

Decision Summary BA21008

This document summarizes my reasons for issuing Registration BA21008 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA21008. 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 a registration. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On March 11, 2021, Skycrest Holsteins Ltd. (Skycrest) submitted a Part 1 application to the NRCB to expand an existing dairy CFO.

The Part 2 application was submitted on June 10, 2021. On July 6, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 66 to 140 milking cows (plus associated dries and replacements)
- Constructing a new dairy barn (the existing dairy barn will be used for replacements) – 90 m x 39 m
- Constructing a new earthen liquid manure storage (EMS) – 49 m x 49 m x 5 m

The application also notified the NRCB of the proposed construction of an office/tank room (12 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.

a. Location

The existing CFO is located at NE 19-64-24 W4M in Athabasca County, roughly 25 km south west from the Town of Athabasca. The terrain is relatively flat sloping to the west towards a seasonal drainage located adjacent to the existing pens.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed registration under section 18.1 of AOPA. This deemed registration allows for the construction and operation of a 66 milking cow (plus associated dries and replacements) CFO. The determination of the CFO’s deemed permit status under section 18.1 of AOPA is explained in Appendix C attached. The deemed facilities are listed in the appendix to the Registration BA21008.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by a registration 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 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 ½ mile (805 m) from the CFO
- all persons who own or reside on land within the greater of ½ mile (805 m) or the minimum distance separation for the land on which the CFO is located

The land zoning on which the CFO is located would require a minimum distance separation of 306 metres. Therefore, the notification distance is 0.5 mile. (The NRCB refers to this distance as the “affected party radius.”)

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

The NRCB gave notice of the application by public advertisement in the Athabasca Advocate paper on July 6, 2021. The full application was made available on the NRCB website for public viewing. As a courtesy, 5 letters were sent to people identified by Athabasca County as owning or residing on land within the notification distance.

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), Alberta Agriculture and Forestry (AF), and Alberta Transportation.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 22(9) 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 existing CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Athabasca 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 expansion:

- 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/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.

7. Responses from the 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.” Athabasca County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Tara LeMessurier, a development officer with Athabasca County, provided a written response on behalf of the county. As noted in section 2, the county is a directly affected party.

Ms. LeMessurier stated that the application is consistent with the Athabasca County’s municipal development plan. The application’s consistency with the municipal development plan, is addressed in Appendix A, attached.

Mr. Stephan Desilets, the manager for Inspections, replied on behalf of AF. Mr. Desilets stated AF would let the NRCB know if any concerns arise. It is requested that Skycrest communicate with AF prior to and during construction of the proposed dairy barn.

Ms. Colleen Billard, an administrative assistant replied on behalf of Alberta Transportation stating that the applicant will require a roadside development permit as their location is near intersection of a highway. The applicant was forwarded this request and is reminded that they need to comply with applicable legislation.

8. Environmental risk of CFO 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.)

For the sake of efficiency, I first assessed the CFO’s existing dairy barn, pens, and calf barn/shelters using the ERST. The assessment found that these facilities pose a low potential risk to groundwater and surface water. Because these are the CFO’s highest risk facilities, I presume that the CFO’s other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

New MSF/MCA which clearly meet or exceed AOPA requirements are automatically assumed to 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, surface water, soil, construction supervision or an exemption from monitoring for the facility. In this case a determination was made and monitoring is not required.

9. Terms and conditions

Registration BA21008 specifies the cumulative permitted livestock capacity as 140 milking cows (plus associated dries and replacements) and permits the construction of the new dairy barn and EMS.

Registration BA21008 contains terms that the NRCB generally includes in all AOPA registrations, 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, Registration BA21008 includes conditions that generally address construction deadlines, document submission and construction inspections. For an explanation of the reasons for these conditions, see Appendix B.

10. Conclusion

Registration BA21008 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA21008.

Skycrest's deemed registration, is therefore superseded, and its content consolidated into this Registration BA21008, unless Registration BA21008 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed permit will remain in effect.

August 18, 2021

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration BA21008
- C. Determination of deemed permit status

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for a registration or amendment of a registration 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 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.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Skycrest’s CFO is located in Athabasca County and is therefore subject to that county’s MDP. Athabasca County adopted the latest revision to this plan on August 29, 2019, under Bylaw #003-2019.

Policy 5.3 defines agricultural land use for extensive and confined feeding operations. This is considered a general guiding principle and is not considered a land use provision, therefore this is not relevant to my decision. In any respect, this application is consistent with this provision.

Policies 5.14 to 5.18 of the MDP relate specifically to CFOs.

Policy 5.14 supports the development and expansion of CFOs where there is limited potential effects for land use conflicts. As the application meets minimum distance separation (MDS) requirements as well as the other AOPA requirements I consider this policy/requirement met.

