

Decision Summary RA22028

This document summarizes my reasons for issuing Authorization RA22028 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA22028. 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 December 5, 2022, Dick Yzerman on behalf of D & A Dairies Ltd. (D & A Dairies) submitted a Part 1 application to the NRCB to construct a new rotary and fresh cow barn, and to build a new synthetic lined liquid manure storage (LMS) to replace the old LMS at an existing dairy confined feeding operation (CFO).

The purpose of the proposed rotary and fresh cow barn, as well as the replacement LMS, is to expand and update facilities which house livestock and/or store manure.

There is no proposed increase in livestock or manure production.

The Part 2 application was submitted on April 12, 2023. On April 27, 2023, I deemed the application complete.

The proposed construction involves:

- Constructing a new synthetic lined LMS - 105 m x 80 m x 5 m
- Constructing a new rotary barn - 91.4 m x 38.1 m
- Constructing a new fresh cow barn - 91.4 m x 39.6 m

a. Location

The existing CFO is located at NW 36-39-28 W4M in Lacombe County, roughly six kilometers west of the town of Blackfalds, Alberta. The terrain is generally flat with a slight slope to the southwest. The nearest residence lies approximately 268 m north of the CFO. There are no surface water bodies within 400 m of the facilities.

b. Existing permits

The CFO is already permitted under Development Permit No. 196/99 and NRCB-issued Approval RA09012 and Authorizations RA14014, RA15021 and RA17032.

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 (2414.02 m) from the CFO

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 Protected Areas (EPA), and Alberta Agriculture and Irrigation (AGI).

I also sent a copy of the application to right of way holders ATCO Gas and Pipelines Ltd., Vesta Energy Ltd., Point Loma Resources Ltd., and EQUUS, as their utility right of ways are within the CFO boundary.

Ms. Angie Barbas, an area service administrator at EQUUS, responded to the notice indicating that EQUUS has no objections to the application.

Ms. Kristina Croce, an executive officer with AHS, responded to the notice with general information regarding protection of groundwater and dust and odor control.

No further responses were received.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction 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 nearby residences, with one exception (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence. Approvals policy section 6.2 presumes that a person who provides a written MDS waiver is automatically considered to be directly affected. However, in the case of

an authorization section 21(2) of the Act specifies that the only directly affected parties are the applicant and the municipality.

- 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 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 facilities are located within its boundaries.

Ms. Allison Noonan, a planning services administrative assistant with Lacombe County, provided a written response on behalf of Lacombe County. Ms. Noonan stated that the application is consistent with the land use provisions in Lacombe County's municipal development plan. The application's consistency with Lacombe County's municipal development plan is addressed in Appendix A, attached.

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

7. Environmental risk of facilities

New manure storage facilities (MSF) or manure collection areas (MCA) 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, water well or porous subsurface materials, an approval officer may require an exemption for the facility. In this case a determination was made that those circumstances are not present, and 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, 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 D & A Dairies' existing CFO facilities were assessed in 2015. The assessment indicated that the potential risks to surface water and groundwater were low, except for the LMS which posed a moderate risk to groundwater.

Since the 2015 risk assessment, water well ID #298627 has been decommissioned. For this reason, I reassessed the risks posed by the CFO's LMS. My reassessment found that both the existing and proposed expanded LMS now pose a low risk to groundwater.

8. Terms and conditions

Authorization RA22028 permits the construction of the new synthetic lined LMS, and the new rotary and fresh cow barn.

Authorization RA22028 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 RA22028 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA22028 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA22028.

Authorization RA22028 must be read in conjunction with Development Permit No. 196/99 and NRCB-issued Approval RA01092, and Authorizations RA14014, RA15021, and RA17032 which remain in effect.

July 6, 2023

(Original signed)
Sarah Neff
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA22028

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 for a CFO or manure storage facility, nor any provisions respecting the 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).

D & A Dairies’ 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 (updated on April 14, 2022) 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.” This provides insight for the interpretation of the remaining portions of the MDP.

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.

Additionally, further restriction on the development of confined feeding operations may apply as directed by an Intermunicipal Development Plan (IDP) or other local plan approved by Council.”

D & A Dairies’ application is for an existing CFO; regardless, the CFO is located outside all the aforementioned setbacks.

Regarding section 3.9.1’s reference to IDP’s 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. This conclusion is consistent with the county's written response to the application.

APPENDIX B: Explanation of conditions in Authorization RA22028

a. Construction and reporting requirements

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 RA22028 includes conditions requiring:

- a. The concrete used to construct the liner of the manure collection and storage portion of the rotary and fresh cow barn are to meet the specification for category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. D & A Dairies to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.
- c. D & A Dairies to provide a completion report, stamped by a professional engineer, certifying that the synthetically lined liquid manure storage:
 - has been constructed in accordance with the proposed design including size, depth and dimensions,
 - is constructed in the approved location,
 - has the same liner material as what has been proposed, and
 - has a liner installed in accordance with the liner manufacturer's requirements, including preparation of the bed on which the synthetic liner is placed and proper sealing at all seams.

b. Construction deadline

D & A Dairies proposes to complete construction of the new lined LMS and rotary and fresh cow barn by November 30, 2026. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2026 is therefore included as a condition in Authorization RA22028.

c. Post-construction inspection and review

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 RA22028 includes a condition stating that D & A Dairies shall not place livestock or manure in the manure storage or collection portions of the new LMS or rotary and fresh cow barn until NRCB personnel have inspected the LMS and rotary and fresh cow barn, and confirmed in writing that they meet the authorization requirements.