

## Decision Summary RA20032A

This document summarizes my reasons for issuing Approval RA20032A under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20032A. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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 September 21, 2020, the NRCB issued Approval RA20032 to the Hutterian Brethren Church of Starland (Starland Colony), which permitted a new 200 milking cow (plus associated dries and replacements) dairy CFO. The approval also permitted the construction of a dairy barn with attached bull barn and pump room, a dry cow shed, and a synthetically lined liquid manure storage facility.

On November 2, 2020, Starland Colony applied to amend that approval to modify the type of liner for the liquid manure storage facility and the outside portion of the dry cow shed. The colony is proposing to use a naturally occurring protective layer to meet the AOPA groundwater protection requirements for the liquid manure storage facility, rather than a synthetic liner. The facility is now referred to as an “earthen liquid manure storage”, or EMS. They are also proposing to use the same naturally occurring protective layer for the uncovered portion of the dry cow shed, while the covered portion will continue to have the previously permitted concrete liner.

No other changes are proposed.

Under AOPA, this type of application requires an amendment to Approval RA20032.

#### a. Location

The CFO is located at NW 15-33-21 W4M in Starland County, roughly 3.6 km southwest from Rumsey, Alberta. The terrain is undulating.

### 2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct 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:

- the municipality where the CFO is 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 this application, the distance is 0.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. Starland County is an affected party (and therefore also a directly affected party) because the CFO is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB published notice of the application in the Drumheller Mail on November 10, 2020 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to Starland County, Alberta Health Services (AHS), Alberta Environment and Parks (EP), Alberta Agriculture and Forestry (AF), and right of way holder Canadian Natural Resources Ltd. Six courtesy letters were sent to people identified by Starland County as owning or residing on land within the affected party radius. These notices specified that due to the limited nature of this application for amendment, only comments regarding the change in liner type would be considered.

### **3. Responses from the municipality and referral agencies**

Mr. Glen Riep, a development officer with Starland County, provided a written response on behalf of Starland County. As noted in section 2, Starland County is a directly affected party.

Mr. Riep expressed concerns about the proposed liner changes for both the liquid manure storage facility and the dry cow shed. Mr. Riep provided additional comments regarding the development of the CFO site, land designation, water licensing, the role of the NRCB, and information flow between Starland Colony and the County.

It is important to highlight that this amendment application deals only with the modification of the liner of the EMS and the dry cow shed, and the previous application (RA20032) dealt with the technical requirements under AOPA. In a recent decision (see Hutterian Brethren of Murray Lake, RFR 2020-09/LA20032 at p3), the NRCB Board stated that “When making a permit decision on a new application, approval officers do not have the jurisdiction to re-visit previously issued permits”. Application RA20032 met all relevant AOPA requirements, with the terms and conditions included in the permit (Approval).

Starland County adopted its current MDP on October 9, 2019 under Bylaw #1142. This is the same MDP that I considered when I issued Approval RA20032 on September 21, 2020. Starland Colony’s present application is consistent with that MDP for the same reasons as those provided in Appendix A of Decision Summary RA20032.

Mr. Balraj Deol, a public health inspector, responded on behalf of AHS. Mr. Balraj summarized the scope of the amendment, and commented on the soil lithology. Mr. Balraj indicated that AHS has no objection to the application.

Mr. Stephan Desilets, inspections manager, responded on behalf of AF. Mr. Desilets acknowledged receipt of the application, and provided the name of the inspector assigned to the CFO. AF did not provide any other comments.

No other responses from referral agencies were received.

#### **4. Responses from other parties**

The NRCB received a response from one individual.

The respondent does not own or reside on land within the 0.5 mile notification radius

Appendix A sets out my reasons for determining that this individual is not directly affected.

#### **5. Environmental risk screening of existing and proposed facilities**

When reviewing new approval applications 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, 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](http://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 Starland Colony's CFO facilities were assessed in 2020. The assessment indicated that the risks to surface water and groundwater were low.

Since the 2020 risk assessment, the applicant has proposed to change the liner type in the liquid manure storage facility and a portion of the dry cow shed. For these reasons, I re-assessed the risks posed by these facilities. My re-assessment found that the potential risks to surface and groundwater remain low.

#### **6. Other factors considered**

The previous application RA20032 met all relevant AOPA requirements. The proposed modification to the liner type in the EMS, and a portion of the dry cow shed meets AOPA's liner requirements.

