

Decision Summary RA21029

This document summarizes my reasons for issuing Approval RA21029 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21029. 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 approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On May 25, 2021, Mark Pierik on behalf of Hendrik & Margje Pierik, operating as Pleasant Hill Farms Ltd. (Pleasant Hill Farms) submitted a Part 1 application to the NRCB to construct a new dairy CFO.

The Part 2 application was submitted on August 30, 2021. On January 12, 2022, I deemed the application complete.

The proposed CFO involves permitting 250 milking cows (plus associated dries and replacements), plus constructing the following facilities:

- Milk cow barn (85 m x 38 m) with attached cross over (6.1 m x 4.6 m)
- Dry cow barn (46 m x 24 m)
- Outdoor pen (80 m x 30 m)
- Round synthetic lined liquid manure storage facility (36.5 m in radius, 4.5 m deep)
- Calf hutch pad (46 m x 15.2 m)
- Solid manure storage pad (20 m x 30 m)

The application also notified the NRCB of the proposed construction of a milk house (25 m x 8 m), a pump house (3.1 m x 3.1 m), and a sawdust bay (20 m x 6 m). These facilities are “ancillary structures,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because they will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, these structures do not need to be permitted under the act.

a. Location

The proposed CFO is located at NE 7-42-26 W4M in Ponoka County, roughly 12 kilometers south west of Ponoka. The terrain is generally flat, with a gentle slope to the north. The closest common water body is a creek located approximately 600 m north of the closest proposed facility.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by an approval 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 person or municipality entitled to divert water from that body within 10 miles
- the municipality where the CFO is located 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 persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified distance is 0.5 miles. (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 site is not located within 100 m of a river, stream or canal.

No other municipalities are located within the notification radius.

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Ponoka News on January 12, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, six letters were sent to people identified by Ponoka County as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

Under section 19 of AOPA, 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, Forestry and Rural Economic Development (AFRED).

Mr. Gordon Watt, a public health inspector, responded on behalf of AHS. Mr. Watt indicated that approval of the application is recommended, and provided some general best practices comments regarding water wells, liners, nuisances, and disposal of dead animals. A copy of this response was forwarded to the applicant. Mr. Watt indicated that the operation needs to comply with the Nuisance and General Sanitation Regulations 2003. The applicant is reminded of this requirement.

Mr. Stephan Desilets, a manager of the inspection and investigation section, responded on behalf of AFRED. Mr. Desilets provided the name of the inspector assigned to the file, but did not provide further comments.

No other responses were received.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) 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 10, the application meets all relevant AOPA requirements.

7. Responses from 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, an assistant CAO, provided a written response on behalf of Ponoka County. Mr. Hall stated that the application is consistent with the land use provisions of the Ponoka County municipal development plan. He added that the application is consistent with the land use by-law, and that the site is not within the boundaries of any related planning documents.

The application's consistency with Ponoka County's MDP is addressed in Appendix A, attached.

No responses were received from any other person, organization, or member of the public.

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 groundwater monitoring for the facility. In this case a determination was made and groundwater monitoring is not required.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Mr. Hall also indicated that the application meets the requirements in Ponoka County's land use bylaw (LUB).

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. AEP has not made me aware of statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application. Furthermore, the application meets AOPAs technical requirements. I am not aware of any written decision of the Environmental Appeals Board for this location (<https://www.eab.gov.ab.ca/status.htm>, accessed July 5, 2022).

Finally, I considered the effects of the proposed CFO on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed CFO is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval RA21029 specifies the cumulative permitted livestock capacity as 250 milking cows (plus associated dries and replacements), and permits the construction of the milk cow barn with attached cross over, dry cow barn, outdoor pen, synthetic lined liquid manure storage facility, calf hutch pad, solid manure storage pad, and the ancillary structures.

Approval RA21029 contains terms that the NRCB generally includes in all AOPA approvals, 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, Approval RA21029 includes conditions that generally address construction deadlines, construction above the water table, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

11. Conclusion

Approval RA21029 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21029.

July 14, 2022

(Original Signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA21029

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval 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 20(1.1) 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’s CFO is 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 would have over 2,000 milking cows. Pleasant Hill Farms’ proposed CFO is for only 250 milking cows (plus associated dries and replacements), 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.

APPENDIX B: Explanation of conditions in Approval RA21029

Approval RA21029 includes several conditions, discussed below:

a. Construction above the water table

Section 9(2) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

Based on this information, the proposed liquid manure storage facility meets the one metre requirement of section 9(2). However, because the height of the water table can vary over time, a condition is included requiring Pleasant Hill Farms to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Construction Deadline

Pleasant Hill Farms proposes to complete construction of the proposed new milking cow barn with attached cross over, dry cow barn, outdoor pen, synthetic lined liquid manure storage facility, calf hutch pad, and solid manure storage pad by an unknown date 2024. In my opinion, given the number of new facilities proposed, a time frame allowing for three full construction seasons would be more appropriate. The deadline of November 30, 2025 is included as a condition in Approval RA21029.

c. 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, Approval RA21029 includes conditions requiring:

a. Pleasant Hill Farms to provide:

- a stamped professional engineer’s completion report certifying that the outdoor pen and solid manure storage pad were constructed with the same liner material as that used for hydraulic conductivity testing in the December 2, 2021 Envirowest Engineering Inc. Site and Soil Assessment, and that the liner material was constructed in accordance with the same report.
- a construction completion report from a qualified third party, certifying that the manure collection and storage portions of the synthetic liquid manure storage facility were constructed as per their application and the manufacturer’s requirements, and certifying the dimensions and capacity of the storage facility.

b. the concrete used to construct the liner of the manure collection and storage portion of the milk cow barn with attached cross over, dry cow barn, and calf hutch area, to meet the specification for category B (liquid manure shallow pits); category C (solid manure – wet) (milk cow barn with attached cross over); category D (solid manure – dry) (dry cow barn, and calf hutch area) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”

c. Pleasant Hill Farms to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the milk cow barn with attached cross over, dry cow barn, and calf hutch area.

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. Approval RA21029 includes conditions stating that Pleasant Hill Farms shall not place livestock or manure in the manure storage or collection portions of the new milk cow barn with attached cross over, dry cow barn, calf hutch area, outdoor pen; or manure in the liquid manure storage facility or in the solid manure storage facility until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.