

Decision Summary BA20008

This document summarizes my reasons for issuing Authorization BA20008 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA20008. 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.

1. Background

On June 8, 2020, Peeters Dairy Ltd. submitted a Part 1 application to the NRCB to construct a new young stock barn (25 m x 125 m) and two new solid manure storage pads (25 m x 25 m each) at an existing dairy CFO. The Part 2 application was submitted on July 15, 2020. On July 28, 2020, I deemed the application complete.

The application also includes construction of a mechanical room (5 m x 12 m). This facility is an “ancillary structure,” under section 1(1)(a.1) of the *Agricultural Operations, Part 2 Matters Regulation*, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure does not need to be permitted under the act.

The purpose of the proposed application is to construct a new facility for the already approved replacements.

There is no proposed increase in livestock.

Under AOPA, this type of application requires an authorization. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The existing CFO is located at NE 1-49-27 W4M in Leduc County, roughly 5 km south of Calmar, AB. The terrain is relatively flat sloping slightly to the west with Conjuring Creek located approximately 60 m to west of the proposed barn.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval BA09004. This approval allows the construction and operation of a 460 milking cow (plus associated dries and replacements) dairy CFO.

2. Notices to affected parties

Under section 21 of AOPA, notice 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 NRCB Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Leduc County is both an affected and directly affected party because the proposed construction is located within its boundaries.

On July 28, 2020, the NRCB emailed referral letters and a copy of the application to Leduc County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Agriculture and Forestry (AF), and Alberta Transportation.

3. Responses from the municipality and referral agencies

I received responses from AHS, AF, and Alberta Transportation. No response was received from AEP.

Mr. Greg McGovern, a planner, provided a written response on behalf of Leduc County. As noted in section 2, Leduc County is a directly affected party.

Mr. McGovern stated that the application is consistent with Leduc County’s municipal development plan. The application’s consistency with the county’s municipal development plan, is addressed in appendix A, attached.

Ms. Anderson, an environmental health officer at AHS, sent a response to the application enquiring if there is any water well testing or potential risk to groundwater. In previous applications and as a part of this application a risk assessment has been completed. As explained in the environmental risk screening discussed below, a risk screening of the existing manure storage facilities at the site has been completed and all of the CFO’s existing and proposed facilities score low risk to both groundwater and surface water.

Dennis Urban, an inspector, replied on behalf of AF. Mr. Urban stated AF has no concerns with the application.

Lisa Gordon, a development and planning technologist, replied on behalf of Alberta Transportation. She stated that the applicant will require a roadside development permit. I have made the applicant aware of this requirement for their follow-up.

4. Environmental risk screening of existing and proposed facilities

When reviewing new authorizations 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, 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 done 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 Peeters Dairy existing CFO facilities were assessed in 2011. The assessment indicated that the risks to surface water and groundwater were low. Since the 2011 risk assessment, a new version of the Environmental Risk Screening Tool has been made available. For this reason, I re-assessed the risks posed by the CFO's existing facilities. My re-assessment found that all existing facilities score a low risk to both surface water and groundwater.

I also assessed the proposed new young stock barn and solid manure storage pads, using the NRCB's risk screening tool, and determined that they all pose a low risk to groundwater and surface water.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.

In addition, the proposed construction is consistent with the land use provisions of Leduc County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed construction:

- Meets the required AOPA setbacks from all nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The residences within the MDS qualifies for an exemption, as explained in Technical Document BA20008
- 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

6. Terms and conditions

Authorization BA20008 permits the construction of the young stock barn and two solid manure storage pads.

Authorization BA20008 also 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 BA20008 includes conditions that:

- Set a deadline of December 1, 2023 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the solid manure storage pads and young stock barn to meet the specification for category C (solid manure – wet) and category D (solid manure – dry) (respectively) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas"
- Require documentation confirming that the concrete used for the manure collection and storage areas meets the required specifications.

- Prohibit Peeters Dairy from placing manure or livestock in the solid manure storage pads or young stock barn until the facilities have been inspected by the NRCB following their construction

For an explanation of the reasons for these conditions, see Appendix B.

7. Conclusion

Authorization BA20008 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA20008.

Authorization BA20008 should be read in conjunction with previously issued Approval BA09004, which remains in effect.

September 8, 2020

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization BA20008

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may approve 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).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

Peeters Dairy CFO is located in Leduc County and is therefore subject to that county’s MDP. Leduc County adopted the latest revision to this plan on June 23, 2019, under Bylaw #08-19.

Section 4.3.0.2 of the MDP lists planning objectives and policies for the county’s four agricultural areas. (The locations of these areas are shown on Map 4 of the MDP.) The existing CFO is in Area South Central/East. The MDP provisions applicable to Peeters Dairy CFO are discussed below.

Section 4.3.0.2(c) states that the purpose of Agricultural Area South Central/East is “to provide for a broad range of agriculture including confined feeding operations. This area currently has a number of dairy operations that will be adversely impacted by significant increases in population and/or development.” This is likely a general guiding principle and is not considered a valid land use provision, therefore it’s not relevant to my decision.

Section 4.3.2 states that the county supports the development and expansion of CFOs provided the operation is compatible with the surrounding land uses. More specifically, section 4.3.2.1 states support for new or expanded CFOs provided the operation:

- a. does not create adverse impacts on environmentally significant lands;*
- b. has a satisfactory access;*
- c. is located within Agricultural Areas A, B or C,*
- d. is carried out in accordance with generally accepted farming practices regarding the storage, disposal and spreading of manure and the disposal of animal carcasses; and*
- e. meets the minimum setback distances to urban communities and residential development as regulated by the Agricultural Operation Practices Act.*

As this application is not for a new or expanding CFO these policies are not relevant to my decision. At any rate, the proposed application does meet all of these requirements.

For these reasons, I conclude that the proposed CFO construction is consistent with the relevant land use provisions of the county’s MDP. The county’s response supports this conclusion.

APPENDIX B: Explanation of conditions in Authorization BA20008

a. Construction Deadline

Peeters Dairy proposes to complete construction of the proposed new young stock barn and solid manure storage pads by November, 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2023 is included as a condition in Authorization BA20008.

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 BA20008 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the solid manure storage pads and young stock barn to meet the specification for category C (solid manure – wet) and category D (solid manure – dry) (respectively) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- Peeters Dairy to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the solid manure storage pads and young stock barn.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization BA20008 includes condition stating that Peeters Dairy shall not place livestock or manure in the manure storage portions of the new solid manure storage pads and young stock barn until NRCB personnel have inspected each facility and confirmed in writing that they meet the authorization requirements.