The conditions placed on RA20032 have been modified to reflect the change in groundwater protection requirements.

When preparing this decision summary, I received technical assistance from Scott Cunningham, NRCB Environmental Specialist.

## **7. Terms and conditions**

Rather than issuing a separate “amendment” to Approval RA20032, I am issuing a new Approval (RA20032A) with the amendment. Approval RA20032A therefore contains all of the terms and conditions in RA20032, except for the reporting requirements for the liner type. The requirements have been updated to reflect the change in groundwater protection requirements.

## **8. Conclusion**

Approval RA20032A is issued for the reasons provided above, in the attached appendix, and in Technical Document RA20032A.

Approval RA20032 is therefore cancelled, unless Approval RA20032A is held invalid following a review and decision by the NRCB’s board members or by a court, in which case the previous permit will remain in effect.

January 20, 2021

(Original Signed)  
Lynn Stone  
Approval Officer

## **Appendices:**

A. Determining directly affected party status

## APPENDIX A: Determining directly affected party status

Mr. Jim Krywcun (SW 23-33-21 W4M) submitted a response to the public notice. Mr. Krywcun resides outside of the notification radius. However, individuals may still qualify as directly affected parties based on their “exposure to potential nuisances or risks” posed by the proposed modification (*Ijtsma*, RFR 2011-05, page 3).

Under NRCB policy, a person who lives outside the notification radius has the burden of demonstrating that they are directly affected by an application. In order to meet their burden of proof, the person has to demonstrate that:

- A plausible chain of causality exists between the proposed project and the effect asserted;
- The effect would probably occur;
- The effect could reasonably be expected to impact the party;
- The effect would not be trivial; and
- The effect falls within the NRCB regulatory mandate under AOPA. (NRCB Operational Policy 2016:7 – *Approvals*, part 6.3; see also *Ijtsma*, page 4.)

Mr. Krywcun raised the following concerns:

- the length of time (short) from when the approval was issued to when the amendment was filed
- size of the EMS
- groundwater contamination
- vegetation surrounding the EMS
- lack of county development permits
- what conditions will be placed if the amendment proceeds
- contaminated milk

Due to the scope of the amendment application, I only considered concerns related to the change in liner type and groundwater protection. As previously noted in this Decision Summary, the NRCB Board has stated that approval officers do not have the jurisdiction to re-visit previously issued permits (see Hutterian Brethren of Murray Lake, RFR 2020-09/LA20032 at p3).

Mr. Krywcun’s response raised concerns about the applicant placing manure “straight on the ground”. He also raised concerns about the accuracy of the geotechnical report due to surface dirt work, as well as the integrity of the liner due to existing vegetation. I interpreted these concerns to be in regards to groundwater protection due to the change in liner type.

The geotechnical report was completed by a 3<sup>rd</sup> party professional engineer. In his report, the engineer provided laboratory tests showing that the naturally occurring protective layer exceeds AOPA’s groundwater protection requirements. As part of the amendment application, I reassessed the potential risks to groundwater using the NRCB’s risk screening tool. The results of that assessment show that the potential risk to groundwater remains low.

The protective layer that was tested extends to a minimum of 7.9 m below grade. As such, it provides a protective layer below the EMS at least 3.5 m thick. As such, any surface dirt work will not have an effect on the naturally occurring protective layer.

The engineer's report states that if vegetation, organics, and non-structural fill are encountered during construction, it is recommended that they are removed. Approval RA20032A includes a condition requiring that a professional engineer provide a construction completion report. One requirement of this report is to ensure that the EMS was constructed according to the recommended construction procedures in the October 29, 2020 geotechnical report. This report must be received and approved by the NRCB, prior to an inspection of the facility completed by NRCB personnel. The permit holder may not use the EMS until the NRCB is satisfied that all requirements have been met.

Based on these considerations, it does not appear that groundwater contamination is likely to occur as a result of the liner change. Mr. Krywcun's letter does not describe any impacts to groundwater as a result of this amendment, and has not provided any claims that would indicate that it is more than trivial in nature. Without this information, the five factor test listed above, fails. I conclude that Mr. Krywcun has not provided proof to demonstrate that he is directly affected by the change in liner type. Therefore, I do not consider him a directly affected party.