

Decision Summary RA21009

This document summarizes my reasons for issuing Registration RA21009 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21009. 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 a registration. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On January 25, 2021, Karen Pierik on behalf of Hendrik and Margje Pierik, operating as Pleasant Hill Farms Ltd. (Pleasant Hill Farms) submitted a Part 1 application to the NRCB to construct a new CFO with 400 dairy bred heifers. Under AOPA, dairy heifers housed away from a dairy are treated as Beef - Feeders for MDS and land base requirements purposes.

The Part 2 application was submitted on May 6, 2021. On June 16, 2021, I deemed the application complete.

The proposed CFO involves the construction of a heifer facility (137.2 m x 24.4 m)

a. Location

The proposed CFO is located at NE 17-42-26 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.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by a registration 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 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 ½ mile (805 m) from the CFO
- all persons who own or reside on land within the greater of ½ mile (805 m) or the minimum distance separation for the land on which the CFO is located

The land zoning on which the CFO is located would require a minimum distance separation of 219 metres. Therefore, the notification distance is 805 metres. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Ponoka County, which is the municipality where the CFO

is to be located.

The NRCB gave notice of the application by public advertisement in the Ponoka News on June 16, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, seven letters were sent to people identified by Ponoka County as owning or residing on land within the notification distance.

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), and Alberta Environment and Parks (AEP).

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 application for a water licensing under the *Water Act* is required.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 22(9) 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 CFO 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.)

6. AOPA requirements

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

- 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 9, the application meets all relevant AOPA requirements.

7. Responses from the 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." Ponoka County is an affected party (and directly affected) because the proposed CFO 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.

No other responses were received.

8. Environmental risk of CFO 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.

9. Terms and conditions

Registration RA21009 specifies the cumulative permitted livestock capacity as 400 dairy bred heifers and permits the construction of the heifer facility.

Registration RA21009 contains terms that the NRCB generally includes in all AOPA registrations, 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, Registration RA21009 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.

10. Conclusion

Registration RA21009 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21009.

October 18, 2021

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

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration RA21009

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for a registration or amendment of a registration 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 will be 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.

Section 2 of the MDP contains eight numbered policies that relate to applications for new CFOs under AOPA. These eight policies are discussed below. (Three other MDP policies relate to CFOs below the AOPA permit threshold or to proposed residential developments near existing CFOs.)

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, policy 2.1 also states that the environment and neighbours’ rights “must be protected.” This policy likely isn’t a “land use provision,” but it provides a general context for interpreting and applying the other policies in section 2.

Policy 2.2 states the county’s “belie[f] that very large CFOs are inappropriate in this part of Alberta, and requests the NRCB not to allow them here.” 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, a “very large” dairy CFO would have over 2,000 milking cows. Pleasant Hill Farms’ proposed CFO is for only 400 dairy heifers, so the proposed CFO is consistent with this policy.

Policy 2.3 has two parts. The first part lists three setbacks and two exclusion zones for new or expanded CFOs. Pleasant Hill Farms’ CFO is not within any of these restricted areas.

The second part of policy 2.3 calls for “very strict conditions on manure handling and storage in the Chain Lakes and Maskwa Creek watersheds. This policy likely isn’t a “land use provision” because it calls for discretionary judgements about what conditions are “very strict.”

In addition, this policy may well be precluded from my consideration under section 20(1.1) of AOPA, which precludes an approval officer 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. Regardless, the proposed CFO meets AOPA’s technical requirements for manure handling and storage and those requirements are arguably “very strict.” In addition, the CFO is not within either of these watersheds. Therefore, the proposed CFO would be consistent with this section, if the section applied.

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.” This is a “test or condition” under section 21(1.1) of AOPA, so I am precluded from considering this policy. At any rate, Pleasant Hill Farms’ CFO will be subject to the Standards and Administration Regulation under AOPA. This regulation arguably provides rules for the land application of manure, including timely incorporation in specified circumstances. These rules are arguably “strict,” which is consistent with this MDP policy.

Policy 2.5 precludes 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.” Policy 2.5 is likely not a “land use provision” because its “fail-safe” and “reasonable risk” tests call for discretionary, CFO-specific judgements. The provision may also be a “test or condition,” which I am precluded from considering by AOPA section 21(1.1). There are no lakes within 2 miles of the proposed CFO, and therefore, the proposed CFO would be consistent with this section, if the section applied.

Policy 2.6 precludes new or expanded CFOs where there is “any risk that runoff will contaminate domestic water supplies.” Policy 2.6 likely is not a “land use provision” because it calls for discretionary judgements about acceptable risks. (On its face, “any risk” is a low risk threshold, but the threshold is presumably more than “minor” or “insignificant.”). At any rate, the proposed CFO meets AOPA’s operational and construction requirements, which are designed to minimize the risks to surface and groundwater.

Policy 2.8 states that “where a *new* CFO is proposed, the minimum distance separation (MDS) should be contained entirely within land owned by the operator of the CFO.” Policy 2.8 goes on to state that this requirement may be waived if the other party (neighbour) agrees to the MDS encroachment in writing.

2.8 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. In AOPA, the MDS is measured to the residential building located on that property rather than to the property line.

The NRCB’s board (see *Wyntjes*, Board Decision 2007-11 at 6 et seq.) and approvals policy (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5) have made it clear that approval officers should not consider MDP provisions that are based on, but modify and render more stringent, AOPA’s MDS requirements. Thus, this policy cannot be considered for purposes of my MDS consistency determination. Regardless, Pleasant Hill Farms’ application meets the AOPA MDS requirement, as noted in part six above.

Last, 2.11 states that the county “may develop policies to reduce the nuisance caused by the spreading of manure near residences,” including ones that require the immediate incorporation of manure and limits on the timing or rate of manure application. I am unaware of any manure application policies that the county has developed under policy 2.11. At any rate, section 21(1.1) of AOPA precludes me from considering policy 2.11 because it relates to manure application.

For these reasons, I conclude that the application is consistent with the relevant land use provisions of Ponoka County's MDP. As noted above, Ponoka County's response did not raise any concerns with this application, which confirms my conclusion.

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 will be permitted by the NRCB under Registration RA21009.

APPENDIX B: Explanation of conditions in Registration RA21009

Registration RA21009 includes several conditions, discussed below:

a. Construction Deadline

Pleasant Hill Farms proposes to complete construction of the proposed new heifer facility by November 1, 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 Registration RA21009.

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, Registration RA21009 includes a condition requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the heifer facility barn 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.” 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. Registration RA21009 includes a condition stating that Pleasant Hill Farms shall not place livestock or manure in the manure storage or collection portions of the new heifer facility until NRCB personnel have inspected the facility and confirmed in writing that it meets the registration requirements.