

Decision Summary RA21032

This document summarizes my reasons for issuing Authorization RA21032 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21032. 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

In early 2021, a fire destroyed the young stock facility permitted by Authorization RA20014. Rather than reconstruct the same young stock facility, a new larger one was proposed by Dirk Bergman, on behalf of Antoon, Fennigje (Fennanda), and Dirk Bergman (the Bergmans). An ancillary structure (work shop) is proposed where the young stock facility was previously located. As the new facility represents a change of dimensions and location, I required a new application be submitted.

The workshop is an “ancillary structure,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure does not need to be permitted under the act.

On June 2, 2021, the Bergmans, submitted Part 1 and 2 applications to the NRCB to construct two straw packs and scrape alleys (cumulative dimensions 17.4 m x 25.9 m and 15.9 m x 13.7 m) in a new young stock facility. There is no increase in livestock or manure production proposed. On the same day, I deemed the application complete.

Under AOPA, this type of application requires an authorization. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

Considering how the application notes that an ancillary structure will be constructed in the place of the young stock facility that was destroyed by a fire, I plan on cancelling Authorization RA20014 after Authorization RA21032 is approved.

a. Location

The CFO is located at SW 21-42-24 W4M in Ponoka County, roughly 11 km southeast of the Town of Ponoka. The terrain is rolling with the CFO located near the top of a hill. Chain Lakes is approximately 4 km to the southwest.

b. Existing permits

The CFO is permitted by Registration RA06014 and Authorization RA20014, which the NRCB issued on June 1, 2006 and April 3, 2020, respectively. The CFO was also issued an

amendment to the registration (RA06014A) on June 14, 2010. Collectively, these NRCB permits allow the Bergmans to construct and operate a 199 milking cow dairy (with associated dry cows and replacements also allowed on site) CFO. The CFO's existing permitted facilities are listed in Registration RA06014 and Authorization RA20014.

The Bergmans have stated in their application that liner of the facility from Authorization RA20014 was decommissioned after a fire. Further, an ancillary work shop will be constructed where that facility was located. Therefore, I am taking this opportunity to serve notice that after the request for review period has closed for this decision, Authorization RA20014 will be cancelled.

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
- 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 miles from the CFO

A copy of the application was sent to Ponoka County, which is the municipality where the CFO is located. It was not sent to any other municipalities as the CFO is not located within 100 m of the bank of the above note water bodies. Also, it is not located within 0.5 miles of another municipality.

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).

Mr. Gordon Watt, an executive officer/public health inspector with AHS, did not raise concern with this application but did provide comments under the Public Health Act. His comments were forwarded to the applicant for their information.

Ms. Laura Partridge, a senior water administration officer with AEP, did not raise concerns with this application.

A representative of AF indicated the inspection officer from AF covering the file would not respond to the NRCB unless that person had concerns with the application. I did not receive a response from the inspection officer.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed straw packs and scrape alleys are consistent with the land use provisions of Ponoka 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 straw packs and scrape alleys:

- 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." Ponoka County is an affected party (and directly affected) because the proposed young stock facility is located within its boundaries.

7. Environmental risk of facilities

When reviewing a new authorization 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 the Bergmans' existing CFO facilities were assessed in 2020 using the ERST. According to that assessment, the existing and then proposed facilities posed a low potential risk to surface water and groundwater. 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 straw packs and scrape alleys using the same screening tool and determined that these newly proposed facilities pose a low potential risk to groundwater and surface water.

8. Terms and conditions

Authorization RA21032 permits the construction of the young stock facility including straw packs and scrape alleys.

Authorization RA21032 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 RA21032 includes conditions that generally address a construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA21032 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21032.

The Bergmans have stated in their application that an ancillary work shop will be constructed where the young stock facility from Authorization RA20014 was constructed. Therefore, I am taking this opportunity to serve notice that after the request for review period has closed for this decision, Authorization RA20014 will be cancelled.

Authorization RA21032 must be read in conjunction with the Bergmans' Registration RA06014 and RA06014A which remain in effect.

July 9, 2021

(Original Signed)
Jeff Froese
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA21032

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 Bergmans’ CFO is located in Ponoka County and is therefore subject to that county’s MDP. Ponoka County adopted the latest revision to this plan in October 2018. The relevant sections of the MDP are discussed below.

Section 2 of the MDP contains 11 numbered “policies” relating to CFOs. Of these, policies 2.7, 2.9, 2.10 and 2.11 are not relevant to this application for the reasons set out above. The remaining policies in section 2 are discussed below.

Under policy 2.1, the county “encourages” the development of CFOs to add value to crop production and provide “more employment and income per acre of land.” However, the policy also states that the environment and neighbours’ rights “must be protected.” This policy likely isn’t a relevant “land use provision” because it relates broadly to economic development, not CFO siting. Regardless, it provides a general context for interpreting and applying the other policies in section 2.

