

Decision Summary BA21009

This document summarizes my reasons for issuing Approval BA21009 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA21009. 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 approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On April 12, 2021, Van Dijk Dairy Ltd. (Van Dijk) submitted a Part 1 application to the NRCB to expand an existing dairy CFO.

The Part 2 application was submitted on April 28, 2021. On May 11, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 250 to 400 milking cows (plus associated dries and replacements)
- Constructing a solid manure storage pad – 15.8 m x 9.1 m
- Constructing a heifer barn over an existing CFO pen – 109.7 m x 24.4 m (does not require an NRCB permit)

The proposed heifer barn mentioned above is being constructed over an existing CFO pen (grandfathered liner). The addition of the heifer barn will not impact this grandfathered liner and as such, does not require an NRCB permit and will not be included in this permit.

a. Location

The existing CFO is located at NE 3-59-26 W4M in Westlock County, roughly 8.4 km southeast of the Town of Westlock, AB. The terrain is relatively flat sloping slightly to the east with the nearest common body of water (intermittent drainage) located approximately 476 metres to the south.

b. Existing permits

The CFO was originally permitted by Westlock County on July 27, 1983 and April 27, 1987 under development permits #1556 and #1970. Since these permits, the CFO has also been issued NRCB Authorizations BA09007 and BA18007. Collectively, these permits allowed the construction and operation of a 250 dairy cow CFO. On July 15, 2009, the NRCB grandfathered the dairy CFO under Authorization BA09007 with a capacity of 250 milking cows (plus associated dries and replacements).

The CFO's existing permitted facilities are listed in the appendix to the Approval BA21009.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs 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:

- 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 person or municipality entitled to divert water from that body within 10 miles downstream
- the municipality where the CFO is located 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 the size of this CFO the specified distance is 1 mile. (The NRCB refers to this distance as the “affected party radius.”)

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

The NRCB gave notice of the application by public advertisement in a newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Westlock News newspaper on May 11, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, 20 letters were sent to people identified by Westlock County as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

Under section 19 of AOPA, 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).

I received responses from AHS, AEP and AF.

Ms. Lu Wang, a public health inspector, provided a response on behalf of AHS. In her response she enquired if the application meets the setback requirements of AOPA, measures in place to reduce risk to groundwater contamination by the three water wells in the application, and if the applicant has plans for odour and pest control. As explained in section 6, below, the application meets the AOPA technical requirements and there are no wells within 100 m of the proposed solid manure storage pad. Two wells are within 100 m of the heifer barn which is being constructed overtop an existing pen (which does not require an AOPA permit as stated above). The construction of the heifer barn improves the existing facility by having walls and a roof to control run-on and runoff. As explained in section 8, the solid manure storage pad poses a low risk to groundwater. With regards to odour and pest control, AOPA setbacks are designed to mitigate some of these issues for neighbouring residences. Also by moving some of the dry cows and heifers indoors, there would be a reduction in nuisances such as odours, dust and pests.

AEP sent a generic response to the application that addresses water regulations in general and that the applicant should contact AEP if they require additional approvals under the *Water Act*. This was forwarded to the applicant for their information.

Mr. Dennis Urban, an inspector with the inspection and investigation section, responded on behalf of AF. Mr. Urban stated that Van Dijk Dairy has capacity in his present bulk milk tank to accommodate the increase in livestock numbers. He also stated that the construction of the heifer barn and manure pad does not affect the day to day operation and therefore AF does not have any concerns with the application.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

There is no ALSA regional plan for the area where the proposed CFO is to be located.

5. Municipal Development Plan (MDP) consistency

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

6. AOPA requirements

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

- 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's nutrient management requirements regarding the land application 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 10, the application meets all relevant AOPA requirements.

7. Responses from municipality and other directly affected parties

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." Westlock County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Kathleen Deshoux, development officer with Westlock County, provided a written response

on behalf of the county. Ms. Deshoux stated that the application is consistent with Westlock County's land use provisions of their municipal development plan. The application's consistency with Westlock County's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received a response from one party (three individuals).

No other responses were received from any other person or organization.

All of the three people who submitted a joint response own or reside on land within the 1 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected parties raised concerns regarding the impacts to the aquifer due to the increase in livestock numbers. These concerns are addressed in Appendix B.

8. Environmental risk of CFO facilities

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO's existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB's environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST 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 supported 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 Van Dijk's existing CFO facilities were assessed in 2018 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater except the EMS which poses a moderate risk to groundwater and low risk to surface water. (A condition was included in Authorization BA18007 to address the risk posed by the EMS which will be carried forward into this approval.) The risk assessment is document in Technical Document BA21009.

