

Decision Summary BA20012

This document summarizes my reasons for issuing Authorization BA20012 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA20012. 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

I was contacted by Kor Steenbergen on June 16, 2020 indicating that his dairy barn collapsed during a storm that occurred on June 13, 2020. On July 31, 2020, I issued a letter to the producer allowing them to construct a pole shed on top of their existing pen as an emergency shelter to house his dairy cows until they can reconstruct their dairy barn. The pole shed does not require an NRCB permit since it was constructed on the footprint of an existing grandfathered CFO facility.

On July 30, 2020, Kor Steenbergen operating as Steentil Dairy Ltd. (Steentil Dairy) submitted a Part 1 application to the NRCB to rebuild their dairy barn and add an addition onto it.

The Part 2 application was submitted on January 18, 2021. On January 27, 2021, I deemed the application complete.

The proposed construction involves:

- Rebuilding the previously permitted, but collapsed, dairy barn over the existing CFO footprint including a portion of the pen and solid manure storage pad – 70.1 m x 36.6 m (does not require an NRCB permit and therefore will not be included into the permit)
- Constructing an addition to the dairy barn – 15.2 m x 36.6 m (totaling 85.3 m x 36.6 m)

There is no proposed increase in livestock.

a. Location

The existing CFO is located at NW 31-60-2 W5M in the County of Barrhead, roughly twelve kilometres northeast of the Town of Barrhead. The terrain is relatively flat with a gentle slope to the east towards an intermittent drainage.

b. Existing permits

The CFO existed prior to January 1, 2002 with a capacity greater than the AOPA permitting threshold, based on infrastructure on site. No official grandfathering has been completed for this CFO. As this application is for an authorization, I will not be making an official grandfathering determination as part of my consideration of this application.

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 0.5 miles from the CFO

A copy of the application was sent to the County of Barrhead, 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 Parks (AEP), and Alberta Agriculture and Forestry (AF).

I received a response from AEP and AF.

AEP sent a generic response to the application that addresses water regulations in general and that the applicant should contact AEP if they require additional approvals under the *Water Act*.

Mr. Dennis Urban, an inspector with AF, sent a response stating that AF has no concerns with the application as it does not affect the milking area/parlour.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed dairy barn addition is consistent with the land use provisions of the County of Barrhead’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 dairy barn addition:

- Meets the required AOPA setbacks from nearby residences, with one exception (see Appendix B for details) (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS).
- Meets the required AOPA setbacks from water wells and springs.
- 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 and manure collection areas.

With the terms and conditions summarized in part 9, the application meets all relevant AOPA requirements. The exemptions that are required to address the AOPA requirements around the setback from a common body of water and minimum distance separation requirement are discussed in the following parts of this decision summary and explained in Appendix B.

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 Barrhead is an affected party (and directly affected) because the proposed dairy barn addition is located within its boundaries.

Ms. Jenny Bruns, a development officer, provided a written response on behalf of the County of Barrhead. Ms. Bruns stated that the application is consistent with the County of Barrhead's municipal development plan. The application's consistency with the County of Barrhead's municipal development plan is addressed in Appendix A, attached.

Ms. Bruns also listed the setbacks required by the County of Barrhead's land use bylaw (LUB) which the application appears to meet these setbacks.

7. Environmental risk of facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within 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.)

All the CFO's existing and proposed facilities pose a low potential risk to groundwater and surface water except the existing solid manure storage pad which poses moderate potential risk to surface water. Since the dairy barn is to be reconstructed overtop of the existing solid manure storage pad, the facility and risk associated with it has been eliminated.

8. Exemptions

I determined that the proposed dairy barn addition is located within the required AOPA setback from a common body of water. As explained in Appendix B, an exemption to the 30 metre setback is warranted due to a secondary protection for the common body of water has been constructed by the owner or operator and protects the common body of water from contamination.

I also determined that the application does not meet the MDS to the Maykut residence. However, since the application is not to increase animal numbers or annual manure production, and the proposed dairy barn addition is located further away from the residence than the existing CFO facilities, an MDS exemption has been granted. See Appendix B for an explanation of the MDS exemption.

9. Terms and conditions

Authorization BA20012 permits the construction of the dairy barn addition. Authorization BA20012 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 BA20012 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

10. Conclusion

Authorization BA20012 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA20012.

