

## Decision Summary RA20029A

This document summarizes my reasons for issuing Authorization RA20029A under the *Agricultural Operation Practices Act* (AOPA). Additional reasons, as well as the full application, are in Technical Document RA20029A. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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 September 21, 2020, the NRCB issued Authorization RA20029 to Lone Pine Hutterian Brethren (Lone Pine), which allowed the construction of a 61 m x 61 m x 4.5 m deep earthen liquid manure storage (EMS) at an existing multi species confined feeding operation (CFO). Lone Pine has constructed the EMS with different dimensions than permitted by the authorization. Lone Pine has not yet used the EMS.

This modification is considered to be an unauthorized construction, and therefore, the NRCB's compliance division is aware and involved in this as well.

On November 9, 2020, Lone Pine applied to amend Authorization RA20029, in order to modify the dimensions of the EMS from 61 m x 61 m x 4.5 m deep, to 85 m x 44 m x 4.5 m deep.

The EMS was constructed using the same proposed compacted clay liner that was previously permitted for the original EMS. No increase in livestock numbers or manure production is proposed.

Under AOPA, this type of application requires an amendment to an authorization.

#### a. Location

The existing CFO is located at SW 7-39-17 W4M in County of Stettler, roughly 4 km northeast of Botha, Alberta. The terrain of the site is level to gently sloping. The closest body of water is the Red Willow Creek located approximately 325 m northwest of the EMS.

### 2. Notices to “Affected Parties”

Under section 21 of AOPA, notice for an amendment of an authorization application must be provided to municipalities that are “affected” by the application. Section 5 of AOPA's Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the existing CFO is located. Under section 21(2) of the act, all affected municipalities are automatically also “directly affected” parties. The NRCB interprets section 21(3) as allowing affected municipalities to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

County of Stettler is both an affected and directly affected party because the proposed modification to the EMS is located within its boundaries.

On November 10, 2020, the NRCB emailed a referral letter and a copy of the application to County of Stettler.

### **3. Responses from the Municipality**

Mr. Larry Clarke, the Reeve of the County of Stettler, provided a written response on behalf of the county. As noted in section 2, the County of Stettler is a directly affected party.

In his response, Mr. Clarke indicated that the application is consistent with the County of Stettler Municipal Development Plan (MDP). The county adopted its current MDP in June 25, 2014 under Bylaw 1529-14. This is the same MDP that I considered when I issued Authorization RA20029 on September 21, 2020. Lone Pine's present application is consistent with that MDP for the same reasons as those provided in Appendix A of Decision Summary RA20029.

In his response letter, Mr. Clarke raised some concerns related to the construction of the original EMS (permitted under Authorization RA20029).

It is important to highlight that this amendment application deals only with the modified dimensions of the constructed EMS, and the previous application (RA20029) dealt with the technical requirements under AOPA. In a recent decision (see Hutterian Brethren of Murray Lake. RFR 2020-09/LA20035 at p 3), the NRCB Board stated that "When making a permit decision on a new application, approval officers do not have the jurisdiction to re-visit previously issued permits". Application RA20029 met all relevant AOPA requirements, with the terms and conditions included in the permit (Authorization).

Therefore, I am not required to address concerns that relate to the original application and do not relate to the modified dimensions of the EMS. However, solely as a courtesy to the County, I will discuss the concerns raised by the County of Stettler's Reeve.

The raised concerns are listed and summarized below, together with my analysis and conclusions.

- a. Response from previous application (RA20029)** – The County indicated that they did not received a response regarding concerns raised on application RA20029, regarding the type and location of soil seams and potential discharge from the EMS.

#### **Approval officer's response:**

The NRCB issued Authorization RA20029 on September 21, 2020. On that date, a Notice of Decision letter and all decision documents were emailed to the County of Stettler, including Technical Documents RA20029, Decision Summary RA20029 and Authorization RA20029. The decision documents were also posted on the NRCB website. The technical document and decision summary addressed all requirements in the regulations by stating that the application met all relevant AOPA requirements, with the terms and conditions included in the permit.

Appendix B of Decision Summary RA20029 extensively describes the rationale to include a construction completion condition making sure that the EMS is constructed to meet AOPA requirements. Condition #1 of Authorization RA20029 required more stringent requirements than similar conditions included on other NRCB authorizations for EMSs. These requirements included that the colony must:

- Construct the EMS under the supervision of a professional engineer

- report the clay content of the soil used to construct the compacted soil liner and compare them to a minimum of 28% clay content
- report the sand, silt and clay content for each texture test as individual test results

The decision cover letter also set out the requirements to request a board review of the approval officer's decision by October 13, 2020, should the county decide to appeal all or part of the decision. The County did not do so.

- b. Potential contamination of surface and groundwater** – The County indicated that nearby water sources and/or water courses may be affected by unplanned discharges from the EMS due to sandy soils.

**Approval officer's response:**

AOPA and its regulations contain several requirements to prevent or minimize manure leakage from CFO facilities and thus to prevent CFO manure from reaching and contaminating surface and groundwater. AOPA requirements do not, of course, guarantee zero risk. Two of these requirements are the setbacks from water wells and common bodies of water set out in section 7(1)(b) and (c) of the Standards and Administration Regulation, which prohibits the construction of a manure storage facility or manure collection area less than 100 m from a water well and less than 30 m from a common body of water. "Common body of water" is a defined term in the legislation.

