

Decision Summary RA20035

This document summarizes my reasons for issuing Approval RA20035 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Documents RA20035 and RA15006. 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 25, 2020, Bertens Holsteins Ltd. submitted Part 1 and Part 2 applications to the NRCB to modify and expand an existing partially constructed dairy CFO.

The application proposes to amend Approval RA15006 by altering several already permitted, but not yet constructed facilities:

- relocating the loose housing, milking, and equipment barns to the west of their previously permitted locations
- relocating the free stall barn to the southeast of the new milking barn location
- relocating the manure handling facility (to include a Bedding Master) to the east side of the new milking barn location, increasing its dimensions to 72 m x 41 m, and convert it to a sand bedding reclamation facility (a facility where sand bedding materials is removed from the dairy's liquid manure)
- relocating the synthetically lined liquid manure storage to the east of the new free stall barn location and to increase its dimensions to 125 m x 125 m along with related alterations to it
- extending the construction completion deadline for these facilities to November 1, 2024. (I note how the December 10, 2018 construction completion deadline in Approval RA15006 was already extended at the permit holders request until December 10, 2021.)

The above modifications to Approval RA15006 would normally only require an amendment to the existing permit. However, this application also proposes to increase the amount of permitted livestock numbers from 420 milking cows (plus associated dry cows) and 1,250 beef finishers (equivalent to dairy replacements) to 700 milking cows (plus associated dry cows and replacements) and 1,250 beef finishers (which requires a new approval).

For efficiency sake, I am first completing an amendment to Approval RA15006 then am consolidating the amended approval into the new Approval RA20035. This is in accordance with NRCB Policy (see part 10.5 of the *Approvals Operating Policy 2016-7*). I am also using this as an opportunity to add clarity to the outstanding conditions in Approval RA15006. Those clarifications are discussed in Appendix B.

On July 21, 2020, I deemed the Part 2 application complete. Under AOPA, this type of application (due to the proposed increase in livestock) requires an approval. (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.)

The equipment barn noted above 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 equipment barn is further discussed in Appendix B.

After this application was deemed complete, it was noted that Approval R15006 permitted the construction of a roof covered manure storage pad (18.3 m x 18.3 m). That pad was mentioned in this application’s list of “existing” facilities, but its location was not indicated in the site plan in Application RA20035. On August 31, 2020 a representative of Bertens Holsteins Ltd. supplied the NRCB with an amended site plan. The new site plan indicates that the roof covered manure storage pad will be located adjacent to the east side of the existing feedlot facility and adds clarity to the previously submitted site plan. The new site plan also includes a silage storage area and a feed mill. These are ancillary structures under the Agricultural Operations, Part 2 Matters Regulation and do not need a permit under the act.

In addition to this, the barn plans included with Application RA20035 indicate the presence of a transfer alley located between the free stall barn and sand reclamation facility. Considering that the free stall barn will contain scrape alleys but no pits for liquid manure, I am of the opinion that this transfer alley will be for transferring both milking cows and liquid manure. Since this “facility” is not documented in Application RA15006 or RA20035, I am considering it to be part of the free stall barn in this and related documents.

a. Location

The existing CFO is located at SW 28-32-28 W4M in Mountain View County, roughly 11 km east of Olds, Alberta. The terrain undulates and generally slopes gently to the south.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval RA15006. This approval allows the construction and operation of a dairy CFO with 1,250 beef finishers (equivalent to dairy replacements) and 420 milking cows (plus associated dry cows). The CFO’s already constructed manure storage facilities and manure collection areas are listed in the Appendix to Approval RA20035.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct the applicant to notify) all parties that are “affected” by an approval application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For this application, the distance is 1.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. Mountain View County is an affected party (and therefore also a directly affected party) because the CFO is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB published notice of the application in the Mountain View Gazette on July 21, 2020 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to Mountain View County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Agriculture and Forestry (AF), and Utility Right of Way holders Trans Northern Pipelines and Crossroads Gas Co-op Ltd. Thirty-three courtesy letters were sent to people identified by Mountain View County as owning or residing on land within the affected party radius.

