



Decision Summary LA20044

This document summarizes my reasons for issuing Authorization LA20044 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20044. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On October 29, 2020, Hubert Rommens and Wally Rommens (Rommens) submitted a Part 1 application to the NRCB to extend the south end of their existing dairy barn by 24.4 m x 28.7 m at an existing dairy CFO (the total dimensions of the dairy barn can be found in Technical Document LA20044).

The Part 2 application was submitted on March 12, 2021 and I deemed the application complete the same day.

a. Location

The CFO is located at NW 23-20-14 W4M in the County of Newell, roughly 3.5 km east of the Village of Duchess. The terrain is flat with slight slope towards the east. The closest body of water is an ephemeral creek 124 m north of the CFO.

b. Permit history

The CFO has no municipal permits but has a deemed permit under section 18.1 (1)(a) of AOPA. Aerial photos show that the CFO existed prior to January 1, 2002, when AOPA came into effect. These pictures also confirmed that the dimensions of the existing facilities have not changed since that time and that associated livestock was raised on site. Although I have not personally counted the stalls in the dairy barn due to biosecurity reasons, the dimensions of the barn support, that Rommens, at a minimum, had a dairy herd that passed the threshold numbers requiring a permit under AOPA. Because this was an application for an authorization that does not require public notice, a full capacity determination has not been undertaken in conjunction with this permit.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is located or is to be located

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

3. Notice to other persons or organizations

Under NRCB policy, 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.

Referral letters and a copy of the complete application were emailed to, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Agriculture and Forestry (AF), and Alberta Transportation.

The NRCB received a written response from Leah Olson, a development/planning technologist with Alberta Transportation. In her response, she stated that a permit from her department is not required and that her department has no concerns with this application. No other responses were received.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of the County of Newell's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

5. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed construction:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). A waiver was provided from the nearest residence. However, it was not required because there is no increase in annual manure production and the proposed dairy barn extension is further away from this residence than other existing CFO facilities. The MDS to all other residences has been met.
- 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/protective layers of manure storage facilities and manure collection areas

6. Responses from the municipality

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." The County of Newell is an affected party (and directly affected) because the proposed dairy barn extension is located within its boundaries.

Ms. Maria Jackson, supervisor of planning and development with the County of Newell, provided a written response on behalf of the County of Newell. Ms. Janzen stated that the application is consistent with the County of Newell's land use provisions of the municipal development plan. The application's consistency with the County of Newell's municipal development plan is addressed in Appendix A, attached.

Ms. Jackson also listed the setbacks required by the County of Newell's land use bylaw (LUB) and noted that the application meets these setbacks.

7. Environmental risk of facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within 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.)

The assessment found that these facilities pose a low potential risk to groundwater and surface water. I also assessed the proposed dairy barn extension and found that it too poses a low potential risk to groundwater and surface water.

8. Terms and conditions

Authorization LA20044 permits the expansion of the dairy barn.

Authorization LA20044 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 LA20044 includes conditions that generally address construction deadline(s), document submission and construction inspection. See Appendix B for an explanation of the reasons for these conditions.

9. Conclusion

Authorization LA20044 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20044.

Authorization LA20044 must be read in conjunction with Rommens' deemed permit which remains in effect.

May 4, 2021

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA20044

APPENDIX A: Consistency with the municipal development plan

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

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, 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.”). “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Rommens’ CFO is located in the County of Newell and is therefore subject to that county’s MDP. The County of Newell adopted the latest revision to this plan on February 2013, under Bylaw # 1705-10, consolidated to Bylaw 1761-13.

The MDP policies relating to CFOs are in part 7. Section 7.1 states that the County “shall restrict the development of CFOs within the established urban fringe areas ...”

Rommens’ CFO is not located in any of the urban fringe areas designated in the MDP, so the proposal is consistent with this policy.

Section 7.2 states that the NRCB “should also consider” the following:

- Proximity to water bodies to minimize negative impact on drinking water supplies;
- The “cumulative effect of a new approval” on any area new other CFOs;
- Environmentally sensitive areas as shown on the report “environmentally Significant Areas of the County of Newell (1991)”;
- Giving notice to adjacent landowners even in case of application for authorizations.

Rommens’ CFO is not close to a common body of water.

The second of these four items does not apply because this permit is an expansion of an existing operation and therefore not a “new approval”. In addition, this provision is likely not a land use provision as it calls for site-specific discretionary judgements (viewed cumulatively with other existing CFOs), so it is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.)

As for the third item, the CFO is not located in an environmentally significant area as listed in the report and is therefore consistent with this policy.

As for the fourth item in section 7.2, this item is likely not a land use provision because of its focus on process and therefore does not need to be considered in my MDP consistency determination. As explained above, the NRB did notify the County of Newell, and several referral agencies (see also Operational Policy 2016-7: Approvals, part 7.5). The notification requirements under AOPA have been met.

Section 7.3 of the MDP states that the county “may use the MDS method to establish separation distances between proposed developments and CFOs.” This policy appears to refer to the “minimum distance separation” (MDS) requirements under AOPA. However, in several review decision, the NRCB’s board members have made it clear that approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. That said, the county may still rely on this policy to set appropriate setbacks from proposed residential or other developments that the county regulates, from Rommens’ CFO.

Section 7.4 of the MDP states that the county “will impose a CFO exclusion zone” around the City of Brooks shown on the map in Appendix C. The applicant’s CFO is not located in the designated CFO exclusion area, so the application is consistent with this part of the plan.

Finally, section 7.5 of the MDP states that, as a “general guideline”. The county will use an 800 meter development setback from all reservoirs. However, this setback can be adjusted on a case-by-case basis depending on topography and other factors. As proposed, the proposed dairy barn extension meets this suggested setback and is therefore consistent with this policy.

For this reason, I conclude that the application is consistent with the land use provisions of County of Newell’s MDP.

Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also consider the County of Newell’s Land Use Bylaw # 1892-17 (consolidated to bylaw #1943-19 – April 2019). Under that bylaw, the subject land is currently zoned Agriculture. Although the land use bylaw does not explicitly mention CFOs (or intensive livestock operations) I would categorize it under ‘Agricultural operation’ which is a permitted use of land under that land zoning.

APPENDIX B: Explanation of conditions in Authorization LA20044

Authorization LA20044 includes several conditions, discussed below:

a. Construction Deadline

Rommens proposes to complete construction of the proposed new dairy barn extension by December 31, 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2022 is included as a condition in Authorization LA20044.

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 LA20044 includes conditions requiring:

- a. The concrete used to construct the liner of the manure collection and storage portion of the dairy barn extension to meet the specification for category B (liquid manure shallow pits); in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas."
- b. Rommens to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications. At a minimum the report must confirm that the facility is constructed in the approved location; the specifications of the concrete used; the thickness of the concrete walls and liner; the type of water stop; and, the size and spacing of reinforcement.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization LA20044 includes a condition stating that Rommens shall not place livestock or manure in the new dairy barn extension until NRCB personnel have inspected the dairy barn extension and confirmed in writing that it meets the authorization requirements.