

Decision Summary RA20008

This document summarizes my reasons for issuing Authorization RA20008 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20008. 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 January 24, 2020, Lac La Nonne Dairy submitted a Part 1 application to the NRCB to construct two new facilities at an existing 300 milking cow dairy confined feeding operation (CFO). The proposed facilities are a dry cow barn (73.2 m x 24.4 m) and a solid manure storage pad (13.7 m x 24.4 m). The Part 2 application was submitted on May 14, 2020. On May 19, 2020, I deemed the application complete.

There is no proposed increase in livestock.

Under AOPA, this type of application requires an authorization.

a. Location

The existing CFO is located at SE 1-39-1 W5M in Red Deer County, roughly 3km east of Sylvan Lake, Alberta. The terrain of the CFO site is mostly flat, with a moderate downhill slope from the west edge of the site to the adjacent cropland.

b. Existing permitted facilities

The CFO was originally permitted by Approval RA09038A, which the NRCB issued on July 21, 2011. The CFO was also issued NRCB Authorization RA12019 on April 30, 2012. Collectively, these NRCB permits allow Lac La Nonne Dairy to construct and operate a 300 milking cow dairy (with associated replacement and dries) CFO.

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.)

Red Deer County is both an affected and directly affected party because the proposed facility is located within its boundaries. The Town of Sylvan Lake is also an affected party because the CFO site is approximately 1.1 km from the town’s boundary.

On May 19, 2020, the NRCB emailed referral letters and a copy of the application to Red Deer

County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Agriculture and Forestry (AF), and Alberta Transportation (AT). A letter was emailed to the Town of Sylvan Lake on May 26, 2020 after discussions with Red Deer County.

2. Responses from the municipalities and referral agencies

I received responses from Red Deer County, the Town of Sylvan Lake, AHS, and AF. No response was received from AEP nor AT.

Ms. Rebecca Schapansky, a planner with Red Deer County, provided a written response on behalf of Red Deer County. As noted in section 2, Red Deer County is a directly affected party.

Ms. Schapansky stated that the County has no objections to the application. She indicated that the subject land is located within an Exclusion Area Buffer; however since the application is for an improvement of a CFO, the application is supported by the MDP.

Ms. Schapansky also listed the setbacks required by Red Deer County's land use bylaw (LUB) and noted that the application meets these setbacks. She also indicated that the land was zoned as Agricultural District, with the adjacent properties zoned as Agricultural District and County Residential District. She also indicated that the parcel is not located within an Intermunicipal Development Plan area; however, it is located within the Meridian Road Area Structure plan. Ms. Schapansky stated that the CFO is consistent with the area structure plan.

Ken Kalirai, the Director of Planning and Development for the Town of Sylvan Lake, provided a written response on behalf of the Town of Sylvan Lake. Mr. Kalirai indicated the application is outside of the town's boundary. The town has no objections to the application.

Pamela Kutuadu, a public health inspector with AHS, responded on their behalf. Ms. Kutuadu summarized the application, and provided comments on the existing water wells. Ms. Kutuadu indicated that AHS has no objections to the application, but AHS recommends that setbacks are considered under the *Nuisance and General Sanitation Regulation* under the *Public Health Act*.

Al Spink, an Inspector with AF, responded on behalf of AF. Mr. Spink indicated that he had no concerns with the application.

3. 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 Lac La Nonne Dairy's existing CFO facilities were assessed in 2009. According to that assessment, all of the facilities posed a low risk to surface water and groundwater, with the exception of the "old" barn pits which scored as a moderate risk to groundwater.

Since the 2009 risk assessment, the NRCB has released a new version of the ERST tool. The operator also added a new water well. For these reasons, I re-assessed the risks posed by the CFO's existing facilities. My re-assessment found that the facilities scored the same level of risk as they did in 2009. The "old" barn pits scored in the "low" risk level; however due to mathematical rounding it is considered in the "moderate" risk category. For this reason, no additional information is required.

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

4. 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 Red Deer County's municipal development plan and with Red Deer County's land use bylaw.

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

5. Terms and conditions

Authorization RA20008 permits the construction of the dry cow barn and solid manure storage pad.

Authorization RA20008 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 RA20008 includes conditions that:

- Set a deadline of November 30, 2021 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the dry cow barn 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 the concrete used to construct the liner of the manure collection and storage portion of the solid manure storage pad to meet the specification for category C (solid manure – wet) 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 Lac La Nonne Dairy from placing manure or livestock in the dry cow barn, and from placing manure in 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 B.

6. Conclusion

Authorization RA20008 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA20008.