3. Responses to the application

I received responses from Mountain View County and AF. No response was received from AHS, AEP, the above noted Utility Right of Way holders, or other parties.

Ms. Peggy Grochmal, a development and permitting officer with Mountain View County, provided a written response on behalf of the county. As noted in section 2, Mountain View County is a directly affected party.

Ms. Grochmal stated that the application is consistent with Mountain View County’s municipal development plan. The application’s consistency with county’s municipal development plan is addressed in Appendix A, attached. She also stated the county’s land use bylaw’s setbacks of 60 m for the front yard and 15 m for the side yard. The manure collection and storage facilities in the site plans appear to meet these setbacks based on the site plans provided.

When I discussed the amended site plan with Ms. Grochmal, she indicated that she had no concerns with it so long as the facilities still meet the setbacks noted above. I note that the solid manure storage pad appears to meet the applicable setbacks.

Mr. Tom Pack, a member of the inspection and investigation section of AF’s animal health and assurance branch, indicated that he has no concerns with this application and that he will be working with the producer during the construction of the facility. I am of the opinion that since the solid manure storage pad will not be directly associated with the dairy barns, its clarification in the August 31, 2020 site plan amendment will not materially affect the AF response.

4. Environmental risk screening of facilities

When reviewing new approval 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 potential 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 potential 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 Bertens Holsteins Ltd.'s existing CFO facilities were assessed in 2015. That assessment indicated that the potential risks to surface water and groundwater posed by then existing and proposed facilities were low.

Although the site specific conditions have not changed since the 2015 risk assessment was completed, the relocation of alterations to facilities warrants the completion of a new risk assessment. Based on results of the environmental risk screening I completed, all of the relocated and modified facilities pose a low potential risk to surface water and groundwater.

To ensure that the already constructed feedlot, including its existing solid manure storages, is treated the same as the other facilities (with regards to risk screening), I re-assessed the risks posed by it. My re-assessment found that it still poses a low potential risk to surface water and groundwater.

5. Other factors considered

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

In addition, the proposed CFO modifications and expansion is consistent with the land use provisions of Mountain View County's municipal development plan and land use bylaw. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed CFO expansion and modifications:

- 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's nutrient management requirements regarding the land application of manure
- meets AOPA groundwater protection requirements for the design of floors and liners of manure storage and collection facilities

In addition, I assessed the effects of the proposed CFO modifications and expansion on the environment. Consistent with NRCB policy, I presumed that these effects are acceptable because the application meets all of AOPA's technical requirements and the directly affected parties' concerns (none were expressed) have been adequately addressed. I also presumed that the application's effects on the economy and community are acceptable, and that the proposed CFO expansion is an appropriate use of land. Under NRCB policy, these presumptions are based on the application's consistency with the municipal development plan and land use bylaw. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.) I considered the information in the application and from my site visit, and the responses from the municipality and referral agencies, and in my view these presumptions are not rebutted.

6. Terms and conditions

Approval RA20035 specifies the new permitted livestock capacity as 700 milking cows (plus associated dry cows and replacements) and 1,250 beef finishers (equivalent to dairy replacements). It also permits the relocation and construction of the below manure storage facilities and collection areas:

- loose housing barn (176 m x 24 m)
- free stall barn (176 m x 48 m)
- milking barn (109 m x 48 m)
- sand reclamation facility (72 m x 41 m)
- solid manure storage pad (18.3 m x 18.3 m)
- synthetic lined liquid manure storage facility (125 m x 125 m x 4.5 m deep and walls sloped at 4:1)

Approval RA20035 also contains terms that the NRCB generally includes in all AOPA approvals, 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, Approval RA20035 carries forward and clarifies existing conditions from Approval RA15006 for the above manure storage facilities and manure collection areas. Those new or revised conditions:

- set a new deadline of November 1, 2024 for the approved construction to be completed
- require submission of an engineer's completion report for the synthetically lined liquid manure storage
- require submission of written confirmation prepared by a qualified third party that the concrete used for the concrete lined manure collection and storage areas meets the required specifications
- prohibit Bertens Holsteins Ltd. from placing manure or livestock in the newly constructed manure collection areas and manure storage facilities until they have been inspected by the NRCB following their construction

