

Decision Summary RA21036

This document summarizes my reasons for issuing Authorization RA21036 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21036. 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 21, 2021, Rolf van Benthem on behalf of Evert van Benthem, Jannette van Benthem, and van Benthem Dairy Ltd. submitted a Part 1 application to the NRCB to construct a new solid manure storage facility (45.7 m x 16.8 m) at an existing dairy. van Benthem Dairy is also proposing to decommission their existing clay based solid manure pad (34.7 m x 11 m)

The Part 2 application was submitted on July 19, 2021. On July 28, 2021, I deemed the application complete.

a. Location

The existing CFO is located at NW 9-36-2 W5M in Red Deer County, roughly five km east of the Village of Spruce View, Alberta. The terrain is slightly undulating with a general slope towards Dickson Creek, which is located about 240 m south.

b. Existing permits

The CFO is already permitted under Registration RA15042, which allows the construction and operation of a dairy CFO with 140 milking cows (plus associated dries and replacements). The CFO's permitted facilities are listed in Registration RA15042.

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
- 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 CFO

A copy of the application was sent to Red Deer 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).

Pamela Kutuadu, 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.

Mr. Stephan Desilets, inspections manager, responded on behalf of AF acknowledging receipt of the application, and indicated that as there is no change to the milk house or milk production, 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 Red Deer 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) with an exemption under Section 3(5)(c) of the Standard and Administration Regulation (The proposed manure storage facility is within the footprint of the existing CFO and away from the closest neighboring residences.)
- 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 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." Red Deer County is an affected party (and directly affected) because the proposed facility is located within

its boundaries.

Mr. Richard Moje, a planner with Red Deer County, provided a written response on behalf of Red Deer County. Mr. Moje stated that Red Deer County's council had no objections to this application. The application's consistency with Red Deer County's municipal development plan 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 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 van Benthem Dairy's existing CFO facilities were assessed in 2015 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 RA21036 permits the construction of the solid manure storage facility.

Authorization RA21036 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 RA21036 includes conditions that generally address a construction deadline, document submission, a construction inspection, and the decommissioning of an old facility. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA21036 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21036.

Authorization RA21036 must be read in conjunction with NRCB previously issued Registration RA15042 which remain in effect.

September 30, 2021

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

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA21036

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.)

van Benthem Dairy’s CFO is located in Red Deer County and is therefore subject to that county’s MDP. Red Deer County adopted the latest revision to this plan on August 21, 2018, under Bylaw #2018/29.

Section 3.3 of the MDP relates to CFOs. The subsections relevant to this application are discussed below:

3.3.1 States that the county “encourages the development of Confined Feeding Operations (CFOs) at appropriate locations, as a means of supporting the local economy and creating employment.” This subsection likely isn’t a relevant “land use provision” but it provides a general context for interpreting and applying the other parts of section 3.3.

3.3.2 Lists six “criteria used [by the county] in responding to applications for new CFOs or expansions to existing CFOs...” This subsection is titled “Criteria for Input” (emphasis added). This subsection is intended to be used only by the county to prepare its responses to AOPA applications. Therefore, the criteria are procedural in nature and not a land use provision, therefore they are not directly relevant to my MDP consistency determination.

In addition, the criteria require site and CFO-specific discretionary considerations rather than providing generic direction for appropriate land uses. As such, the six criteria are not considered by the NRCB to be “land use provisions.” (See Operational Policy 2016-7: Approvals, part 8.2.5.) Therefore, they are not relevant to this MDP consistency determination.

3.3.3 Contains three parts under the heading “Conditions for County Support of CFOs”:

- a. States that “[t]he [c]ounty shall provide input to the Natural Resources Conservation Board (NRCB) in responding to applications for new or expanded CFOs.” As with subsection 3.3.2, discussed above, this subsection focuses on the county’s response and therefore is not a land use provision and is not relevant to my MDP consistency determination.
- b. Relates to the establishment of new CFOs. This application is for a solid manure

storage facility at an already existing dairy CFO, not the establishment of a new one, and therefore is not applicable to this application.

- c. Relates to expanding CFOs and states that “applications made to the NRCB ... may be supported if they:
 - i. Are located within an Intermunicipal Development Plan (IDP) and are in accordance with the policies contained within the IDP regarding new CFOs and expanding CFOs; and
 - ii. are compatible with adjacent land uses.”

van Benthem Dairy’s CFO is not located in the area covered by an IDP. Under the county’s land use bylaw, the CFO and surrounding lands are zoned as agricultural district. CFOs are listed as a permitted land use on agriculturally zoned parcels that are 32 ha or 80 acres or larger. Based on this, this CFO is compatible with adjacent land uses.

For these reasons, I conclude that the application is consistent with the land use provisions of Red Deer County’s MDP. As noted above, the response from Red Deer County to this application did not state any objections with this application. Therefore, the county’s response is consistent with my conclusion.

In my view, the text of Red Deer County’s MDP also provides a clear intent to adopt provisions from the land use bylaw (LUB), in sections 1, 3, 5 and 10. Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also considered the county’s Land Use Bylaw 2006/6.

Under the NRCB’s Approvals Policy (See Operational Policy 2016-7, part 8.3) a proposed development is considered to be consistent with the bylaw if it is listed as either a permitted or discretionary use. Based on this, I am of the opinion that the proposed solid manure storage is consistent with the county’s LUB.

APPENDIX B: Explanation of conditions in Authorization RA21036

Authorization RA21036 includes several conditions, discussed below:

a. Construction Deadline

van Benthem Dairy proposes to complete construction of the proposed new solid manure storage facility by October 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 more than one 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 RA21036.

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 RA21036 includes a condition requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the solid manure 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.” van Benthem Dairy 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 RA21036 includes a condition stating that van Benthem Dairy shall not place manure in the manure storage or collection portions of the new solid manure storage facility until NRCB personnel have inspected it and confirmed in writing that it meets the authorization requirements.

c. Facility Decommissioning

As noted in part 1 above, van Benthem Dairy propose to decommission the existing clay based solid manure pad. A condition will be included in Authorization RA21036 requiring the existing clay based solid manure pad to be decommissioned in accordance with Technical Guideline Agdex 096-90, “Closure of Manure Storage Facilities and Manure Collection Areas”.