

Decision Summary RA21017

This document summarizes my reasons for issuing Authorization RA21017 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21017. 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 March 18, 2021, The Board of Governors of Lakeland College (Lakeland College) submitted a Part 1 application to the NRCB to construct a dry cow shed (30.5 m x 9.2 m) and a feed apron (30 m x 4.3 m) at an existing dairy CFO.

The purpose of the proposed dry cow shed and feed apron is to better accommodate and manage 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 23, 2021. On June 29, 2021, I deemed the application complete.

a. Location

The proposed dry cow shed and feed apron are located at SW 30-50-6 W4M in the County of Vermilion River, roughly 0.5 km southwest of the Town of Vermilion. The terrain is relatively flat and slopes gently to the south and east.

b. Existing permits

The CFO is already permitted under Registration RA16070, which allowed the construction and operation of a dairy CFO with 120 milking cows (plus associated dries and replacements). The CFO's permitted facilities are listed in Registration RA16070.

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 mile (800 m) from the CFO

A copy of the application was sent to the County of Vermilion River, which is the municipality where the CFO is located, and to the Town of Vermilion which has a boundary within the notification distance for the CFO.

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. Gregory Ward, an AHS environmental health officer/executive officer. In his letter, he summarized the scope of the application. He further included a few comments for consideration under the Nuisance and General Sanitation Regulations. Mr. Ward concluded that AHS has no objections to the proposed development.

Ms. Laura Partridge, a senior water administration officer with AEP, indicated that no additional water licensing is required at this time.

Mr. Stephan Desilets, inspections manager, responded on behalf of AF acknowledging receipt of the application, and indicated that AF has no concerns with this application.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of County of Vermilion River'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 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 municipalities

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." County of

Vermilion River is an affected party (and directly affected) because the proposed facility is located within its boundaries.

Mr. Roger Garnett, the director of planning and development with the County of Vermilion River, provided verbal and written responses on behalf of the county. The written responses included revisions of a MDP policy that deals with setbacks near the Town of Vermilion, and a clarification of the concept of sustainable development.

Mr. Garnett indicated that the application is consistent with the County of Vermilion River's municipal development plan land use provisions. The application's consistency with County of Vermilion River's municipal development plan is addressed in Appendix A, attached.

The Town of Vermilion is also a directly affected party because it is an affected municipality. The NRCB received a written response from Mr. Allan Wilson, planner and development officer with the Town of Vermilion. Mr. Wilson indicated that the Town did not have any concerns as the CFO already exists and their MDP allows for CFOs affiliated with the college.

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 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 Lakeland College's existing CFO facilities were assessed in 2016 using the ERST. According to that assessment, the 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.

8. Terms and conditions

Authorization RA21017 permits the construction of the dry cow shed and the feed apron.

Authorization RA21017 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 RA21017 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA21017 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21017.

Authorization RA21017 must be read in conjunction with NRCB previously issued Registration RA16070 which remain in effect.

September 16, 2021

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

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA21017

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for 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.)

Lakeland College’s CFO is located in the County of Vermilion River and is therefore subject to that county’s MDP. The County of Vermilion River adopted the latest revision to this plan on January 2020, under Bylaw 19-03. The County advised me that, at a regular council meeting on August 31, 2021, the County revised the wording of section 5.9(2)(d) of their MDP under Bylaw 21-17.

Part 5 of the MDP is titled Sustainable Development, and through objectives and policies it sets the direction for the County’s future growth and development.

This part defines sustainable development “as the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” Further, in this part the MDP states that “Land is a limited resource and how we use it reflects our community values and priorities.”

Part 5.9 of the MDP states the goal to conserve agricultural land. This part includes their objectives, which includes preserving existing productive farmland for agricultural use from incompatible, non-farming related uses and support the continuation of agricultural operations and agriculture support activities in the County.

Policies 5.9.2 b), c), d), e) and f) of the MDP relate specifically to CFOs.

Policy 5.9.2. b) of the MDP states that the county’s response to a CFO application will be based on the “technical and locational merits of each application.” As this provision is directed specifically at the county’s response, it likely is not directly relevant to the NRCB’s own “MDP consistency” determination. In addition, the provision is not a “land use provision” because it calls for a discretionary judgment regarding the merits of each application. For these reasons, I conclude that this provision is not relevant to my MDP consistency determination. At any rate, as noted in part 5 above, the application meets the requirements in AOPA’s regulation, so the application is arguably consistent with this MDP policy.

