

Decision Summary RA21041

This document summarizes my reasons for issuing Authorization RA21041 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21041. 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 July 26, 2021, Jan-Willem ‘JW’ & Lovera Bruins (JW Bruins) submitted a Part 1 application to the NRCB to construct a manure storage facility (MSF) at an existing dairy CFO.

The Part 2 application was submitted September 27, 2021. On September 27, 2021, I deemed the application complete.

The proposed construction involves constructing a 60 m x 19.5 m young stock barn.

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

Under AOPA this type of application requires an authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

a. Location

The proposed MSF is located at NE 24-41-24 W4M in Lacombe County, roughly 8 kilometers north of Tees, Alberta. The terrain is hummocky, with a general slope to the west.

b. Existing permits

The CFO is already permitted for 60 milking cows (plus associated dries and replacements) under Registration RA07045, which was consolidated with a deemed permit from Lacombe County development permit 177-98. The NRCB has also issued Authorization RA11034.

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 Lacombe 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), Alberta Agriculture and Forestry (AF), and Alberta Transportation.

Mr. Quentin Schatz, an AHS public health inspector/executive officer, indicated that AHS has no concerns with the application.

Ms. Laura Partridge, an AEP senior water administration officer, responded that it appears that additional water licensing and a groundwater evaluation report are required. She provided a number of resources to assist the applicant in the water licensing process. The applicant is reminded that it is their responsibility to ensure that they have adequate water licensing.

Ms. Sandy Choi, an AT development and planning technologist, responded with a copy of the applicant's approved Roadside Development Permit.

No other responses were received.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Lacombe 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 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." Lacombe County is an affected party (and directly affected) because the proposed facility is located within

its boundaries.

Ms. Allison Noonan, a planning services assistant with Lacombe County, provided a written response on behalf of Lacombe County. Ms. Noonan stated that Lacombe County has no objections to the proposed application. She further noted that the application is consistent with the County's MDP. The application's consistency with Lacombe County's municipal development plan is addressed in Appendix A, attached.

Ms. Noonan also indicated that the proposed application meets Lacombe County's land use bylaw (LUB) and noted that the application meets the required setbacks.

7. Environmental risk of facilities

New MSF 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 groundwater monitoring for the facility. In this case a determination was made, and groundwater 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 the Bruins' 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 RA21041 permits the construction of the young stock barn

Authorization RA21041 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 RA21041 includes conditions that generally address construction deadline(s), document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA21041 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21041.

Authorization RA21041 must be read in conjunction with the Bruins' Registration RA07045, which was consolidated with a deemed permit from Lacombe County development permit 177-98, and NRCB previously issued Authorization RA11034, which remain in effect.

October 29, 2021

(Original Signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA21041

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.)

The Bruins’ CFO is located in Lacombe County and is therefore subject to that county’s MDP. Lacombe County adopted the latest revision to this plan on April 8, 2021, under Bylaw #1238/17. As relevant here:

Section 3.3.1 states that “All lands in the County shall be deemed to be agricultural lands unless otherwise designated by the Municipal Development Plan, an approved statutory or non-statutory plan, the Land Use Bylaw, or provincial legislation.”

I consider this section to be a procedural in nature and not a valid land use provision. However, it does provide insight for the interpretation of the remaining portions of the MDP and land use bylaw (LUB).

Section 3.9.1 of the county’s MDP states that the “County shall provide input on applications for confined feeding operations to the Natural Resources Conservation Board (NRCB) under the *Agricultural Operations Practices Act*. The county’s support is subject to the following:

- a) No new confined feeding operation shall be permitted less than 1.6 kilometres (1 mile) from the boundary of:
 - i) a town, village, summer village or hamlet;
 - ii) an area developed or designated for multi-lot residential use; or
 - iii) a provincial or municipal park or recreation area, or other area used or intended to be used for a recreational facility development, except that where provincial regulations require a larger setback distance, that distance shall apply.

Further restriction on the development of confined feeding operations may apply as directed by an Intermunicipal Development Plan or other local plan approved by Council.”

The Bruins’ application is for a young stock barn at an existing CFO; regardless the CFO is located outside any of these 1.6 km setbacks.

As for section 3.9.1’s reference to intermunicipal development plans (IDP) or other plans approved by the county’s council, this CFO is not located within land identified as part an IDP or any other plans.

For these reasons, I conclude that the application is consistent with the land use provisions of Lacombe County's MDP that I may consider.

In my view, under sections 1.3.4 and 3.3, the MDP clearly intends to incorporate Lacombe County's LUB #1237/17 (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 "A" District. CFOs are not listed as either a permitted or discretionary use within that zoning category. However, section 3.2(2)(j) of the LUB states that CFOs do not require a development permit. I interpret this provision as meaning either that the county intended CFOs to have the same effective status as listed permitted uses, or that the county simply does not intend to address CFOs in its LUB (given that the NRCB's permitting role since AOPA came into effect in 2002). Under either interpretation, the proposed CFO does not conflict with the LUB.

APPENDIX B: Explanation of conditions in Authorization RA21041

Authorization RA21041 includes several conditions, discussed below:

a. Construction Deadline

JW Bruins proposes to complete construction of the proposed new young stock barn by Spring, 2022. In my opinion, a time-frame that allows for two full construction seasons would be more reasonable for the proposed scope of work. The deadline of November 30, 2023 is included as a condition in Authorization RA21041.

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 RA21041 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the young stock 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.” The Bruins; shall provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the young stock barn.

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 RA21041 includes a condition stating that the Bruins' shall not place livestock or manure in the manure storage or collection portions of the new young stock barn until NRCB personnel have inspected the young stock barn and confirmed in writing that it meets the authorization requirements.