

Decision Summary RA21039

This document summarizes my reasons for issuing Authorization RA21039 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21039. 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 June 25, 2021, Karen Pierik on behalf of Hendrik & Margje Pierik o/a Pleasant Hill Farms Ltd. (Pleasant Hill Farms) submitted a Part 1 application to the NRCB to construct an addition of 45.7 m to the dry cow barn (final dimensions of 91.4 m x 21.3 m) at an existing dairy CFO.

The purpose of the proposed addition to the dry cow barn is to better accommodate the housing of replacement stock at the existing dairy CFO.

There is no proposed increase in livestock or manure production with the application.

The Part 2 application was submitted on June 25, 2021. On July 7, 2021, I deemed the application complete.

a. Location

The existing CFO is located at NW 16-42-26 W4M in Ponoka County, roughly eight km southwest of the Town of Ponoka, Alberta. The terrain is undulating. The CFO is located on top of a hill that slopes southeast toward a creek approximately 1.6 km away.

b. Existing permits

The CFO is already permitted under Approval RA08002 and authorizations RA13040, RA16051 and RA18033 from the NRCB. Collectively, these NRCB permits allow the construction and operation of a 400 milking cow dairy (plus associated dry cows and replacements) CFO. The CFO's permitted facilities are listed in Approval RA08002 and authorizations RA13040, RA16051 and RA18033.

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.

A copy of the application was sent to Ponoka County, 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), and Alberta Agriculture and Forestry (AF).

Mr. Gordon Watt, an AHS environmental health officer/executive officer, indicated that AHS has no concerns with this application and included comments under the *Public Health Act* that the applicant must follow.

Ms. Laura Partridge, a senior water administration officer with AEP, indicated that no additional water licensing is required at this time; however, the water licence requires a name change amendment under the *Water Act*.

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.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is 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 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 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.” Ponoka County is an affected party (and directly affected) because the proposed construction is located within its boundaries.

Mr. Peter Hall, the assistant chief administrative officer with Ponoka County, provided a written response on behalf of Ponoka County. As noted in section 2, Ponoka County is a directly affected party.

In his response, Mr. Hall indicated that there are no issues or concerns with the proposal. The application’s consistency with the county’s municipal development plan (MDP) is addressed in Appendix A, attached.

7. Environmental risk of facilities

New CFO facilities 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 surface and/or groundwater monitoring for the facility. In this case a determination was made and monitoring is not required.

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 Pleasant Hill Farms’ existing CFO facilities were assessed in 2013, 2016 and 2018 using the ERST. According to those assessments, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since those assessments were done. As a result, a new assessment of the risks posed by the CFO’s existing facilities is not required.

8. Terms and conditions

Authorization RA21039 permits the construction of the addition to the dry cow barn.

Authorization RA21039 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 RA21039 includes conditions that generally address a construction deadline, document submission and a construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA21039 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21039.

Authorization RA21039 must be read in conjunction with NRCB previously issued Approval RA08002 and authorizations RA13040, RA16051 and RA18033 which remain in effect.

September 2, 2021

(Original Signed)
Francisco Echegaray, P.Ag
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA21039

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.)

Pleasant Hill Farms’ CFO is located in Ponoka County and is therefore subject to that county’s MDP. Ponoka County adopted the latest revision to this plan on October 2018, under Bylaw #6-08 MDP.

Sections 2.1 to 2.8 of the MDP deal with CFOs. I have reviewed these sections, and find that these provisions generally apply to new or expanded CFOs. The MDP does not define “expansion,” so I will use the definition in the Part 2 Matters Regulation under AOPA. Section 1(1)(d)(i) of that regulation defines an “expansion” as the construction of additional facilities to confine more livestock. Pleasant Hill Farms’ application does not involve confining more livestock, so I conclude that it is not an “expansion” under this definition. Therefore, the MDP policies relating to CFO “expansions” do not apply to Pleasant Hill Farms’ application. Irrespective, the application meets the policies for expanded CFOs.

For these reasons, I conclude that the application is consistent with the land use provisions of Ponoka County’s MDP. This conclusion is supported by the county’s non-objection to the application.

In my view, under sections 1.4, 1.6, 4.10, 17.5 and in Appendix A, the MDP clearly intends to incorporate Ponoka County’s Land Use Bylaw (LUB) # 7-08 (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3). Accordingly, I considered the LUB. Under that bylaw, the subject land is currently zoned as agricultural. 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 part 1 of this decision summary, Pleasant Hill Farms’ CFO has been permitted under NRCB Approval RA08002.

APPENDIX B: Explanation of conditions in Authorization RA21039

Authorization RA21039 includes several conditions, discussed below:

a. Construction Deadline

Pleasant Hill Farms proposes to complete construction of the proposed addition to the dry cow barn by December 31, 2021. This time-frame is unrealistic due to the time required for the permitting process, as well as the length of time needed to obtain the liner materials. It is my opinion that a deadline that allows for at least a full construction season is more reasonable for the proposed scope of work. The deadline of November 30, 2022 is included as a condition in Authorization RA21039.

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 RA21039 includes a condition requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the addition to the dry cow barn 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.” Pleasant Hill Farms shall 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.

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 RA21039 includes a condition stating that Pleasant Hill Farms shall not place livestock or manure in the manure storage or collection portions of the new addition to the dry cow barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the authorization requirements.