

Decision Summary RA21001

This document summarizes my reasons for issuing Approval RA21001 under the *Agricultural Operation Practices Act (AOPA)*. Additional reasons are in Technical Document RA21001. 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 approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On January 4, 2021, Adrianus (Arie) and Antonia VandenBroek (VandenBroek) submitted a Part 1 application to the NRCB to construct a new dairy CFO.

The Part 2 application was submitted on June 15, 2021. On June 22, 2021, I deemed the application complete.

The proposed CFO involves:

- Permitting for 250 milking cows (plus associated dries and replacements)
- Constructing a dairy barn (46 m x 105 m, with an in-barn pit)
- Constructing a solid manure storage pad (30 m x 15 m)
- Constructing a synthetically lined, round liquid manure storage facility (32 m in radius at floor, and 5.3 m deep)

a. Location

The proposed CFO is located at NE 21-32-27 W4M in Mountain View County, roughly 23 kilometers south east of Olds, Alberta. The terrain is generally flat, with a gentle slope to the west. Spruce Creek is located approximately 1.5 kilometers to the north east.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs 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:

- 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 person or municipality entitled to divert water from that body within 10 miles downstream
- the municipality where the CFO is located 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 the size of this CFO the specified distance is 0.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Mountain View County, which is the municipality where the CFO is to be located.

The NRCB gave notice of the application by public advertisement in The Albertan on June 22, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, six letters were sent to people identified by Mountain View County as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

Under section 19 of AOPA, 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).

Ms. Pamela Kutuadu, a public health inspector, responded on behalf of AHS. Ms. Kutuadu summarized the application, and assessed the closest water well. She stated that the risk of contamination to ground water is low. She provided guidelines as to how to maintain the water well if it is to be used for human consumption. She concluded that AHS has no objection to the proposed development. A copy of her response was sent to the applicant.

Mr. Tom Pack, an inspector, responded on behalf of AF. Mr. Pack stated that he had been in contact with the producer, and that the facility will be inspected prior to being used. He summarized that he had no concerns with the proposed construction.

No other responses were received.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

There is no ALSA regional plan for the area where the proposed CFO is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of Mountain View County’s municipal development plan. (See Appendix A for a more detailed discussion of the county’s planning requirements.)

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed CFO:

- 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 facilities and manure collection areas

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

7. Responses from municipality and other directly affected parties

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." Mountain View County is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Ms. Peggy Grochmal, a permitting and development officer with Mountain View County, provided a written response on behalf of Mountain View County. Ms. Grochmal stated that the application is consistent with Mountain View County's land use provisions in the municipal development plan. The application's consistency with Mountain View County's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received responses from three individuals. All of the three people who submitted responses own or reside on land within the 0.5 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status (See Appendix B for details of this determination). (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected parties raised concerns regarding ground water availability, impact on surface water, close proximity of other CFOs in the area, traffic, odour from spreading activity, lack of ability to subdivide property, property values, and alternative locations for the CFO. These concerns are addressed in Appendix C.

8. Environmental risk of CFO facilities

An ERST was completed on the new CFO facilities, and found that they pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require groundwater monitoring for the facility. In this case a determination was made and surface water and groundwater monitoring are not required.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

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

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments, and determined that these are acceptable.

I am not aware of any applicable statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* and section 109 of the *Water Act* in respect of the subject of this application, or any written decision of the Environmental Appeals Board or Director under the *Water Act* relating to the CFO site.

Finally, I considered the effects of the proposed CFO on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed.

I also presumed that the proposed CFO is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted because the application meets the land use requirements and setbacks in the County's MDP and LUB.

10. Terms and conditions

Approval RA21001 specifies the cumulative permitted livestock capacity as 250 dairy cows (plus associated dries and replacements), and permits the construction of the dairy barn (with in-barn pit), solid manure storage pad, and the synthetically-lined liquid manure storage facility.

Approval RA21001 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 RA21001 includes conditions that generally address construction deadline(s), document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix D.

11. Conclusion

Approval RA21001 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21001.

August 12, 2021

(Original Signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Explanation of conditions in Approval RA21001

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval 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 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.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

VandenBroek’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 December 9, 2020, under Bylaw #20/20

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. 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”, rather it helps to identify where the location of CFO’s would be considered to be more suited within the county. Because of this I do not consider it to be relevant to my MDP consistency determination.

At any rate, VandenBroek’s CFO is within the “Agricultural Preservation Area” marked on Figure 3. Section 2 of the MDP explains that the “majority” of this area is subject to the “applicable Land Use Policies outlined in section 3.0 of the MDP....”

As relevant here, sub-section 3.3.15 precludes new CFOs within 1.6 km (1 mile) of any identified growth centre or an IDP with adjacent urban municipalities. VandenBroek’s site meets these setbacks.

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, VandenBroek’s application meets AOPA requirements.