This policy also state that CFOs must “fully satisfy all the requirements and regulations” under AOPA, specifically the minimum distance separation requirements and the land base requirements.” Policy 5.9.2 c) echoes this policy somewhat by stating that “[m]inimum distance

separations for CFOs shall conform to standards set out in” AOPA. These two policies likely are not relevant “land use provisions.” At any rate, the application meets the MDS and all other AOPA requirements, so it is consistent with these policies.

Policy 5.9.2 d), as noted above, was revised on August 31, 2021, and states that “In addition to the minimum distance separation requirements provided through regulations adopted under the Agricultural Operation Practices Act, the County’s policy is that confined feeding operations requiring registration or approval and manure storage facilities requiring authorization under that Act must be sustainable within 2.4 km (1.5 miles) of the corporate boundaries of any urban municipality within the County of Vermilion River or within 0.8 km (0.5 miles) of the Community Areas designated on Map 1, which areas shall be considered an urban fringe when calculating the regulations approved under the Agricultural Operation Practices Act.

Lakeland College’s CFO site is outside of, and therefore satisfies, this policy’s 0.8 km setback from Community Areas. However, as noted in part 1 of the decision summary above, the CFO site is roughly 0.5 km from the Town of Vermilion, which is an “urban municipality.” Therefore, the CFO is *within* the 2.4 km setback in this policy.

At the time of the application this policy stated in part that ...”manure storage facilities requiring authorization under that Act **will be discouraged** within 2.4 km (1.5 miles) of the corporate boundaries of any urban municipality”... As noted above, however, the county changed the wording of this setback policy by inserting “must be sustainable” in place of “will be discouraged.” The plain meaning of this change in terminology suggests that, after the August 31, 2021 revision, the county meant the setback to be more of a flexible than a rigid rule.

The updated policy is likely not a land use provision because it calls for a discretionary judgement regarding the merits of each application, therefore, it is not relevant to my MDP consistency determination. At any rate, based on the definition of sustainable development, and the goals & objectives stated in parts 5 and 5.9 of the MDP, respectively, I conclude that the application to construct a dry cow shed and feed apron at an existing dairy CFO at Lakeland College is sustainable, since authorizations (including this one) generally improve the environmental and animal conditions at a CFO, so the application is arguably consistent with this MDP policy.

Policy 5.9.2 e) states that “CFO’s will be discouraged from locating in environmentally sensitive areas where slope instability and or groundwater contamination may be of concern” This policy is likely not a “land use provision,” because it calls for a discretionary judgment regarding the merits of each application, therefore, it is not relevant to my MDP consistency determination. At any rate, the CFO site is not an area where slope instability is a concern, and as previously noted in section 7 of this decision summary, the CFO’s proposed facilities pose a low potential risk to groundwater. The application meets the requirements in AOPA’s regulation, so the application is consistent with this MDP policy.

Policy 5.9.2 f) requires that in addition to meeting the requirements of AOPA and the County’s MDP, the application must meet the County’s Area Structural Plan. The location of where Lakeland College’ CFO is located is not part of an Area Structural Plan.

Based on my independent review of the county’s MDP, I conclude that the application is consistent with the land use provisions in the county’s MDP. This conclusion is supported by the county’s responses to the application.

In my view, the MDP clearly intends to incorporate Vermilion River County's Land Use Bylaw (LUB) 19-02 (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3). The latest revision to this planning document was ratified in June 2021. Accordingly, I considered the LUB. Under the LUB the subject land is currently zoned as Agricultural. Section 5.6 of this LUB, states that "Confined Feeding Operations and Manure Storage Facilities for which an approval, a registration, or an authorization is required pursuant to the Agricultural Operations Acts are not regulated by this Bylaw rather by that Act and by the Natural Resources Conservation Board pursuant to that Act. Please refer to the Agricultural Operations Acts and the Regulations under the Agricultural Operations Acts under for these Developments." Therefore, the proposed construction is not inconsistent with the LUB.

APPENDIX B: Explanation of conditions in Authorization RA21017

Authorization RA21017 includes several conditions, discussed below:

a. Construction Deadline

Lakeland College proposes to complete construction of the proposed new dry cow shed and feed apron by November 30, 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 two full construction seasons is more reasonable for the proposed scope of work. The deadline of November 30, 2023 is included as a condition in Authorization RA21017.

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 RA21017 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the addition to the dry cow shed and feed apron to meet the specification for category D (solid manure – dry) and category C (solid manure – wet), respectively, in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.” Lakeland College 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 RA21017 includes conditions stating that Lakeland College shall not place livestock or manure in the manure storage or collection portions of the new dry cow shed and the feed apron, until NRCB personnel have inspected the facilities and confirmed in writing that they meet the authorization requirements.