Policy 5.15 requires MDS (as defined by AOPA) to be met. As stated in the decision summary and in Technical Document BA21008 the proposed CFO expansion meets the MDS requirement.

Policy 5.16 lists 4 requirements in which the county believes new or expanding CFOs are inappropriate:

- a) Within 1.6 km of land used for residential, commercial, recreational or institutional use or land designated for such uses;
- b) Within 100 m of a water body, watercourse or ravine;
- c) Within 1.6 km of an urban municipality, and intermunicipal development plan boundary, a summer village or a hamlet; or
- d) Within the Major Lake Policy Area Overlay Area or the Less Developed Lake Policy Area Overlay or within the Environmentally Significant Area or the Key Wildlife and Biodiversity Zone.

5.16 a) zoning of the land around the CFO is zoned as agricultural and therefore this policy is considered met.

5.16 b) The county shows waterbodies/water courses on several maps and specifically map A3. According to the maps no waterbodies or water courses are within 100m of the proposed expansion and therefore this requirement is considered met. The application also meets the AOPA setback requirement of 30 m to common bodies of water.

5.16 c) the proposed expansion meets this requirement.

5.16 d) According to Maps A3 and Map 1 the proposed expansion is not within any of these areas and therefore this policy is considered met.

Policy 5.17 states what the County will consider when providing recommendations to the NRCB regarding a proposed application. I consider this to be guidance for the County when responding to the NRCB and therefore not land use provisions.

Policy 5.18 requests the NRCB require the applicant to enter in to road use agreements. Under NRCB policy, approval officers will not include conditions in permits requiring operators to enter into a road use agreement with the municipality. The reason for this policy is that roads are a “municipal responsibility and are not located on the CFO site.” NRCB Operational Policy 2016-7: *Approvals*, part 8.9. However, Skycrest is reminded that it is responsible under municipal law for complying with any county road use requirements.

APPENDIX B: Explanation of conditions in Registration BA21008

Registration BA21008 includes several conditions, discussed below:

a. Groundwater protection requirements

Skycrest measured the hydraulic conductivity of the protective layer by installing a monitoring well (or water table well) at the time of borehole drilling. This approach provides an adequate representation of the protective layers proposed to be used to protect the groundwater resource.

The regulations provide that the actual hydraulic conductivity of a 10 metre thick naturally occurring protective layer must not be more than 1×10^{-6} cm/sec.

In this case, the in situ measurement was 1.39×10^{-7} cm/sec. This value is below the maximum value in the regulations. Therefore, the proposed naturally occurring protective layer meets the hydraulic conductivity requirement in the regulations.

b. Construction Deadline

Skycrest proposes to complete construction of the proposed new dairy barn and EMS by December 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2024 is included as a condition in Registration BA21008.

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, Registration BA21008 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dairy barn to meet the specification for category B (liquid manure shallow pits); category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Skycrest to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dairy barn.

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. Registration BA21008 includes a condition stating that Skycrest shall not place livestock or manure in the manure storage or collection portions of the new dairy barn or EMS until NRCB personnel have inspected each facility and confirmed in writing that it meets the registration requirements.

APPENDIX C: Determination of deemed permit status

Skycrest claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status. Under section 11(1) of the Administrative Procedures Regulation under AOPA, and because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO.

The investigation was to determine the capacity of the CFO that was in place on January 1, 2002.

The CFO is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities were at a size that was at or greater than the permit threshold sizes under AOPA. (See NRCB Operational Policy 2016-6: *Public Notice on Grandfathering Decisions*, part 1.)

To determine whether the CFO meets these two criteria, the NRCB must consider, among other things:

- a. What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics
- b. How each of those facilities was being used on January 1, 2002

The NRCB published notice of the deemed permit determination as part of the notice for the proposed Registration BA21008 application, in the Athabasca Advocate on July 6, 2021.

Under section 18.1(2)(a) of AOPA, if a CFO existed on January 1, 2002, the CFO’s deemed capacity is its physical capacity to confine livestock on January 1, 2002 (See NRCB Operational Policy 2016-5: *Determining Deemed Capacity for Grandfathered CFOs*).

For determining capacity, I consulted standards from Technical Guideline Agdex 096-81: *Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002*.

In discussion with the applicant, the existing dairy barn has 66 tie stalls. Using a formula from the Agdex 096-81 for calculating dairy barn capacity, the claimed grandfathered capacity of 66 milking cows for the dairy barn is, reasonable. There are also several pens at the CFO indicating that the operation housed dries and replacements along with their milking cows.

I did not receive any submissions relating to grandfathering.

Based on these findings, the CFO is considered to have a deemed registration and a deemed capacity of 66 milking cows (plus associated dries and replacements).