Authorization BA20012 must be read in conjunction with Steentil Dairy's deemed permit, including municipal development permit #53-2000, which remains in effect.

March 19, 2021

(Original signed)

Julie Wright
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Exemptions from natural water setback and the minimum distance separation requirement
- C. Explanation of conditions in Authorization BA20012

APPENDIX A: Consistency with the municipal development plan

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

Steentil Dairy’s confined feeding operation (CFO) is in the County of Barrhead and is therefore subject to that county’s MDP. The County of Barrhead adopted the latest revision to this plan on August 17, 2010, under Bylaw No. 4-2010.

Part 3.1.3 of the MDP lists 14 agricultural development policies and lists CFOs as among “primary use[s]” in agricultural use area. The first policy recognizes agriculture as the priority land use in rural areas, supports agricultural diversification, encourages siting agricultural industries in agricultural areas and discourages non-agricultural land uses in intensive agricultural areas. Of the remaining 13 policies, policies 10 and 11 relate specifically to CFOs.

Policy 10 states that “input shall be provided to the NRCB in responding to applications for new or expanded CFOs based on the technical and locational merits of each application.” This policy is likely not a land use provision because it requires site-specific, discretionary determinations (Operational Policy, *Approvals* 8.2.4). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA.

Policy 11 states that “minimum distance separations for CFOs shall conform to standards set out in AOPA.” The policy’s use of the term “minimum distance separations” appears to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. MDP policy 11 is not relevant to my MDP consistency determination because it is based on AOPA’s MDS requirements. (See NRCB Operational Policy, *Approvals*, part 8.2.5). That said, the CFO meets the MDS requirements under AOPA (with the use of an exemption) and is therefore consistent with this MDP policy.

For these reasons, I conclude that the application is consistent with the relevant land use provisions of the County of Barrhead’s MDP. The proposed dairy barn addition also meet the required setbacks identified by the county’s LUB. The county’s response confirms my conclusion.

APPENDIX B: Exemptions from natural water setback and the minimum distance separation requirement

1. Common Body of Water Considerations

The proposed dairy barn addition is to be located less than 30 m from an intermittent drainage, a common body of water (CBW), which is in conflict with the section 7(1)(c) of the SAR. Section 7(3) allows for exemptions if the owner or operator demonstrates, before construction, that the natural drainage for the facility or area is away from the CBW, or a berm or other secondary containment is constructed which would protect the CBW from contamination.

The proposed dairy barn addition has secondary containment in terms of both a concrete floor liner and walls with a roof. There are also extra pony walls within the facility along the feed alley and chase alley which act as an additional means to prevent any runoff from being able to leave the facility.

Based on the above I am of the opinion that an exemption for the 30 m setback to a CBW is warranted as:

The secondary containment is proposed between the MSF/MCA and CBW, exemption granted as it meets the requirement of S 7(3)(b) of SAR.

2. Minimum distance separation requirement

One residence is located within the MDS for Steentil Dairy's existing CFO. This residence is located approximately 230 metres from the closest of the existing CFO facilities but approximately 310 metres from the proposed dairy barn addition. As set out in the technical document, this residence is classified as category 1 which has an MDS of 294 metres.

The Standards and Administration Regulation 3(5)(b) allows approval officers to issue or amend an approval, registration or authorization despite not meeting the MDS requirement in 3(1) if the applicant is applying to increase the amount of manure storage on the site of the CFO and the total amount of manure produced annually will not increase.

Since the application is not to increase animal numbers or manure production, I am invoking the authority provided to approval officers by Section 3(5)(c)(ii) of the Standards and Administration Regulation and granting an MDS exemption for this proposed facility. Additionally, the proposed dairy barn addition is located further away from the residence than from the existing CFO manure storage facilities and manure collection areas.

APPENDIX C: Explanation of conditions in Authorization BA20012

Authorization BA20012 includes several conditions, discussed below:

a. Construction Deadline

Steentil Dairy proposes to complete construction of the proposed new dairy barn addition by December 1, 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 BA20012.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Authorization BA20012 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dairy barn addition 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. Steentil Dairy to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dairy barn addition.

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 BA20012 includes a condition stating that Steentil Dairy shall not place livestock or manure in the manure storage or collection portions of the new dairy barn addition until NRCB personnel have inspected the facility and confirmed in writing that it meets the authorization requirements.