

Decision Summary RA21020

This document summarizes my reasons for issuing Authorization RA21020 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21020. 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 April 16, 2021, Harmen & Peggy Hondebrink on behalf of Jan & Johanna Hondebrink (the Hondebrinks) submitted a Part 1 application to the NRCB to construct a synthetically lined liquid manure storage (40 metres x 40 metres x 4 metres deep) at an existing 49 cow dairy operation. This is a below threshold CFO, a permit is issued because the proposed manure storage facility (MSF) has a capacity to contain 500 tonnes or more of manure which requires a permit under the Matters Part 2 regulation Section 4(1). Only the MSF will hold an AOPA permit.

The Part 2 application was submitted on April 28, 2021. On April 30, 2021, I deemed the application complete.

a. Location

The proposed synthetically lined liquid manure storage will be located at SW 8-40-5 W5M in Clearwater County, roughly 7 km northwest of Leslieville, Alberta. The terrain is slightly undulating with a general slope towards the southeast.

b. Existing permits

The existing 49 cow dairy operation was built in 2011, under the jurisdiction of Clearwater County, and is below the AOPA permitting threshold of 50 milking cows (plus associated dries and replacements). The dairy operation includes a dairy barn, a heifer barn, a pregnant heifer barn, and a solid manure storage pad; however, all of these facilities do not require an AOPA permit, nor are they considered to be AOPA permitted facilities.

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 MSF is located or is to be located
- in the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a municipality entitled to divert water from that body within 10 miles downstream

- any other municipality whose boundary is within a notification distance. In this case, the notification distance is 0.5 mile from the MSF

A copy of the application was sent to Clearwater County, which is the municipality where the synthetically lined liquid manure storage is to be 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), and Alberta Agriculture and Forestry (AF).

These responses are included in Appendix B, attached.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of Clearwater County'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)
- 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

With the terms and conditions summarized in part 8, the application meets all relevant AOPA requirements.

6. Responses from 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." Clearwater County is an affected party (and directly affected) because the proposed facility is located within its boundaries.

Ms. Charmin Pashulka, a development officer with Clearwater County, provided a written response on behalf of Clearwater County. As noted in section 2, Clearwater County is a directly affected party.

Ms. Pashulka stated that the application is consistent with Clearwater County's municipal development plan. She included that the land does not fall within an area covered by any additional planning documents.

Ms. Pashulka also discussed the requirements under Clearwater County's land use bylaw (LUB). She noted that CFOs are not listed as permitted or discretionary use, in a reflection of the NRCB's mandate in permitting CFOs. She included that the subject land is zoned as Agriculture "A" District, and included the zoning of the surrounding lands within 1,600 metres.

7. Environmental risk of facilities

New MSF/MCA which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require construction supervision or monitoring for the facility. In this case a determination was made and monitoring is not required; however, a condition will be included in the authorization requiring a professional engineer to provide a construction completion report for the installed synthetic liner.

8. Terms and conditions

Authorization RA21020 permits the construction of a synthetically lined liquid manure storage facility.

Authorization RA21020 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 RA21020 includes conditions that generally address the construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

9. Conclusion

Authorization RA21020 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21020.

June 11, 2021

(original signed)
Francisco Echegaray, P.Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Responses from referral agencies
- C. Explanation of conditions in Authorization RA21020

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.)

The Hondebrinks’ synthetically lined liquid manure storage will be located in Clearwater County and is therefore subject to that county’s MDP. Clearwater County adopted the latest revision to this plan on July 13, 2010, under Bylaw 923/10. As relevant here:

Section 8.2.4 states that CFOs for which an approval, authorization, or registration is required under AOPA are not regulated by this Plan. However, subsequent sections of the MDP indicate that the county shall provide guidance on the location of CFOs.

Section 8.2.5 of the MDP states that within specified exclusion zones, the county shall indicate its opposition to an application for a new operation and may indicate its opposition to an application to expand a confined feeding operation. This application is not located in any of these exclusion zones. Therefore, this section is not applicable to this application.

Section 8.2.6 states that the county may identify further CFO exclusion zones (in addition to those in section 8.2.5) in additional planning documents. The county’s response to this application indicates that the CFO is not subject to any additional planning documents.

Section 8.2.7 indicates that in its response to the NRCB, the county will consider the location, scale of operation, surrounding land uses, and provisions in the MDP and other applicable plans. This is a procedural provision which provides discretion to the county regarding how the county can respond to the NRCB. Since this provision is procedural and calls for site specific information, it is not considered to be a land use provision and therefore is not relevant to my MDP consistency determination. Regardless, the county’s response indicates that the proposed construction fully conforms to the requirements of the MDP.

For these reasons, I conclude that the application is consistent with the land use provisions of Clearwater County’s MDP.

In my view, the text of Clearwater County’s MDP also provides a clear intent to adopt provisions from the land use bylaw (LUB), in parts 2.1, 6.2.10, 8.2.9, 11.2, and 12.2. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered Clearwater County’s Land Use Bylaw 714/01 (Amended June 16, 2020).

Under that bylaw, the subject land is currently zoned agriculture. CFOs are not listed as a permitted or discretionary land use within this district. Normally, this means that CFOs are prohibited within this land use district. However, section 11.1 of the LUB states that CFOs are regulated by the NRCB and are exempt from municipal permit requirements. I interpret this provision as meaning that the county simply does not intend to address CFOs in its LUB (given the NRCB's permitting role since AOPA came into effect in 2002). The county's response supports this conclusion.

APPENDIX B: Responses from referral agencies

This application was referred to Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Agriculture and Forestry (AF) as a courtesy and for their information as the referral agency may have a regulatory interest. Under AOPA referral agencies are not considered affected parties or directly affect parties for authorization applications. The comments from the referral agencies, that responded, are set out here for information purposes only.

a. Alberta Environment and Parks (AEP)

Ms. Laura Partridge, a water administrator technologist at AEP sent an email, to the applicant and the NRCB, with information related to water licencing under the *Water Act*. The applicant is reminded that they need to obtain and maintain water license for their operation.

b. Agriculture and Forestry's (AF) inspection and investigation section of the animal health and assurance branch

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

APPENDIX C: Explanation of conditions in Authorization RA21020

Authorization RA21020 includes several conditions, discussed below:

a. Construction above the water table

Section 9(2) of the Standards and Administration Regulation under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

Based on this information, the proposed synthetically lined liquid manure storage meets the one metre requirement of section 9(2). However, because the height of the water table can vary over time, a condition is included requiring the Hondebrinks to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Construction Deadline

The Hondebrinks propose to complete construction of the proposed new synthetically lined liquid manure storage by September 30, 2021. This time-frame may not be reasonable for the proposed scope of work. Allowing an additional construction season is more reasonable, therefore a deadline of November 30, 2022 is included as a condition in Authorization RA21020.

c. 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 RA21020 includes a condition requiring the Hondebrinks to provide a completion report, stamped by a professional engineer, certifying that the synthetically lined liquid manure storage:

- has been constructed in accordance with the proposed design including the size, depth and dimensions;
- is constructed in the approved location;
- has the same liner material as what has been proposed;
- has a liner installed in accordance with the liner manufacturer’s requirements, including under membrane surface preparation and proper sealing at all seams.

The NRCB routinely inspects newly constructed facilities to assess whether the facility was constructed according to their required design specifications. To be effective, these inspections must occur before manure is placed in the newly constructed facility. Authorization RA21020 includes a condition stating that the Hondebrinks shall not place manure in the new synthetically lined manure storage until NRCB personnel have inspected it and confirmed in writing that it meets the authorization requirements.