Authorization RA20008 should be read in conjunction with previously issued Approval RA09038A, and Authorization RA12019, which remain in effect.

June 24, 2020

(Original Signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA20008

APPENDIX A: Consistency with the municipal development plan

Under 22 of AOPA, an approval officer may approve an application for an authorization or amendment of 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.”)

Lac La Nonne Dairy’s CFO is located in Red Deer County and is therefore subject to that county’s MDP. Red Deer County adopted the latest revision to this plan on August 21, 2018, under Bylaw # 2012/26.

Section 3.3 of the MDP relates to CFOs; its relevant subsections are discussed below.

Subsection 3.3.1 states that the county “encourages the development of CFOs at appropriate locations, as a means of supporting the local economy and creating employment.” This policy likely isn’t a relevant “land use provision” but it provides a general context for interpreting and applying the other policies in section 3.3.

Subsection 3.3.2 lists six “criteria used [by the county] in responding to applications for new CFOs or expansions to existing CFOs...” This subsection is titled “Criteria for *Input*” (emphasis added). This subsection is intended to be used only by the county to prepare its responses to AOPA applications. Therefore, the criteria are procedural in nature and not a land use provision; therefore they are not directly relevant to my MDP consistency determination.

In addition, the criteria require site-and CFO-specific discretionary considerations rather than providing generic direction for appropriate land uses. As such, the six criteria are not considered by the NRCB to be “land use provisions.” (See Operational Policy 2016-7: *Approvals*, part 8.2.5.) Therefore, they are not relevant to this MDP consistency determination.

Subsection 3.3.3 contains three parts under the heading “Conditions for County Support of CFOs”:

- Part 3.3.3(a) states that the county will provide input to the NRCB regarding CFO applications. As with subsection 3.3.2, discussed above, this subsection focuses on the county’s response and therefore is not a land use provision and is not relevant to my MDP consistency determination.
- 3.3.3(b) is for new CFOs. Therefore, this part is not applicable to this application as this is an existing CFO.
- 3.3.3(c) is for expanding CFOs and states that “applications made to the NRCB... may be supported if they:
 - i. are located within an intermunicipal development plan (IDP) and are in accordance with the policies contained within the IDP... and

ii. are compatible with adjacent land uses.”

Lac La Nonne Dairy is not located within an IDP so it does not conflict with this requirement of the MDP. In their response, the County indicated that the adjacent land was designated as Agricultural District, and Country Residential District. The site in itself is designated as Agricultural District. On this basis, the CFO is “compatible” with adjacent agriculturally zoned land uses.

For these reasons, I conclude that the application is consistent with the land use provisions of Red Deer County’s MDP. As noted above, Red Deer County council, and the county planner, did not raise any objections with this application. Therefore, the county’s response is consistent with my conclusion.

In my view, the text of Red Deer County’s MDP also provides a clear intent to adopt provisions from the LUB, in sections 1, 2, 3, 5 and 10. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered county’s Land Use Bylaw 2006/6. Under that bylaw, the subject land is currently zoned Agriculture District (AG). Confined feeding operations are listed as a permitted land use if they are sited on 32 hectare or larger parcels of land.

Under the NRCB’s Approvals policy (See Operational Policy 2016-7, part 8.3) a proposed development is considered to be consistent with the bylaw if it is listed as either a permitted or discretionary use. The CFO is located on a parcel that has an area larger than 32 hectares, so I am of the opinion that the proposed dry cow barn and solid manure storage pad and the CFO as a whole are consistent with the county’s LUB.

APPENDIX B: Explanation of conditions in Authorization RA20008

1. New conditions in Authorization RA20008

a. Construction Deadline

Lac La Nonne Dairy proposes to complete construction of the proposed new dry cow barn and solid manure storage pad by January 31, 2021. Given that at the time the permit was issued, a significant portion of the 2020 construction season has passed. By providing a full construction season, the applicant has the flexibility if there are unexpected construction delays. The deadline of November 30, 2021 is included as a condition in Authorization RA20008.

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 RA20008 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the dry cow barn to meet the specification for category D (solid manure – dry), and the manure storage portions of the solid manure storage pad to meet the specifications for category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- Lac La Nonne Dairy to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dry cow barn, and the manure storage portions of the solid manure storage 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. Authorization RA20008 includes a condition stating that Lac La Nonne Dairy shall not place livestock or manure in the manure storage portions of the new dry cow barn, nor place manure in the manure storage portions of the solid manure storage pad until NRCB personnel have inspected the dry cow barn and solid manure storage pad and confirmed in writing that they meet the authorization requirements.