



Decision Summary LA22047

This document summarizes my reasons for issuing Authorization LA22047 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22047. 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 November 29, 2022, Jacob Bueckert (Bueckert) submitted a Part 1 application to the NRCB, on behalf of 1628487 AB Ltd. The application is to construct a stand-alone solid manure storage pad (821 m x 400 m) adjacent to an existing beef CFO. The manure that will be stored at the proposed solid manure storage pad originates from the CFO.

The Part 2 application was submitted on January 12, 2023 and the application was deemed complete the same day.

The application was deemed complete by a former approval officer. On March 20, 2023, the file transferred to me.

Notices to referral agencies initially stated that the proposed manure storage pad would be placed at the existing CFO site (S½ 34-4-17 W4M); however, that is incorrect as the applicant is proposing to build on the adjacent quarter section (NW) of the same land location. All of the agencies caught the error; however, on May 16, 2023 I notified the appropriate right of way holders on the correct land location.

a. Location

The proposed MSF is located at NW 34-4-17 W4M in the County of Warner, roughly 5 km north of the Village of Warner. The terrain is generally flat but slopes to the east.

b. Existing permits

The manure storage pad is being permitted as a stand along facility under AOPA. There are currently no AOPA permits associated with the land location in question.

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 3 miles from the manure storage pad

A copy of the application was sent to the County of Warner, 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), Alberta Transportation and Economic Corridors (TRAN), and the St. Mary River Irrigation District (SMRID).

A copy of the application was sent to Prairie Sky Royalty Ltd. and Triple W Natural Gas Co-op Ltd. Prairie Sky Royalty Ltd. holds the mineral rights to the section of land that encompasses both the proposed solid manure storage pad, as well as the existing feedlot. Triple W Natural Gas Co-op was incorrectly notified as they have a utility right of way on the land the feedlot sits on, not the proposed pad.

I received comments from AHS, EPA, TRAN, and SMRID. No concerns were raised relating to the application, but SMRID did identify a land easement and canal and asked that the NRCB ensure setbacks are met and stated the canal road must not be utilized for hauling manure. In my view these concerns are addressed by the conditions relating to setbacks to surface water as included in Authorization LA22047.

All of the referral agencies that responded recognized that the proposed site's land location was different than what originally listed in our cover letter. Therefore, no additional notice was needed. On May 16, 2023 I notified the right of way holders on the quarter section where the proposed pad will be located.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of the County of Warner'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.

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." The County of Warner is an affected party (and directly affected) because the proposed facility is located within its boundaries.

The County of Warner did not provide a submission to the application notice. The application's consistency with the County of Warner's municipal development plan is addressed in Appendix A, attached.

7. Environmental risk of facilities

New MSFs which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. As the application meets all AOPA requirements I am satisfied it poses a low risk to surface and groundwater.

8. Terms and conditions

Authorization LA22047 permits the construction of the solid manure storage pad.

Authorization LA22047 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 LA22047 includes conditions that generally address construction deadline, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA22047 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22047.

June 8, 2023

(Original signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA22047

APPENDIX A: Consistency with the municipal development plan

Under section 22 of the *Agricultural Operation Practices Act* (AOPA), an approval officer may grant an application for an authorization only if the approval officer finds that the application is consistent with the land use provisions of the applicable municipal development plan (MDP).

Bueckert's proposed solid manure storage pad is located in the County of Warner and is therefore subject to that county's MDP. The county adopted the latest revision to this plan in November, 1999, under Bylaw #804-99, which pre-dates Part 2 of AOPA that came into force in 2002.

As relevant here, section 4.1.5 of the MDP states that, "[i]n general, [land] uses will be encouraged to locate in areas discussed below...." Sub-section 4.1.5(c) then states that "intensive agriculture":

- [Is] generally accepted everywhere in the county within the principles of minimum distance separation and the land use bylaw, particularly in the irrigated areas of the county,
- [Should] have regard for the minimum distance separation calculation,
- [Should] ensure compliance with land use bylaw and any other regulation.

