

Decision Summary RA24017

This document summarizes my reasons for issuing Authorization RA24017 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24017. 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

On April 2, 2024, Cornelis (Kees) Bottenberg and Jacqueline Bottenberg-Van Den Berg operating as Bottenberg Holsteins Ltd. (Bottenberg Holsteins) submitted a Part 1 application to the NRCB to construct a new dairy barn at an existing dairy CFO.

The Part 2 application was submitted on April 5, 2024. On May 8, 2024, I deemed the application complete.

The proposed construction involves:

- Constructing a new dairy barn – 29.3 m x 51.8 m (96 ft. x 170 ft.)
- Decommissioning the old dairy barn

There is no proposed increase in livestock.

a. Location

The existing CFO is located at SW 26-34-3 W5M in Red Deer County, roughly 20 km west of Bowden, Alberta. The terrain is flat to undulating with a general slope to the east and northeast.

b. Existing permits

The CFO was originally permitted by Authorization RA11013, which the NRCB issued on May 13, 2011. The CFO also has NRCB Authorization RA11052, Registration RA13001 (which amalgamated the previous authorizations), Authorization RA17001 (further amended into RA17017A) and Authorization RA20016. Collectively, these NRCB permits allow Bottenberg Holsteins to construct and operate a dairy CFO with 145 milking cows (associated replacements and dries also allowed on site). The CFO's existing permitted facilities are listed in Registration RA13001 and Authorization RA17011A.

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 ½ mile (805 m) from the CFO

None of the CFO facilities are located within 100 m of a bank of a river, stream, or canal.

A copy of the application was sent to Red Deer County, which is the municipality where the existing 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 Environment and Protected Areas (EPA), Alberta Agriculture and Irrigation (AGI), and Alberta Transportation and Economic Corridors (TEC).

I also sent a copy of the application to Foothills Natural Gas Co-op Ltd., Fortis Alberta Inc., Omers Energy Inc., and Kosowan Hydrocarbons Ltd. as they are right of way/easement holders.

I received a response from AGI indicating the inspector assigned to the application.

Ms. Anne Han, a development and planning tech with TEC, also responded to the notice indicating they have no objections to the application.

No responses were received from any other organization.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of Red Deer County'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 construction:

- 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 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 8, the application meets all relevant AOPA requirements.

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.

Municipalities that are affected parties are identified by the Act as "directly affected." Red Deer County is an affected party (and directly affected) because the proposed facility is located within its boundaries.

Mr. Richard Moje, a planner with Red Deer County, provided a written response on behalf of Red Deer County. Mr. Moje stated that the application is consistent with the land use provisions of Red Deer County's municipal development plan. The application's consistency with Red Deer County's municipal development plan is addressed in Appendix A, attached.

Mr. Moje also listed the setbacks required by Red Deer County's land use bylaw (LUB) and noted that the application meets these setbacks.

7. Environmental risk of facilities

New MCA's which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. There may be circumstances where, because of the proximity of a shallow aquifer, porous subsurface materials, or surface water systems an approval officer may require groundwater or surface water monitoring for the facility. In this case a determination was made that those circumstances are not present, and monitoring is not required.

When reviewing a new authorization application for an existing CFO, NRCB approval officers assess the CFO's existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB's environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, which can fall 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 supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 9.17.

In this case, the risks posed by Bottenberg Holsteins' existing CFO facilities were assessed in 2011, 2017 and 2020 using the ERST. According to those assessments, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since those assessments were done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

8. Terms and conditions

Authorization RA24017 permits the construction of the new dairy barn.

Authorization RA24017 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 RA24017 includes conditions that generally address construction deadline, document submission, post construction inspection, water well decommissioning and facility decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA24017 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24017.

Authorization RA24017 must be read in conjunction with NRCB previously issued Registration RA13001, and Authorizations RA17017A and RA20016, which remain in effect.

July 4, 2024

(Original signed)

Sarah Neff
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA24017

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization or amendment of 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.

“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 9.2.7.)

Bottenberg Holsteins’ CFO is located in Red Deer County and is therefore subject to that county’s MDP. Red Deer County adopted the latest revision to this plan on September 21, 2021, under Bylaw #2020/20.

