

Decision Summary RA19056

This document summarizes my reasons for issuing Authorization RA19056 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA19056. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

1. Background

On November 19, 2019, Risco Dairy submitted a Part 1 application to the NRCB to construct a new heifer facility (67.1 m x 19.8 m) and expand a solid manure pad by 12.2 m x 15.2 m (for total dimensions of 48.8 m x 15.2 m) at an existing dairy confined feeding operation (CFO). The Part 2 application was submitted on May 5, 2020. On May 8, 2020, I deemed the application complete.

The purpose of the proposed heifer facility is to replace an existing heifer shelter that sustained wind damage in the fall of 2019. Risco Dairy will be converting their existing heifer shed into a hay storage.

There is no proposed increase in livestock.

Under AOPA, this type of application requires an authorization. (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.)

a. Location

The existing CFO is located at NW 6-43-26 W4M in Ponoka County, roughly 10 km west of Ponoka, Alberta. The terrain is nearly level with a general slope to the west.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval RA15020. This approval allows the construction and operation of a dairy CFO with 275 milking cows (plus additional associated dry cows and replacement stock). The CFO’s existing permitted facilities are listed in Approval RA15020.

2. Notices to affected parties

Under section 21 of AOPA, notice of an authorization application must be provided to municipalities that are “affected” by the application. Section 5 of AOPA’s Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the existing CFO is located. Under section 21(2) of the act, all affected municipalities are automatically also “directly affected” parties. The NRCB interprets section 21(3) as allowing affected municipalities to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Ponoka County is both an affected and directly affected party because the proposed facilities are located within its boundaries.

On May 8, 2020, the NRCB emailed referral letters and a copy of the application to Ponoka County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Agriculture and Forestry (AF).

3. Responses from the municipality and referral agencies

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

Mr. Tom Webber, the assistant chief administrative officer with Ponoka County, provided a verbal response on behalf of the county. As noted in section 2, Ponoka County is a directly affected party.

In his response, Mr. Webber indicated that there are no issues or concerns with the proposal. The application's consistency with the county's municipal development plan (MDP) is addressed in Appendix A, attached.

Mr. Al Spink, an inspector indicated that AF has no concerns with the application.

Ms. Laura Partridge, a water administrator technologist at AEP sent an email, to the applicant and the NRCB, with the applicant's licences under the *Water Act*. Ms. Partridge indicated that the operation has adequate water licencing.

The NRCB also received a response from Bob More, an AHS environmental health officer/executive officer indicating that AHS has no concerns with this application.

4. Environmental risk screening of existing and proposed facilities

When reviewing a new authorization 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/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was done with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: *Approvals*, part 8.13.

In this case, the risks posed by Risco Dairy's existing CFO facilities were assessed in 2015. 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 facility and the expansion to the solid manure pad, using the NRCB's risk screening tool, and determined that they pose a low risk to groundwater and surface water.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.

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

With respect to the act's technical requirements, the proposed construction:

- 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 groundwater protection requirements for the design of floors and liners of manure storage facilities

6. Terms and conditions

Authorization RA19056 permits the construction of the heifer facility and the expansion of the solid manure pad.

Authorization RA19056 also contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization RA19056 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 heifer facility and the solid manure pad to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas"
- Require written confirmation from a qualified third party that the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Risco Dairy from placing manure or livestock in the new heifer facility or manure in the solid manure pad, until the facilities have been inspected by the NRCB following their construction
- Require that the existing heifer shelter (damaged by wind) not to be used as a CFO facility, after the new heifer facility has been constructed

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

7. Conclusion

Authorization RA19056 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA19056.

Authorization RA19056 should be read in conjunction with previously issued Approval RA15020, which remains in effect.

June 12, 2020

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

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA19056

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may approve an application for an authorization 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 22(2.1) 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.”)

Risco Dairy’s CFO is located in Ponoka County and is therefore subject to that county’s MDP. Ponoka County adopted the latest revision to this plan on October 2018, under Bylaw #6-08 MDP.

Sections 2.1 to 2.8 of the MDP deal with CFOs. I have reviewed these sections, and find that these provisions generally apply to new or expanded CFOs. The MDP does not define “expansion,” so I will use the definition in the Part 2 Matters Regulation under AOPA. Section 1(1)(d)(i) of that regulation defines an “expansion” as the construction of additional facilities to confine more livestock. Risco Dairy’s application does not involve confining more livestock, so I conclude that it is not an “expansion” under this definition. Therefore, the MDP policies relating to CFO “expansions” do not apply to Risco Dairy’s application. Irrespective, the application meets the policies for expanded CFOs.

For these reasons, I conclude that the application is consistent with the land use provisions of Ponoka County’s MDP. This conclusion is supported by the county’s non-objection to the application.

In my view, under sections 1.4, 1.6, 4.10, 17.5 and in Appendix A, the MDP clearly intends to incorporate Ponoka County’s Land Use Bylaw (LUB) # 7-08. (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3). Accordingly, I considered the LUB. Under that bylaw, the subject land is currently zoned as agricultural. CFOs are listed as a permitted land use within this land use zoning, provided that they hold the required authorization (or permit) under AOPA. As noted in part 1 of this decision summary, Risco Dairy’s CFO has been permitted by the NRCB under Approval RA15020.

APPENDIX B: Explanation of conditions in Authorization RA19056

Authorization RA19056 includes several conditions, discussed below:

a. Construction Deadline

Risco Dairy proposes to complete construction of the proposed new heifer facility and the expansion to the solid manure pad by spring 2021. In my opinion, a construction schedule that allows at least three construction seasons is more practical and realistic for the proposed development. Therefore, Authorization RA19056 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, Authorization RA19056 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the heifer facility and the expansion to the solid manure pad 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.” Risco Dairy shall provide written confirmation, signed by a qualified third party, that the concrete used for the manure collection and storage area meets the required specifications.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities.

Authorization RA19056 includes conditions stating that Risco Dairy shall not place livestock or manure in the manure storage portions of the new heifer facility, or manure on the expanded portions of the solid manure pad, until NRCB personnel have inspected them and confirmed in writing that they meet the authorization requirements.

c. No livestock or manure allowed in the existing heifer shelter (damaged by wind).

As noted by the applicant, the existing heifer shelter will no longer be used to store manure or house livestock. Therefore, Registration RA19056 includes a condition prohibiting Risco Dairy from placing manure or livestock in this facility, after the new heifer facility has been constructed.