Sub-section 3.3.18 states that after provincial approval is obtained for new or expanding CFOs, the construction shall be subject to Mountain View County Road Use Agreement Policy. The NRCB Board has previously stated that road use agreements are between the developer and the municipality, not the NRCB (see *Zealand Farms*, RFR 2011-02 at 5, *Faberdale*, RFR 2018-12 at 3). Furthermore, this is not a land use provision, so I am precluded from considering this policy.

No other policies in section 3.0 preclude VandenBroek's application. Therefore, their proposed CFO conversion and expansion is an acceptable land use within the Agricultural Preservation Area of the MDP. Thus, the CFO is consistent with the MDP.

For these reasons, I conclude that the application is consistent with the land use provisions of Mountain View County's MDP that I may consider.

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 # 16/18 (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered Mountain View County's LUB. Under that bylaw, the subject land is currently zoned as Agriculture. CFOs are not listed as permitted or discretionary use in this district. 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.

Section 9.5.1 (b)(i) of the LUB relates to required CFO (new and expanding) setbacks (0.5 miles) from multi-parcel residential development, any urban centre, school, or hospital. This CFO is not located near any of these and meets this setback requirement. Section 9.5.1 (b)(ii) relates to MDS requirements in AOPA. As noted in this Decision Summary, the CFO meets the MDS requirements.

APPENDIX B: Determining directly affected party status

The following individuals qualify for directly affected party status because they submitted a response to the application and they own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation (See NRCB Operational Policy 2016:7 – Approvals, part 6.2.):

- Dale Weiss, SW 28-32-27 W4M
- Jamie Clarahan, S ½ 27-32-27 W4M
- Barry Weiss, S ½ 28-32-27 W4M

A person who is not specified in section 5 of the Part 2 Matters Regulation as an affected party can also qualify for directly affected party status. However, they have the burden to demonstrate they are directly affected by the application. No individuals submitted a response requesting status to this application.

APPENDIX C: Concerns raised by directly affected parties

Concerns from directly affected parties

The directly affected parties raised the following concerns: ground water availability, impact on surface water, close proximity of other CFOs in the area, traffic, odour from spreading activity, lack of ability to subdivide property, property values, and alternative locations for the CFO.

1. **Ground water availability-** all parties expressed concerns about the amount of groundwater that the CFO would use, and the effect on aquifers, particularly related to climate change

Approval Officer's conclusions- Alberta Environment and Parks (AEP) is responsible for licensing and monitoring the supply of groundwater in the province. The water licensing process includes an opportunity for neighbours to provide input. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form.

Mr. VandenBroek's application included a signed declaration indicating that he requested that his *Water Act* license be processed separately from his AOPA permit. In that declaration, Mr. VandenBroek acknowledged that he is aware that he will need a new water license, and that he understands the risk of constructing a CFO if the *Water Act* license is not issued.

2. **Impact on surface water-** one individual identified that he uses spring surface water as the only water source to support his pasture

Approval Officer's conclusions-The individual's response doesn't provide details about how he believes the CFO may impact surface water. However, I will address this concern in two ways—potential surface water supply, and potential surface water contamination.

Surface Water Supply

As discussed in point 1 above, Mr. VandenBroek has signed a declaration indicating that he will apply for a water license through AEP. In my experience, almost all CFOs in central Alberta utilize groundwater resources, rather than surface water. However, if Mr. VandenBroek wished to apply to capture surface water to support his CFO, the process detailed above would still apply. Neighbours would have an opportunity to participate in the *Water Act* licensing process and provide input to ensure that their water sources are adequate.

Surface Water Contamination

I assessed the proposed CFO facilities and found that they pose a low potential risk to surface water.

Mr. VandenBroek has proposed a synthetically lined liquid manure storage facility that is nearly three times AOPA's minimum storage capacity requirements. The additional capacity will allow Mr. VandenBroek sufficient time to remove the manure and apply it on his spreading land. The proposed facility will have a 0.5 m berm around it; this is

designed to prevent run-on from entering the liquid manure storage facility. The extra storage capacity of the facility, combined with the proposed berm, would make an overflow event unlikely. The proposed barn is enclosed, which eliminates any run-on from entering the facility. Any manure produced in the barn would go into a holding pit, before being pumped into the synthetically lined liquid manure storage facility. The final proposed facility is a solid manure storage pad; by its nature, solid manure is low risk to surface water. Mr. VandenBroek has proposed building pony walls on three sides of the pad, which minimizes the run on/runoff effects.

The spring/creek mentioned in the response is located more than 1,400 metres from the closest proposed manure storage facility (MSF). The potential flow path between respondent's land and Mr. VandenBroek's is separated by both a range road and a township road. Furthermore, as part of my site assessment, I determined that any potential runoff that could leave Mr. VandenBroek's CFO facilities would travel to the south-west direction; away from the location of the spring/creek.