Policy 2.2 states that it’s the county’s belief that “very large CFOs are inappropriate in this part of Alberta, and requests the NRCB not to allow them here (in Ponoka County).” This policy defines “very large” as “more than ten times” the threshold for approvals in the Part 2 Matters Regulation under AOPA. In this case, the threshold for approvals for dairies are 200 milking cows, so a “very large” dairy CFO in Ponoka County would have at least 2,000 milking cows. This application does not propose an increase in livestock and the CFO is already permitted with a capacity of 199 milking cows plus associated dry cows and replacements. This does not fit the definition of a “very large” CFO as set out in policy 2.2 and the CFO as a whole is therefore consistent with this policy.

Policy 2.3 has two parts. The first part states that no new CFO shall be established within specified distances to itemised urban developments, watersheds and land within a CFO exclusion zone in an Area Structure Plan (ASP) that has been adopted by bylaw. This CFO is located within the “no new CFO setback” to the Town of Ponoka. Regardless, this application is to improve how currently permitted livestock are managed, not for a new CFO or for an expansion to the amount of livestock or manure production at this CFO. For this reason, the first part of this policy is not applicable to this CFO or this application.

The second part of policy 2.3 of the MDP calls for “very strict” conditions on manure handling and storage in the Chain Lakes and Maskwa Creek watersheds. Based on the landscape I observed during my site inspection and Map 2 in the MDP, this CFO is located on the edge of the Chain Lakes watershed. Regardless, this policy likely isn’t a “land use provision” because it calls for discretionary judgements about what conditions are “very strict.” In addition, section 22(2.1) of AOPA precludes me from considering MDP provisions “respecting tests or conditions related to the construction of or the site for a confined feeding operation or manure storage facility” and regarding the land application of manure. Even if I did consider this provision, the proposed young stock facility meets AOPA’s technical requirements for manure handling and storage and, in my opinion, those requirements are considered to be “very strict.”

Policy 2.4 calls for the NRCB to “set strict rules for the timely incorporation of manure within a mile of any urban municipality or rural residence.” Section 22(2.1) of AOPA precludes me from considering this policy because it relates to the land application of manure. The regulations under AOPA regulate the manure application process, including timely incorporation in specified circumstances (see section 24 of the Standards and Administration Regulation which sets out the manure incorporation requirements under AOPA for different cropping methods).

Policy 2.5 requests the NRCB not to allow the siting of CFOs within two miles of “any lake” unless the “regulators” are “convinced” that the CFO’s manure management system is “fail-safe” and the CFO poses “no reasonable risk of contamination of the lake.” This policy is likely not a “land use provision” because its “fail-safe” and “reasonable risk” tests call for discretionary, CFO-specific judgements. The policy may also be a “test or condition,” which I am precluded from considering under AOPA’s section 22(2.1). Regardless, this is an existing CFO which is not located within two miles of a lake identified in the MDP.

Policy 2.6 states that CFOs “should not be established or expanded” where there is “any risk that runoff will contaminate domestic water supplies.” This policy likely is not a “land use provision” because it calls for discretionary judgements about acceptable risks. (The policy’s “any risk” test is a low risk threshold, but I read the threshold as more than “minor” or “insignificant.”) The proposed facilities meet AOPA’s operational and design requirements, which are designed to minimize the risks to surface water and groundwater. Further to this, this is not an application to establish a CFO or to expand the existing one (there is no application for more livestock or an increase in manure production) at this time. For this reason, this policy is not applicable to this application.

Policy 2.8 applies to new CFOs and uses, but essentially modifies, AOPA’s MDS requirements by measuring the AOPA-derived minimum distance of separation to the edge of an adjacent landowner’s property. This application is not for a new CFO and so policy 2.8 is not applicable to this application.

Based on the above, I conclude that the application is consistent with the land use provisions of the Ponoka County’s MDP. The county’s response does not conflict with this conclusion.

In my view, the text of Ponoka County’s MDP also provides a clear intent to incorporate the land use bylaw (LUB), in sections 1.4, 1.6, 4.10, 10.3, 12.1, 17.5 and in Appendix A. Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also considered Ponoka County’s LUB 7-08-LU. Under that bylaw, the subject land is currently zoned Agricultural (AG). CFOs are listed as a permitted land use within this land use zoning, provided that they hold the required authorization (or permit) under AOPA. As noted in this decision summary, the CFO already holds a registration and an authorization under AOPA.

APPENDIX B: Explanation of conditions in Authorization RA21032

Authorization RA21032 includes several conditions, discussed below:

a. Construction Deadline

The Bergmans propose to complete construction of the proposed young stock facility by November 2021. This time-frame is not considered to be reasonable for the proposed scope of work. Two construction seasons seems more reasonable as poor weather or a lack of available contractors may prohibit construction this year. In lieu, the deadline of October 31, 2022 is included as a condition in Authorization RA21032.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new permits to ensure that the new facilities are constructed according to the required design specifications. Accordingly, Authorization RA21032 includes a condition requiring the submission of proof, prepared by a qualified third party, that the concrete used to construct the liner of the manure collection and storage portion of the two:

- straw packs 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.”
- scrape alleys 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.”

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, the inspection must occur before livestock or manure are placed in the newly constructed facilities. Authorization RA21032 includes a condition stating that the Bergmans shall not place livestock or manure in the manure storage or collection portions of the new straw packs or scrape alleys until NRCB personnel have inspected these facilities and confirmed in writing that they meet the authorization requirements.