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 assessed the proposed solid manure storage pad, using the NRCB's risk screening tool, and determined that it poses a low risk to groundwater and surface water.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and

road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Ms. Kathleen Deshoux also listed the setbacks required by Westlock County's land use bylaw (LUB) and noted that the application meets these setbacks.

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed as seen in Appendix B.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval BA21009 specifies the cumulative permitted livestock capacity as 400 milking cows (plus associated dries and replacements) and permits the construction of the solid manure pad.

Approval BA21009 contains terms that the NRCB generally includes in all AOPA approvals, 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, Approval BA21009 includes conditions that generally address construction deadlines, monitoring, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval BA21009: municipal development permits #1556 and #1970 and NRCB Authorizations BA09007 and BA18007 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix C discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval BA21009 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA21009.

Van Dijk's deemed approval, including municipal development permit #1556 and #1970, and NRCB-issued Authorizations BA09007 and BA18007 are therefore superseded, and their content consolidated into this Approval BA21009, unless Approval BA21009 is held invalid following a review and decision by the NRCB's board members or by a court, in which case previous permits will remain in effect.

July 5, 2021

(Original signed)

Julie Wright
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Explanation of conditions in Approval BA21009

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval 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 20(1.1) 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.)

Van Dijk’s CFO is located in Westlock County and is therefore subject to that county’s MDP. Westlock County adopted the latest revision to this plan in April 2016, under Bylaw #05-2016. The portions of the MDP applicable to this application are discussed below.

Policy 4.1.1.3 clarifies that the “primary use” of the “Agriculture Use Area” of which the existing CFO is located within, is for both “extensive agriculture and confined feeding operations”. This is considered a general guiding principle and gives generic directions about the acceptability of various land uses in specific areas, therefore this is not relevant to my decision. Irrespectively, the proposed application fits with this general guiding principle.

Policy 4.1.2.2 states that the county will provide “input” to the NRCB on applications for new or expanded CFOs, based on the “technical and locational merits” of each application. This policy is likely not a land use provision because of its procedural focus and thus I do not consider it to be relevant to my MDP consistency determination. At any rate, the application meets the “technical and locational” requirements of AOPA.

Policy 4.1.2.2 further states that CFOs and manure storage facilities “must fully satisfy all the requirements and regulations adopted under that Act [AOPA], specifically the minimum distance separation requirements and land base requirements.” As noted above, the application meets AOPA’s requirements including MDS and land base requirements.

Policy 4.1.2.3 states “Minimum distance separations for CFOs shall conform to standards set out in the Agricultural Operations Practices Act.” Together, the use of the term “minimum distance separation” in policies 4.1.2.2 and 4.1.2.3 appear to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. These MDP policies are likely not relevant to my MDP consistency determination, because these policies are based on AOPA’s MDS requirements. (See also Operational Policy, *Approvals*, part 8.2.5). That said, the CFO meets the MDS requirements and meets all other AOPA technical requirements. Therefore, this application is consistent with these MDP policies.

Policy 4.1.2.4 requires a 2.4 km CFO setback from “corporate boundaries of any urban municipality within Westlock County” or a 0.8 km CFO setback from “Community Areas

designated on Map 7.2.” To determine whether the Van Dijk’s CFO is within the 2.4 km setback to all of the corporate boundaries of any urban municipality within Westlock County or 0.8 km setback from community areas, I measured from the nearest edge of the CFO’s property line to the property line of the “target” area. Based on this measurement, Van Dijk’s CFO is roughly 4.5 km from Pickardville, Alberta and thus exceeds the required setbacks and is consistent with policy 4.1.2.4 in the MDP. I found that the CFO was not closer to any other urban municipality, and not within 0.8 km of a community area designated on Map 7.2.

Policy 4.1.2.5 states that CFOs are “discouraged from locating in environmentally sensitive areas where slope instability and or groundwater contamination may be a concern.” This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see NRCB Operational Policy 2016-7, *Approvals*, part 8.2.5). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA. At any rate, the application meets the “technical and locational” requirements set out in AOPA.

Policy 4.1.2.6 states that in addition to AOPA, Area Structure Plans (ASP) in Westlock County and MDP policies in respect to CFOs should be followed. The development officer who responded to this application on behalf of the county, confirmed that there are no ASPs that would apply to this CFO at this time.