- 3. Close proximity of other CFOs in the area-** two of the respondents expressed concerns about the number of other CFOs within a few kilometers of the farm.

Approval Officer's conclusions-AOPA does not expressly require approval officers to consider the cumulative effects of proposed developments together with those of other CFOs, or other activities in the area. In addition, the NRCB's board members have directed approval officers to ignore this factor in their permitting decisions. For example, in a 2011 decision, the board stated that the issue of cumulative effects is "not within the Board's regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment." (*Zealand Farms*, RFR 2011-02 at 5.)

- 4. Traffic-**two respondents expressed concern about the amount of traffic on the nearby roads, and the resulting dust, noise, safety, and "wear and tear".

Approval Officer's conclusions- Traffic on the county roads may increase as a result of the new CFO. Mountain View County has jurisdiction over the management of these roads. While the County did not raise any specific roadway concerns, they do require that the applicant enter into a Road Use Agreement with the County, as per their MDP. The applicant has been reminded of this requirement.

- 5. Odour-** two respondents stated that they already experience odour from current manure spreading on nearby fields. One respondent stated that some operators do not incorporate their manure.

Approval Officer's conclusions- Manure application is regulated under sections 24(1), and 24(5) of the Standards and Administration Regulation.

Section 24(1) of the regulation requires manure to be incorporated within 48 hours of application when it is applied to cultivated land.

Incorporating reduces odour by working the manure into the soil. This type of land application of manure is typically limited to once or twice per year and are typically of short duration. Odours from manure spreading typically do not persist for extended periods of time.

Under section 24(5)(a) of that regulation, manure does not need to be incorporated after surface application on forages, or on no-till cropland, in order to conserve the soil. However, the manure must be applied at least 150 m from any residence. This setback helps mitigate the odour from manure spreading without incorporation. Complaints about CFOs, including manure spreading and odour, can be reported to the NRCB's 24 hour reporting line (1-866-383-6722 or 310-0000). A NRCB inspector will follow up on the concern.

- 6. Lack of ability to subdivide property-** two parties expressed concern about the ability for them to subdivide their properties in the future.

Approval Officer's conclusions- Subdivision of properties and residential building permits fall under the jurisdiction of the municipality. In their response, Mountain View County stated that the proposed application is consistent with their Municipal Development Plan. Furthermore, it states that the subject land is identified as "Agricultural Preservation Lands" and that the intent of this area is to allow for first parcel out residential developments to ensure productive agricultural land in the County is preserved for agricultural purposes. The response goes on to further state that "subdivision and development applications that deviate from this general policy approach within the Agricultural Preservation Area are strongly discouraged and shall require significant justification and supporting evidence".

- 7. Property Values-**one respondent expressed concerns about the proposed CFO lowering his property value.

Approval Officer's conclusions- The NRCB's board has consistently stated that concerns regarding effects on property values are "not a subject for [the board's] review under AOPA" or for approval officers' consideration of permit applications. According to the board, impacts on property values are a land use issue which is a "planning matter dealt with by municipalities in municipal development plans..." *Zealand Farms*, RFR 2011-02, p.5; see also, e.g. *Pigs R Us Inc.*, RFR 2017-11, p. 6 (stating that effects on land values are "not a relevant Board consideration when the development is consistent with the MDP's land use provisions.")

- 8. Alternative locations for CFO-**one respondent stated that the applicant has other locations that would be more suitable, and less invasive.

Approval Officer's conclusions-The applicant has proposed a location that meets all municipal land use provisions, as well as meets AOPA's technical requirements.

APPENDIX D: Explanation of conditions in Approval RA21001

Approval RA21001 includes several conditions, discussed below:

1. New conditions in Approval RA21001

a. Construction above the water table

Section 9(2) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

No borehole logs nor water well logs in close proximity to the proposed MSFs are available; however, the applicant has estimated based upon his site knowledge that the water table is at 11 metres.

Based on this information, the proposed barn pits and liquid manure storage facility meet the one metre requirement of section 9(2). However, because the height of the water table can vary over time, a condition is included requiring VandenBroek to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Construction Deadline

VandenBroek proposes to complete construction of the proposed new barn, solid manure storage pad, and liquid manure storage facility by December 31, 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2023 is included as a condition in Approval RA21001.

c. 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, Approval RA21001 includes conditions requiring:

- a. VandenBroek to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dairy barn (and in-barn pits), and solid manure storage pad.
- b. a construction completion report, certifying that the manure collection portions of the new synthetic lined liquid manure storage facility were constructed as per their application and the manufacturer’s requirements.

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. Approval RA21001 includes conditions stating that VandenBroek shall not place livestock or manure in the manure storage or collection portions of the new dairy barn (with in-barn pits), nor place manure in the synthetically lined liquid manure storage facility or on the solid manure storage pad until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.