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

a. Conditions carried forward from Approval RA15006

For clarity, I have amended Approval RA15006 and then consolidated it with Approval RA20035. This is being completed in accordance with NRCB policy (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). Consolidating permits generally involves carrying forward

all relevant terms and conditions in the existing permit into the new permit, with any necessary changes or deletions of those terms and conditions, and then cancelling the existing permit once the new one is issued. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

Therefore, in addition to containing the terms and conditions summarized above, Approval RA20035 includes all existing terms and conditions from Approval RA15006 with some revisions (to add clarity to those conditions and the new construction completion deadline, see Appendix B). Construction conditions that have already been met are identified and included in the Appendix to Approval RA20035.

7. Conclusion

Approval RA20035 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA20035.

Approval RA15006 is therefore cancelled, unless Approval RA20035 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA15006 will remain in effect.

September 17, 2020

(original signed)
Jeff Froese
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA20035

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for an approval 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 20(1.1) 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.”)

Bertens Holsteins Ltd.’s CFO is located in Mountain View County and is therefore subject to that county’s MDP. Mountain View County adopted the latest revision to this plan on August 22, 2018, under Bylaw #09/12. As relevant here:

Section 2.0 of the MDP provides a “growth management strategy” that is reflected in the land use map in Figure 3 of the MDP. The discussion in this section emphasizes that this strategy is “conceptual in nature” for purposes of determining “where certain types of development should and should not occur” within the county. However, this section explains that the land use designations on this map are just a “baseline”; development applications must still be reviewed on a “case by case, site-specific basis.”

Because the land use designations in Figure 3 are not meant to be definitive, the MDP’s “growth management strategy” based on these designations is not considered to be a “land use provision” and therefore is not relevant to my MDP consistency determination.

Regardless, Bertens Holsteins Ltd.’s CFO is located within the “Agricultural Preservation Area” area and the “concentrated confined feeding operation area” marked on Figure 3. Section 2 of the MDP explains that the “majority” of the agricultural preservation area is subject to the “applicable Land Use Policies outlined in section 3.0 of the MDP....” It goes on to state that the concentrated CFO area is an area where development, including first parcel out subdivision, is not ideal.

Section 3.0 relates to agricultural land use policies. Specific to CFOs are sub-sections 3.3.15, 3.3.16, and 3.3.17:

Sub-section 3.3.15 precludes new CFOs within 1.6 km (1 mile) of any identified residential growth centre or urban centre shown in Figure 3. This application is not for a new CFO. At any rate, the site of the CFO is not within this 1.6 km setback.

Sub-section 3.3.16 specifies that the setback for a new CFO from a business park will not be required. Bertens Holsteins Ltd.’s application is not near a setback for a business park nor is it a new CFO.

Sub-section 3.3.17 states that applications for new or expanding CFOs “shall meet all Provincial standards.” This sub-section likely isn’t a “land use provision” and therefore is not relevant to my MDP consistency determination.

Regardless, it meets the AOPA requirements for an expanding CFO.

For these reasons, I conclude that the application is consistent with the land use provisions of Mountain View County’s MDP. The response to this application from Mountain View County noted in part three (above) supports this conclusion.

In my view, under sections 3.3.5, 3.3.14, 13.3.1 and 13.3.2, amongst others, Mountain View County’s MDP provides a clear intent to adopt provisions from the land use bylaw (LUB) # 16/18. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered Mountain View County’s LUB (last amended November 27, 2019).

Under that bylaw, the subject land is currently zoned as Agriculture. CFOs are not listed as permitted or discretionary use in this district. It should be noted though that section 9.5 of the LUB states that CFOs are regulated by the NRCB under provincial regulations, and are therefore exempt from municipal control under the land use bylaw.

Notwithstanding this statement, section 9.5.1 of the LUB lists several requirements for siting CFOs. Notably, sub-section 9.5.1 (a) states that CFO developments "shall be consistent with the land use provisions of the MDP." As noted above, this CFO is consistent with Mountain View County’s MDP.

Section 9.5.1 (b) states that the minimum distance separation (MDS) between a new or expanding CFO and multi-parcel residential development, any urban centre, school, or hospital should be (i) 800 m or (ii) the MDS as described in AOPA, whichever is greater.

