

Decision Summary RA20040A

This document summarizes my reasons for issuing amended Approval RA20040A under the *Agricultural Operation Practices Act* (AOPA). Additional reasons, as well as the full application, are in Technical Document RA20040A. 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.

1. Background

On September 21, 2020, the NRCB issued Approval RA20040 to Ryan & Jo-Ann Andrew, operating as Andrew Dairy Ltd, which allowed the construction of a new sheep and dairy confined feeding operation (CFO). The approval permitted, amongst other facilities, the construction of a 46 m x 37 m x 4.2 m deep earthen liquid manure storage (EMS). Andrew Dairy has constructed the EMS with different dimensions than permitted by the approval. Andrew Dairy has not yet used the EMS.

This modification is considered to be unauthorized construction, and therefore, the NRCB's compliance division is aware and involved in this as well.

On September 14, 2021, Andrew Dairy applied to amend Approval RA20040, in order to modify the dimensions of the EMS from 46 m x 37 m x 4.2 m deep, to 53 m x 42 m x 3.5 m deep.

The EMS was constructed using the same proposed compacted clay liner that was previously approved for the original EMS. No increase in livestock numbers or manure production is proposed.

Under AOPA, this type of application requires an amendment to an approval.

a. Location

The existing CFO is located at NE 13-41-23 W4M in Lacombe County, roughly 12 km northeast of Tees, Alberta. The terrain in the vicinity is hilly and the site will be located on a slightly undulating field.

2. Notices to “Affected Parties”

Under section 19 of AOPA, notice for an amendment of an approval application must be provided to all parties that are “affected” by an approval application. Section 5 of AOPA's Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all individuals who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For this application, the distance is one mile. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. Lacombe County is an affected party (and therefore also a directly affected party) because the proposed CFO is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB published notice of the amendment application in the Lacombe Express on September 23, 2021 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to Lacombe County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Agriculture and Forestry (AF), and utility right of way holders: Ember Resources, Battle River Power Coop, and Chain Lakes Gas Coop. Twenty seven courtesy letters were sent to people identified by Lacombe County as owning or residing on land within the affected party radius.

3. Responses from the Municipality, referral agencies and other directly affected parties

I received responses from Lacombe County, AEP, AHS and another party.

The NRCB received a written response to the application notice from Ms. Allison Noonan, planning services administrative assistant with Lacombe County. As noted in section 2, Lacombe County is a directly affected party.

In her response, Ms. Noonan indicated that the county has no concerns with this application. The county adopted its current MDP on July 6, 2017 under Bylaw 1238/17. This is the same MDP that I considered when I issued Approval RA20040 in October 15, 2020. Andrew Dairy’s present application is consistent with that MDP for the same reasons as those provided in Appendix A of Decision Summary RA20040.

Ms. Laura Partridge, a senior water administration officer with AEP, indicated that it appears that additional water licensing and a groundwater evaluation report are required based on the animal numbers indicated under Approval RA20040. Additionally, Ms. Partridge indicated that the current water registration requires a name change amendment under the *Water Act*.

Ms. Pamela Kutuadu, an AHS executive officer/public health inspector, has no concerns with this application.

Apart from municipalities, any member of the public may request to be considered “directly

affected.” The NRCB received a statement of support from one party.

Dean and Julie Christine Hjelte, who submitted a response, own or reside on land within the one mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

4. Environmental risk screening of existing facilities (including the constructed EMS)

When reviewing new permit applications for an existing CFO, NRCB approval officers normally assess the CFO’s existing buildings, structures and other facilities, using the NRCB’s environmental risk screening tool, to determine the level of risk they pose to surface water and groundwater. This tool 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/Guides 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 done with a previous version of the risk screening tool and requires updating.

The potential risks posed by Andrew Dairy’s permitted CFO facilities were assessed in 2020, including the EMS. According to that assessment, the facilities, including the EMS, all pose a low potential risk to surface water and groundwater.

The permit holder constructed the EMS modifying the permitted dimensions. The soil information submitted for the EMS originally permitted under Approval RA20040 remains the same, as indicated in a completion report signed by a professional engineer. This report confirms that the facility was constructed with the same material that was used for hydraulic conductivity testing, and that the EMS was constructed according to the proposed procedures and design specifications. The constructed EMS, therefore, has the same compacted clay liner as the EMS permitted by Approval RA20040.

For these reasons, a new assessment of the risks posed by the CFO’s permitted facilities, including the constructed EMS, is not required.

5. Factors Considered

The previous application RA20040 met all relevant AOPA requirements. The proposed change to the dimensions of the EMS has no impact on that determination, which still stands. Additionally, the terms and conditions summarized in section 6, include the terms and conditions from Approval RA20040.

6. Terms and Conditions

Rather than issuing a separate “amendment” to Approval RA20040, I am issuing a new approval (RA20040A) with the required amendment. Approval RA20040A therefore contains all of the terms and conditions in RA20040, but with modifications to the dimensions of the EMS.

7. Conclusion

Approval RA20040A is issued, for the reasons provided above, in decision summaries RA20040 and RA20040A, and in Technical Documents RA20040 and RA20040A. In the case of a conflict between these documents, the latest ones will take precedence.

Approval RA20040 is therefore cancelled, unless Approval RA20040A is held invalid following a review and decision by the NRCB's board members or by a court, in which case the previous permit will remain in effect.

October 29, 2021

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