150 acres)

Requirement Met: YES NO

Land spreading agreements required: YES

Agreements attached: NO

Agreements in file: YES NO

Manure Management Plan: YES

Plan attached: NO

Plan in file: YES NO

Applicant has provided three times the land base required for manure spreading.

B

APPENDIX C: Explanation of Conditions in Registration RA16006

a. Construction Deadline

The Peters' application does not include a proposed date to complete construction of the goat barn. In my opinion, a construction completion deadline that allows applicants two full construction seasons after receiving their permit is reasonable and practicable. Therefore, a construction deadline of November 30, 2018 will be included as a condition in Registration RA16006.

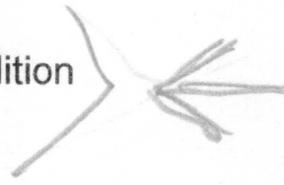
b. Post-Construction Inspection and Review

The NRCB's general practice is to include conditions in new permits to help ensure that the new facilities are constructed according to the required design specifications. Accordingly, Registration RA16006 includes a condition requiring the Peters to provide a completion report confirming that the manure collection and storage portions of the goat barn was constructed according to the required design specifications, as well as confirmation that the finished landscape around the goat barn slopes to the south and west. The report must be prepared by a qualified third party.

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. Registration RA16006 includes a condition stating that the manure storage portions of the goat barn must be inspected by NRCB personnel prior to livestock or manure being placed in it.

c. Miscellaneous

The Peters have proposed not to spread manure on their home quarter. Accordingly, a condition will be included in Registration RA16006 stating that the permit holder shall not land spread manure at the SW 32-47-26 W4M land location.



of 19

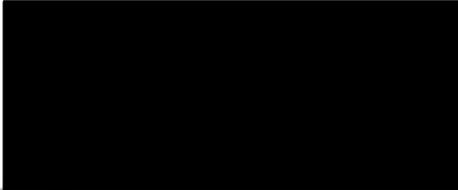


Operating Conditions

4. The permit holder shall not spread manure on land located on the SW 32-47-26 W4M.

This Registration becomes effective immediately. The Registration conditions will remain in effect unless amended in writing by the NRCB.

May 4, 2016



Francisco Echegaray, P.Ag.
Approval Officer

D

Agreement of Purchase

Between

Jos and Dorthy Peters



And

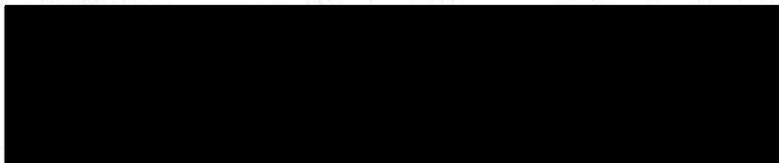
Marieholm Farms
Division of 1719366 AB Ltd



For the removal of livestock manure from their farm location, manure will be cleaned out of building by owner and placed in a stock pile up to twice a year. Marieholm farms will cover all cost in relation to removal of the stocked pile of manure, within ~~20~~¹⁴ days, giving weather and road conditions allow for removal.

Purchase cost of the manure is \$0.00.

We hereby agree to the above contract.



Jos or Dorthy Peters



Esben or Terri-Sue Larsen
1719366 AB Ltd

20 of 20

Part 2 – Technical Requirements

E

Application under the Agricultural Operation Practices Act for a confined feeding operation, manure collection area and/or manure storage facility(ies)

SOLID MANURE, COMPOST & COMPOSTING MATERIALS: Barns, feedlots & storage facilities - Concrete liner

(complete a copy of this section for EACH barn, feedlot and storage facility for solid manure, composting materials or compost with a concrete liner)

Facility description / name (as indicated on site plan)

Manure storage will be in the barn

Manure storage capacity

Length (m)(f)	Width (m)(f)	Estimated storage capacity (m ³) (f ³)	Depth below grade to the bottom of the liner (m)
205 185	80 62	22940	0

NRCB USE ONLY

Depth to water table: > 2 metres Requirements met: YES NO

Depth to UGR: 24.7 metres Requirements met: YES NO

ERST completed: YES NO

Surface water risk level: Low (22) Groundwater risk level: Low (45)

UGR: Uppermost Groundwater Resource as defined under AOPA's Standards and Administration Regulation.