I already considered the distances to surface bodies of water and groundwater aquifers under application RA20029. On page 7 of 45 of Technical Document RA20029, I identified the distance to the nearest Red Willow Creek to be 325 m northwest of the EMS. On the same page of the Technical Document, I identified the uppermost groundwater resource to be at 13.7 m below ground, and that there are no water wells located within 100 m of the EMS. All of these distances meet the setbacks in the regulations.

I assessed the EMS, using the NRCB's environmental risk screening tool described in section 4 of the Decision Summary RA20029, in order to determine the level of risk it posed to surface and groundwater. I determined that the EMS posed a low potential risk to surface groundwater.

The information included in Decision Summary RA20029, and further documented in Technical Document RA20029, indicated that the EMS met or exceeded all AOPA technical requirements. Because the EMS met or exceeded these requirements, I concluded that the level of risk to surface and groundwater posed by the EMS was low.

The level of risk, and the adherence of the proposed facility to AOPA requirements, are unaffected by the modified dimensions of the EMS.

- c. Health risk and lose access to potable water** – The County's letter included concerns regarding County of Stettler residents' health risks associated with potential contamination of water wells, and consequentially losing access to potable water.

**Approval officer's response:**

For authorizations or amendment of authorization under section 22(2) of AOPA, an approval officer may consider only (a) whether the application meets the requirements in the regulations, and (b) whether the application is consistent with the MDP land use

provisions.

Health concerns and access to potable water are not requirements under section 22(2) of AOPA. As indicated in point b. above, the EMS met all AOPA technical requirements. Because the EMS met these requirements, I concluded that the level of risk to groundwater posed by the EMS is low.

- d. Timing of application and compliance with NRCB permitting process** – The County’s letter quoted a section of the NRCB application forms that says in part that “Any construction prior to obtaining an NRCB permit is an offence and is subject to enforcement action, including prosecution”. The County letter included concerns regarding the construction of the EMS outside the parameters defined in the original authorization. The County questions whether there will be consequences for the landowner for constructing the EMS differently than it was permitted. The County was also concerned with the short processing time to deem the amendment application complete.

**Approval officer’s response:**

As indicated in point a. above, the NRCB issued Authorization RA20029 on September 21, 2020. Lone Pine did not construct the EMS prior to obtaining a permit.

As the constructed EMS is slightly different than it was permitted under Authorization RA20029, in order to be in compliance Lone Pine has applied to the NRCB to amend the EMS dimensions. Lone Pine has not yet used the EMS, and is waiting for the decision on this amendment application before determining if they will use it.

The NRCB’s compliance division is aware of this and is monitoring the site for compliance.

AOPA and its regulations do not set the time between receiving an application and deeming it complete. Approval officers conduct a preliminary review of applications (including amendment applications) to make sure that sufficient information has been received before deeming them complete, and referring them to the municipality. For authorizations, after receiving a response from the municipality, an approval officer considers whether the application meets the requirements in the regulations, and whether the application is consistent with the MDP land use provisions, before issuing a decision.

#### **4. Environmental risk screening of existing facilities (including the constructed EMS)**

When reviewing new permit applications for an existing CFO, NRCB approval officers normally assess the CFO’s existing buildings, structures and other facilities, using the NRCB’s environmental risk screening tool, to determine the level of risk they pose to surface water and groundwater. This tool 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/Guides on the NRCB website at [www.nrcb.ca](http://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 done with a previous version of the risk screening tool and requires updating.

The potential risks posed by Lone Pine's permitted CFO facilities were assessed in 2013 and 2019, the EMS was assessed in August 2020. According to those assessments, the facilities, including the EMS, all pose a low potential risk to surface water and groundwater.

The permit holder constructed the EMS modifying the permitted length and width; however, the depth of the modified EMS did not change from its original depth of 4.5 m. As a result, the constructed EMS has a lesser capacity than the originally permitted facility. It does, however, still meet the AOPA 9 month storage requirement.

The soil information submitted for the EMS originally permitted under Authorization RA20029 remains the same, as indicated in a completion report signed by a professional engineer. This report confirms that the facility was constructed with the same material that was used for hydraulic conductivity testing, and that the EMS was constructed according to the proposed procedures and design specifications. The constructed EMS, therefore, has the same compacted clay liner as the EMS permitted by Authorization RA20029.

For these reasons, a new assessment of the risks posed by the CFO's existing facilities, including the constructed EMS, is not required.

## **5. Factors Considered**

The previous application RA20029 met all relevant AOPA requirements. The proposed change to the dimensions of the EMS has no impact on that determination, which still stands. Additionally, the terms and conditions summarized in section 6, include the terms and conditions from Authorization RA20029.

## **6. Terms and Conditions**

Rather than issuing a separate "amendment" to Authorization RA20029, I am issuing a new authorization (RA20029A) with the required amendment. Authorization RA20029A therefore contains all of the terms and conditions in RA20029, but with modifications in regards to the dimensions of the EMS.

## **7. Conclusion**

Authorization RA20029A is issued, for the reasons provided above, in decision summaries RA20029 and RA20029A, and in Technical Documents RA20029 and RA20029A. In the case of a conflict between these documents, the latest ones will take precedence.

Authorization RA20029 is therefore cancelled, unless Authorization RA20029A is held invalid following a review and decision by the NRCB's board members or by a court, in which case the previous permit will remain in effect.

January 6, 2021

(Original Signed)  
Francisco Echegaray, P.Ag.  
Approval Officer