Section 3.5 of the MDP relates to CFOs. The subsections relevant to this application are discussed below:

3.5.1 States that the county “encourages the development of Confined Feeding Operations (CFOs) at appropriate locations, as a means of supporting the local economy and creating employment.” This subsection likely isn’t a relevant “land use provision” but it provides a general context for interpreting and applying the other parts of section 3.5.

3.5.2 Lists six “criteria used [by the county] in responding to applications for new CFOs or expansions to existing CFOs...” This subsection is titled “Criteria for Input” (emphasis added). This subsection is intended to be used only by the county to prepare its responses to AOPA applications. Therefore, the criteria are procedural in nature and not a land use provision, therefore they are not directly relevant to my MDP consistency determination.

In addition, the criteria require site and CFO-specific discretionary considerations rather than providing generic direction for appropriate land uses. As such, the six criteria are not considered by the NRCB to be “land use provisions.” (See Operational Policy 2016-7: Approvals, part 9.2.7) Therefore, they are not relevant to this MDP consistency determination.

3.5.3 Contains three parts under the heading “Conditions for County Support of CFOs”:

a. States that “[t]he [c]ounty shall provide input to the Natural Resources Conservation Board (NRCB) in responding to applications for new or expanded CFOs.” As with subsection 3.5.2, discussed above, this subsection focuses on the county’s response and therefore is not a land use provision and is not relevant to my MDP consistency determination.

b. States that the establishment of new CFOs shall be supported if they:

- i. Are not located within an “Exclusion Area Buffer”, as illustrated on Map 2
- ii. Are compatible with adjacent land uses
- iii. Are not located within an Urban Fringe Area (pursuant to Policy 3.4.5)

Bottenberg Holstein’s dairy operation already exists and is not a new site. Furthermore, the CFO is not located in an exclusion area buffer (i) and is not located within an urban fringe area (iii). The CFO, and the area surrounding, is designated as “Agricultural District (AG)”; therefore, I have determined that it is compatible with adjacent land uses. Bottenberg Holstein’s application meets the requirements of section 3.5.3 (b).

c. Relates to expanding CFOs and states that “applications made to the NRCB ... may be supported if they:

- i. Are located within an Intermunicipal Development Plan (IDP) and are in accordance with the policies contained within the IDP regarding new CFOs and expanding CFOs; and
- ii. Are compatible with adjacent land uses.”

Bottenberg Holstein’s CFO is not located within an IDP area and is compatible with adjacent land uses. Therefore, this application is consistent with this section of the MDP.

3.5.4 Titled “Maintain Minimum Distance Separation (MDS) from an Existing CFO”. This subsection is intended to be used only by the county to approve rezoning and residential applications. Therefore, the criteria are procedural in nature and not a land use provision, therefore they are not directly relevant to my MDP consistency determination.

3.5.5 States that the county “does not support new CFOs being established within a minimum of 1.6 kilometres (1 mile), or as determined by the NRCB, of any recognized approved and future development area. This includes urban fringe or an Intermunicipal Development Plan boundary, or into an area of an existing or approved residential subdivision situated within the County, or a hamlet.” Bottenberg Holstein’s CFO is an existing CFO; therefore, this section does not apply. Regardless, the CFO is not located in any of the areas indicated in this section.

For these reasons, I conclude that the application is consistent with the land use provisions of Red Deer County’s MDP that I may consider.

APPENDIX B: Explanation of conditions in Authorization RA24017

Authorization RA24017 includes several conditions, discussed below:

a. Construction Deadline

Bottenberg Holsteins proposes to complete construction of the proposed new dairy barn by December 1, 2025. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2025, is included as a condition in Authorization RA24017.

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 RA24017 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the new dairy barn 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. Bottenberg Holsteins to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the new dairy barn.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization RA24017 includes a condition stating that Bottenberg Holsteins shall not place livestock or manure in the manure storage or collection portions of the new dairy barn until NRCB personnel have inspected the new dairy barn and confirmed in writing that it meets the authorization requirements.

c. Water well decommissioning

Water well #428885 (located south of the existing dairy barn) must be fully decommissioned prior to December 1, 2025, and documentation must be provided confirming that it was completed according to EPA's standards. Upon request, this deadline may be extended by the NRCB in writing.

d. Facility decommissioning

Bottenberg Holsteins has proposed to decommission the existing dairy barn. Therefore, there will be a condition included requiring this to be completed. This decommissioning must be completed in accordance with the Technical Guideline Agdex 096-90, “Closure of Manure Storage Facilities and Manure Collection Areas.”