Section 4.1.5(c) relies on the county's land use bylaw (LUB), which is Bylaw #866-08 and which post-dates Part 2 of AOPA. Due to the age of the MDP, it is necessary to consider the LUB in order to interpret the municipalities planning documents. Under that bylaw, the subject land is currently zoned as Extensive Agriculture. CFOs are not listed as either a permitted, discretionary or prohibited land use under this zoning category.

Under sections 14 and 42 of the LUB, a land use is prohibited if it is not listed as either permitted or discretionary and is not "reasonably similar" to a listed permitted or discretionary land use. In fact, the LUB does not list CFOs as permitted or discretionary land uses in any other district, and the LUB expressly prohibits CFOs in four zoning districts. (See Schedule 2, prohibited uses for the following districts: Grouped Country Residential; Urban Fringe; Urban Fringe – Agriculture; and Hamlet Transitional/Agricultural.)

The LUB does not expressly allow CFOs (above the AOPA permit threshold) anywhere in the county, though several LUB provisions address the suitability of developments near existing CFOs and of dwellings on and subdivisions of, CFO lands. (See LUB, ss. 28(l), 47(c), and Sched. 4, s. 2.) This is likely because after Part 2 of AOPA came into effect in 2002, the county recognized it no longer had permitting authority. Two other LUB provisions refer to the NRCB's authority over CFOs above the AOPA permit threshold. (LUB Sched. 13, ss. 2(b) and 3(a). Bueckert's proposed construction is not precluded by any of these CFO-specific provisions, and it meets the LUB setbacks that are applicable to any type of development.)

Viewed together, these LUB omissions and references to CFOs suggest that the county did not intend to preclude CFOs in the Extensive Agriculture district. Rather, the county omitted listing CFOs as either permitted/discretionary or prohibited, simply due to the county's recognition that, after AOPA came into effect, the county no longer had permitting authority over CFOs. This interpretation is supported by the first bullet in section 4.1.5(c) of the MDP which states that "intensive agriculture" is generally "accepted everywhere in the county..." This statement would be meaningless if the county had meant to preclude CFOs in the Extensive Agriculture district, because that district comprises the vast majority of the lands in the county.

Two of the bullets in section 4.1.5(c) of the MDP refer to the “minimum distance separation” (MDS). The MDP does not define this term, so it is reasonable to define it by reference to the MDS requirements under AOPA. As noted in part 5 above, the proposed construction meets these MDS requirements.

The third bullet in section 4.1.5(c) refers to compliance with “any other regulation.” This is likely not a “land use provision,” for purposes of the MDP consistency requirement under AOPA. At any rate, no party, including the county, has identified “any other regulation” that has not been met.

For these reasons, I conclude that the application is consistent with the land use provisions of the County of Warner’s MDP, and with the county’s LUB.

APPENDIX B: Explanation of conditions in Authorization LA22047

Authorization LA22047 includes several conditions, discussed below.

a. Construction Deadline

Bueckert proposes to complete construction of the proposed new solid manure storage pad by November 30, 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2023 is included as a condition in Authorization LA22047.

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 LA22047 includes conditions requiring:

- a. Bueckert to provide written confirmation from a qualified third party that the proposed manure storage pad is constructed at minimum 30 m distance from the SMRID right of way, and from western irrigation canal, and that the proposed 0.3 m tall berm is built as proposed.

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 LA22047 includes a condition stating that Bueckert shall not place manure in the new solid manure storage pad until NRCB personnel have inspected the solid manure storage pad and confirmed in writing that it meets the authorization requirements.

c. Manure storage limits

Bueckert must maintain records and provide them to the NRCB upon request, tracking the quantity of manure, in tonnes, stored on the manure storage pad. This quantity shall at no time exceed 30,000 tonnes.