Surface water control systems

- Under roof: Surface water will be controlled by the walls and roof of the building and by the finished landscaping.
- Outdoor: Describe the run-on and runoff control system proposed for feedlots and outdoor manure storage facilities

NRCB USE ONLY

Requirements met: YES NO Details/comments:
 Surface runoff from the CFO facility will run away from the wetland and the water well, as an elevation measurement, conducted on March 10, 2016, determined the topography of the area of the proposed barn in relation to the water body and the water well on the site.

Last updated:
07-15-2014

Page 14 of 20

NRCB Environmental Technical Specialist, Scott Cunningham, conducted an elevation study on the site. His findings and conclusions are included in a report named: Peters RA16006 – SW 32-047-26 W4 -Site visit of March 10, 2016



G

2.0 Site Description

The Site is located approximately 16 kilometers (km) northeast of Mulhurst, Alberta, as indicated on Figure 1.0. The proposed scope of work is the construction of a solid manure storage pad and the assessment of an existing clay pad. The locations of the assessed areas are shown on Figure 2.0.

The Alberta Soil Information Viewer indicates the Site is in an area of undulating, high relief topography (GOA, 2020).

The Geological Map of Alberta indicates that the Site is located in an area where the uppermost bedrock is of the Scollard Formation. This formation is reported to consist of grey feldspathic sandstone and dark grey bentonitic mudstone. It also contains thick coal beds and is non-marine in nature (Prior, 2013).

The quaternary geology of the area is typified by glacial deposits that consist of till of unsorted mixtures of clay, silt, sand and gravel, with local water-sorted material and bedrock. The deposits are generally less than 25 m thick on uplands but can be as thick as 100 m in buried valleys. The topography is flat, undulating, hummocky, or ridged (Shetsen, 1990).

The quaternary geology of the Site is that of a draped moraine, consisting of till of even thickness with minor amounts of water-sorted material and local bedrock exposures, up to 10 m thick. It includes local areas of undifferentiated sub-glacially molded deposit with streamlined features. The topography is typically flat to undulating, which reflects the underlying bedrock and other deposits (Shetsen, 1990).

Pigeon Lake is approximately 16 km southwest of the Site. Wizard Lake is approximately 3 km to the northwest of the Site. There is also an open water wetland complex approximately 140 m to the north of the Site. The Site generally slopes to the north, and surface water flow is predicted to be in this direction. The upper groundwater flow direction is predicted to be to the northwest, towards Wizard Lake.



H

6.0 Design and Construction Considerations

Based on the information obtained it was determined that the constructed clay pad, found to have a thickness of at least 0.8 meters below grade, has an hydraulic conductivity of 1.1×10^{-7} cm/sec. It has been determined that the compacted liner for the barn pad meets the specified requirements for solid manure storage.

Minimum Required Liner Depth for Compost Pad:

$$\frac{2 \text{ m}}{1 \times 10^{-6} \text{ cm/sec}} = \frac{X \text{ m}}{1.6 \times 10^{-5} \text{ cm/sec}}$$

$$X = 32.0 \text{ m}$$

It was determined that the naturally occurring material beneath the proposed compost pad does not meet the requirements for a natural barrier.

It is recommended that a compacted clay liner or synthetic liner be designed for this area.



www.nrcb.ca

APPROVALS

Operational Policy 2016-7

Agricultural Operation Practices Act
January 26, 2016

Updated May 8, 2018

If one or more facilities at an operation are identified as posing the highest risk, but are determined by the ERST scoring system to be low risk, approval officers may forego a detailed risk assessment of the other existing facilities. If this approach has been taken, the approval officer will note it in the technical document that support their decision.

Approval officers must include the environmental risk screening results in their decision documents, in accordance with the NRCB's water data management process.

9. Permit terms and conditions

9.1 Environmental risks of existing facilities

When issuing a permit for an expansion or modification to an existing CFO, approval officers will include conditions that require the permit holder to mitigate the risks, if the risks are determined to be moderate or high under the ERST scoring system.