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

In my view, the text in Westlock County’s MDP also provides a clear intent to adopt provisions from the LUB, in multiple subsections within sections 1, 3, 4, 5, and 6. For example, section 1.3 specifies that for “land use planning and development”, the MDP serves as the main document and changes will be implemented within the LUB to be consistent with the MDP. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also consider Westlock County’s Land Use Bylaw (LUB) #04-2016. Under that bylaw, the subject land is currently zoned as Agriculture District. CFOs (as defined by AOPA) are listed as discretionary use under this zoning.

Under NRCB policy, CFO expansions are considered to be consistent with a LUB if CFOs are listed as either a permitted or discretionary land use for the relevant land use district (See NRCB Operational Policy 2016-7: *Approvals*, part 8.3) However, Section 7.7.1 of the LUB expressly exempts CFOs from municipal control under the LUB, because CFOs are regulated by the NRCB under AOPA.

For these reasons, I conclude that the application is consistent with Westlock County’s LUB. The county’s non-objection to the proposed CFO supports this conclusion.

APPENDIX B: Concerns raised by directly affected parties

The following individuals qualify for directly affected party status because they submitted a response to the application and they own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

- Ron Riopel
- Sid Vanderleest (Westlock Tractor)
- Garry Steffan

The directly affected parties raised concerns regarding the impacts to the aquifer supply and usage due to the increase in livestock numbers. The issue is listed and summarized below, together with my analysis and conclusions. Additionally, Mr. Van Dijk submitted a letter of response to the NRCB in regards to the statement of concern. His comments are also summarized below.

Groundwater supply and usage – Concerns were raised about the volume of water required by the dairy operation and a depletion of the surrounding groundwater system.

Response from operator:

Mr. Van Dijk indicated that when they took over Faruna Dairy 18 years ago, they have used the dugout as a water source for the cows. He also mentioned that they constructed another dugout in 2018 which has been further expanded and is now similar in size to the one constructed by Faruna.

Approval officer’s conclusion:

Alberta Environment and Parks (AEP) is responsible for licensing and monitoring the supply of groundwater in the province. The water licensing process includes an opportunity for neighbours to provide input. The NRCB’s Approvals Policy (Operating Policy 2016-7, part 8.10) states that approval officers will not consider water supply concerns when reviewing an AOPA application other than ensuring that the applicant signs a Water Act declaration in their Part 2 application.

Van Dijk’s application included a signed declaration indicating that they were unsure if they require additional water licensing. (This declaration is on page 4 of Technical Document BA21009.) However, by signing the declaration they acknowledge that their receipt of an AOPA approval will not improve or enhance their ability to obtain a water license, and that any construction under an AOPA approval is at their own risk if AEP denies their water application. I forwarded the application to AEP for their information and AEP’s response to the applicant.

APPENDIX C: Explanation of conditions in Approval BA21009

Approval BA21009 includes several conditions, discussed below, and carries forward a number of conditions from Authorizations BA09007 and BA18007 (see sections 2 of this appendix). Construction conditions from historical Authorizations BA09007 and BA18007 that have been met are identified in the appendix to Approval BA21009.

1. New conditions in Approval BA21009

a. Construction Deadline

Van Dijk proposes to complete construction of the proposed new solid manure storage pad by 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2024 is included as a condition in Approval BA21009.

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, Approval BA21009 includes conditions requiring:

- a. 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.”
- b. Van Dijk to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection 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, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval BA21009 includes a condition stating that Van Dijk shall not place manure on the manure storage portions of the new solid manure storage pad until NRCB personnel have inspected the facility and confirmed in writing that it meets the approval requirements.

2. Conditions not carried forward from Authorization BA18007

Approval BA21009 includes the terms and conditions in Authorization BA18007, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition #5 from Authorization BA18007 should be deleted and therefore is not carried forward to Approval BA21009.

5. Livestock numbers

Unless otherwise directed by the NRCB in writing, the permit holder shall maintain and make available to the NRCB, upon request, an ongoing monthly record of the number of milking cows at Van Dijk to demonstrate that the number remains at or below the permitted capacity of 250 milking cows (plus associated dries and replacements). This monthly record must be maintained for a minimum of five years.

My reason for deleting this condition is because the application is for an increase in livestock numbers. This condition was initially included in Authorization BA18007 since a second dairy barn was being constructed which gave the potential to increase livestock numbers over the permitted capacity. Also to date, no complaints have been filed against the CFO.