

Decision Summary BA23004

This document summarizes my reasons for issuing Authorization BA23004 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA23004. 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 March 14, 2023, Smoky Lake Farming Company Ltd. submitted a Part 1 application to the NRCB to construct a manure collection area (MCA) at an existing multi species CFO.

The proposed construction involves converting an old milking parlour to a dry cow and calf room (12 m x 30 m)

The Part 2 application was submitted on March 14, 2023. On March 20, 2023, I deemed the application complete.

a. Location

The existing CFO is located at NE 21 & NW 22-58-17 W4M in Smoky Lake County, roughly 6.5 km south of Smoky Lake Alberta. The terrain is flat to undulating with an unnamed tributary to Smoky Creek passing through NE 21 & NW 22-58-17 W4M.

b. Existing permits

The CFO is already permitted under Approval BA19018.

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. In this case, the notification distance is 1.5 miles from the CFO

A copy of the application was sent to Smoky Lake 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 Protected Areas (EPA), and Alberta Agriculture and Irrigation (AGI).

A response was received from AHS, they had no concerns with the application.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of Smoky Lake 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

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." Smoky Lake County is an affected party (and directly affected) because the proposed construction is located within its boundaries.

Mr. Kyle Schole, a planning technician with Smoky Lake County, provided a written response on behalf of the County. Mr. Schole stated that the application is consistent with the County's land use provisions of the municipal development plan. The application's consistency with the County's municipal development plan is addressed in Appendix A, attached.

Mr. Schole also noted that the proposed application meets the setbacks required by the County's land use bylaw (LUB).

7. Environmental risk of facilities

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 Smoky Lake Farming's existing CFO facilities were assessed in 2013 and 2019 using the ERST. According to these assessments, 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 BA23004 permits the construction of the dry cow and calf room.

Authorization BA23004 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 BA23004 includes conditions that generally address construction deadlines and document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization BA23004 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA23004.

Authorization BA23004 must be read in conjunction with Smoky Lake Farming's NRCB previously issued Approval BA19018 which remains in effect.

May 24, 2023

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization BA23004

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.)

Smoky Lake Farming’s CFO is located in Smoky Lake County and is therefore subject to that county’s MDP. The county adopted the latest revision to this plan on January 31, 2013, under Bylaw #1249-12.

Policy 4.1.1.2 of the MDP states that “the primary use of the Agriculture Use Area is for extensive agriculture and confined feeding operations involving the production of feed grains, cereal grains, forage grains, specialty crops, livestock and other animals on a commercial basis...” This is considered a general guiding principle and is not considered a land use provision; therefore, this is not relevant to my decision. Regardless, the proposed application fits with this general guiding principle.

Policy 4.1.3.2 states that “input shall be provided to the Natural Resources Conservation Board (NRCB) in responding to application for new or expanded Confined Feeding Operations (CFOs) based on the technical and locational merits of each application.” This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see NRCB Operational Policy 2016-7, Approvals, part 8.2.5). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA.

Policy 4.1.3.3 states that “Minimum distance separation for CFOs shall conform to the standards set out in the Agricultural Operations Practices Act.” Together, the use of the term “minimum distance separation” in policy 4.1.3.3 appears to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. This MDP policy is likely not relevant to my MDP consistency determination, because this policy is based on AOPA’s MDS requirements. (See also Operational Policy, Approvals, part 8.2.5). That said, the CFO meets the MDS requirements under AOPA (as shown in Technical Document BA23004) and meets all other AOPA technical requirements. Therefore, this application is consistent with this MDP policy.

Policy 4.1.3.4 states that “CFOs will be discouraged from locating in environmentally sensitive areas where slope instability and or groundwater contamination may be of concern.” This policy is likely not a land use provision because it requires site-specific, discretionary determinations

(see NRCB Operational Policy 2016-7, Approvals, part 8.2.5). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA. At any rate, the application meets the “technical and locational” requirements set out in AOPA and is not located in or near any areas identified as environmentally sensitive on the MDP’s Future land use maps.

APPENDIX B: Explanation of conditions in Authorization BA23004

Authorization BA23004 includes several conditions, discussed below:

a. Construction Deadline

Smoky Lake Farming proposes to complete the proposed construction by the end of 2023. This time-frame is considered to be reasonable for the proposed scope of work however to allow for possible construction disruptions 2 construction seasons will be given. The deadline of December 1, 2024 is included as a condition in Authorization BA23004.

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 BA23004 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dry cow & calf room 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.”
- b. Smoky Lake Farming to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dry cow & calf room.

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 BA23004 includes a condition stating that Smoky Lake Farming shall not place livestock or manure in the manure storage or collection portions of the new dry cow & calf room until NRCB personnel have inspected the room and confirmed in writing that it meets the authorization requirements.