As written, this setback is irrelevant to my LUB consistency determination as it is “based on” or “directly modifies” AOPA’s MDS requirement. See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5. Regardless, the CFO is not located near any of these developments and meets the minimum distance of separation setback requirement of AOPA to local residences.

APPENDIX B: Explanation of conditions in Approval RA20035

Approval RA20035 carries forward all of the outstanding conditions, except for those related to the equipment barn, from Approval RA15006. Despite this, the conditions from Approval RA15006 are being revised here to add clarity and to reflect the newly proposed construction completion deadline.

a. Equipment barn

Approval RA15006 permitted the construction of an equipment barn. It was clarified in Application RA20035 that this structure will not be a manure storage facility or a manure collection area. For this reason, I am treating it as an ancillary facility now, not as a permitted facility as in Approval RA15006. For this reason, I am removing it from Approval RA20035's list of facilities permitted for construction as it does not require a permit under the *Agricultural Operation Practices Act*.

b. Construction above water table

The loose housing barn and solid manure storage pad are proposed to be constructed at ground level and the geotechnical report attached to Application RA15006 indicated that groundwater is likely more than 7.5 m below ground level at the CFO.

Based on this information, the loose housing barn and solid manure storage pad are very likely to meet the one metre requirement of section 9 of the Standards and Administration Regulation. For this reason, I am deleting and not carrying forward conditions two and eighteen from Approval RA15006 into Approval RA20035.

c. Construction deadlines

As part of Application RA15006 Bertens Holsteins Ltd. proposed to complete construction of the then permitted manure storage facilities and manure collection areas by December 2018. The construction completion deadline of December 10, 2018 was included in Approval RA15006. That construction completion deadline was already extended once, at Bertens Holstein Ltd.'s request, by the NRCB until December 10, 2021.

Among other changes, this application proposes a new construction completion deadline of November 1, 2024 for the outstanding manure storage facilities and manure collection areas. This time-frame is considered to be reasonable for the proposed scope of work. The construction completion deadlines of Approval RA15006 will be amended to be November 1, 2024 then carried forward into Approval RA20035.

d. Liner construction and installation

Approval RA15006 included specific construction conditions for the loose housing barn, free stall barn, milking barn, manure handling facility (effectively replaced by the sand reclamation facility), solid manure storage pad, and synthetically lined liquid manure storage. To ensure that it is clear to the readers of the new approval, the conditions from Approval RA15006 will be revised to add clarity in Approval RA20035.

Approval RA15006's construction conditions relating to concrete liners for the below facilities will be revised in Approval R20035 so that the conditions state that the concrete used for the liner for the manure collection areas and manure storage facilities must be sulphate resistant and have the below compressive strengths and other properties:

- loose housing barn: 30 MPa at 56 days
- free stall barn (including transfer alley between the free stall barn and sand reclamation facility, which needs to have adequate crack control, see Technical Guideline 096-93, Category C): 30 MPa at 56 days
- milking barn (scrape alleys): 30 MPa at 56 days
- milking barn (pit): 32 MPa at 56 days and have joints sealed with bentonite strips (or an equivalent product)
- sand reclamation facility: 32 MPa at 56 days and have joints sealed with rubber sealants (or an equivalent product)
- solid manure storage pad: 30 MPa at 56 days

Proof prepared by a qualified third party confirming that the concrete used to construct the above liners must be submitted to the NRCB.

The new approval's conditions related to the liner of the synthetically lined liquid manure storage will be revised to reflect what was stated in Application RA15006 and the modifications to it proposed by Application RA20035, specifically:

- conditions 21 and 22 from Approval RA15006 will be combined into one condition
- the liquid manure storage must be constructed in the location identified on page six of Technical Document RA20035
- that the GEOWEB 3D Concrete Channels, inlet splash pad, access ramps and agitation pads are installed in a method which will not compromise the 60 mil HDPE liner

e. Other condition revisions

Other minor clerical revisions will be completed to the conditions which will add clarity to the conditions from Approval RA15006 that will be brought forward into Approval RA20035.