9.2 Post-construction completion

Approval officers will include a "post-construction completion" condition in permits that allow the construction of new facilities, or the expansion or other modification of existing facilities. The post-construction condition prohibits the permit holder from populating the permitted facility with livestock or placing manure in the facility (or the new or modified part of an existing facility, as appropriate), until it has been inspected by NRCB personnel and determined by them, in writing, to have been constructed in accordance with the permit. The condition will require the permit holder to give the NRCB at least 10 working days' notice of a desired inspection date.

9.3 Post-construction inspections

Post-construction inspections will be conducted jointly by the approval officer who issued the permit and an NRCB inspector, unless a joint inspection is impractical under the circumstances.

Following the facility inspection and provided that the approval officer has determined that the facility was constructed in accordance with the permit, the approval officer will advise the operator (in writing) that they may place livestock or manure in the constructed facility.

9.4 Applicant commitments that are more stringent than AOPA

Permit applicants occasionally commit to design, construction or operational standards, or to take certain actions, that are more stringent than comparable AOPA requirements or that are not required at all under AOPA. When an approval officer identifies these commitments, the approval officer will discuss them with the applicant to ensure that the applicant understands how they are more stringent than AOPA requirements. If, after this discussion, the applicant remains committed to these more stringent standards or measures, the approval officer will include them as permit conditions, if a permit is issued and if the conditions are relevant to AOPA and are able to be enforced.

9.4.1 Amending permit conditions from an applicant's previous commitments

An applicant may apply to amend an existing permit, to delete a condition that resulted from their previous commitment to a more stringent standard. Approval officers will review these amendment applications by considering all relevant factors, including: the context in which the commitments were originally made; whether the reasons for those commitments still apply; any practical challenges

the applicant has had in meeting the commitments; whether the commitments have been reasonably enforceable; and, whether directly affected parties object to removing the commitments. An applicant should try to address as many of these factors as possible in their application.

If a municipal permit that is deemed (i.e., grandfathered) under AOPA has a condition that is more stringent than AOPA, the approval officer will follow Operational Policy 2016-1: *Amending Municipal Permit Conditions* when considering whether to delete or amend the condition.

10. Amending and consolidating AOPA permits

10.1 Amending municipal permit conditions

CFO owners may apply to amend their AOPA permits under the amendment provisions of AOPA and the regulations. These amendment provisions relate not only to permits issued by the NRCB after AOPA came into effect in 2002, but to municipal permits that are deemed (i.e., grandfathered) permits under section 18.1 of the act.

When considering whether to amend deemed municipal permits, approval officers will follow Operational Policy 2016-1: *Amending Municipal Permit Conditions*.

10.2 Approval officer amendments

Section 23 of AOPA allows approval officers to amend permits on their “own motion”— i.e., without an amendment request from the permit holder. That section prescribes several procedures for approval officers to follow when amending permits on their own motion, but provides no limit on the scope or type of amendments that approval officers can make on their own motion. Section 9 of the AOPA Administrative Procedures Regulation and Operational Policy 2016-2: *Approval Officer Amendments under Section 23 of AOPA* provide policy guidance on these substantive and procedural issues.

10.3 Minor amendments

Sections 19(1) and 21(1) AOPA generally require notice to affected parties of permit applications and allow directly affected parties to provide written responses to those applications. However, sections 19(1.1) and 21(1.1) allow approval officers to forego these “notice and comment” procedures for an application to amend a permit, if the proposed amendment is for a “minor alteration to an existing building or structure ... that will result in a minimal change to its risk, if any, to the environment and a minimal change to a disturbance, if any....”

The NRCB broadly interprets the term “existing,” in reference to “buildings or structures,” to include buildings or structures that have been permitted but not yet constructed. From the standpoint of AOPA’s purpose, there is no practical reason to interpret “existing” as covering only constructed facilities.

In contrast, the NRCB views “minor alterations” somewhat narrowly. In the NRCB’s view, minor alterations exclude changes that will create additional capacity, encroach on the minimum distance separation to a given residence, or encroach on another setback required by AOPA. All of these can have significant effects and therefore should be subject to the notice and comment processes that otherwise apply.

See part 7.5 of this policy for notice requirements.