

Decision Summary RA24011

This document summarizes my reasons for issuing Approval RA24011 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24011. 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 March 4, 2024, Ad Bertens on behalf of Bertens Holsteins Ltd. submitted a Part 1 application to the NRCB to expand an existing dairy CFO.

The Part 2 application was submitted on March 20, 2024. Additional information regarding spreading lands was required by the applicant, this was provided in early December 2024. On January 21, 2025, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 700 to 1,400 milking cows (plus associated dries and replacements)
- Constructing a freestall barn (extension to the existing freestall barn) - 132 m x 44.2 m (433 ft. x 145 ft.)
- Constructing a heifer shelter - 117 m x 12.2 m (384 ft. x 40 ft.)
- Constructing manure storage pad 3 (attached to heifer shelter) - 24.4 m x 42.7 m (80 ft. x 140 ft.)

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 permits

The CFO is currently permitted under NRCB Approval RA20035. That permit allowed the construction and operation of a 1,250 beef finisher and 700 milking cow (plus associated dries and replacements) CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval RA24011.

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 1.5 miles. (The NRCB refers to this distance as the “notification distance”.)

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 Mountain View County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in The Albertan newspaper in circulation in the community affected by the application on January 21, 2025, and
- sending 29 notification letters to people identified by Mountain View County as owning or residing on land within the notification distance.

The full application was made available at the Red Deer NRCB office for viewing during regular business hours.

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 Alberta Environment and Protected Areas (EPA), and Alberta Agriculture and Irrigation (AGI).

I also sent a copy of the application to Trans-Northern Pipelines Ltd., Crossroads Gas Co-op Ltd., Fortis Alberta Inc. and Conoco Phillips Canada as they are right of way/easement holders.

Trans-Northern Pipelines Ltd. submitted a response to the application providing their requirements for setbacks and notice if working within these setbacks to their pipeline. I have forwarded this response to the applicant for their information and follow-up.

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 existing CFO is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion 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 expansion:

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence
- 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 and in Appendix D, 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 expansion is located within its boundaries.

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

Mountain View County also stated that if approved the applicant will be subject to Mountain View County's Road Use Agreement Policy. The applicant has been made aware of this. Finally, the County sent a separate enquiry after the initial response asking for information regarding if the applicant has adequate water available in the existing well or if an additional well will be required. The applicant submitted a response that they have adequate volume in the existing well for the time being but eventually may drill a second well to meet the additional needed supply or to have a back-up well present. I sent this response to the County for their information.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (see NRCB Operational Policy 2016-7: Approvals, part 7.2.1). Frank Richardson provided an MDS waiver and is a directly affected party.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received a response from 1 other party.

All of the members of the party who submitted the response own or reside on land within the 1.5 mile notification distance for affected persons. Because of their location within this distance, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 7.2.1)

The directly affected party raised concerns regarding odours, burning of waste, increased presence of weeds, and nutrient management. The party also offered several suggestions such as shelter belts, waste management, and weed barriers to assist with their concerns. These concerns are addressed in Appendix C. I have provided the response to the applicant for their review and consideration.

8. Environmental risk of CFO facilities

When reviewing a new approval 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 Bertens Holsteins’ existing CFO facilities were assessed in 2020 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was done. As a result, a new assessment of the risks posed by the CFO’s existing facilities is not required.

New CFO facilities which clearly meet or exceed AOPA requirements may be 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 monitoring for the facility. In this case a determination was made, and monitoring is not required as none of these circumstances were identified.

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 listed the setbacks required by Mountain View County's land use bylaw (LUB) and noted that the facilities meet these setbacks.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments and a copy of the application was sent to EPA, who did not provide any comments.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed February 22, 2025).

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

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, I presumed that the effects on 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 party's concerns have been addressed (see Appendix C, below).

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, 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 party's concerns have been addressed (see Appendix C, below).

I also presumed that the proposed expansion 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 9.10.9). In my view, this presumption is not rebutted as the subject land and most surrounding lands are all zoned Agricultural. In addition, the County stated the application meets the required setbacks and the development is a permitted use and consistent with the MDP. The directly affected party's concerns have also been addressed (see Appendix C, below).

10. Terms and conditions

Approval RA24011 specifies the cumulative permitted livestock capacity as 1,400 milking cows (plus associated dries and replacements) and 1,250 beef finishers and permits the construction of the freestall barn extension, heifer shelter and manure storage pad.

Approval RA24011 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 RA24011 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix D.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval RA24011: Approval RA20035 (see NRCB Operational Policy 2016-7: Approvals, part 11.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix D discusses conditions from the historical permits that are or are not carried forward into the new approval

11. Conclusion

Approval RA24011 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24011.

Bertens Holsteins' previously issued Approval RA20035 is therefore superseded, and its content consolidated into this Approval RA24011, unless Approval RA24011 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA20035 will remain in effect.

March 13, 2025

(Original signed)

Nathan Shirley
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 RA24011

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.

“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 9.2.7.)

Bertens Holsteins’ 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 and was consolidated on September 14, 2022, under Bylaw No. 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 suitable within the County.

Bertens Holsteins’ 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...”.

3.3.1 states that “all lands in the County are deemed to be agricultural use unless otherwise designated for other uses”. Bertens Holsteins’ land is designated as agricultural.

As relevant here, sub-section 3.3.15 precludes new CFOs within 1.6 km (1 mile) of any identified growth centre or of an IDP with adjacent urban municipalities. The CFO is existing and therefore this provision does not apply. Also, Bertens’ Holsteins CFO is not within this 1.6 km setback for either the growth centre or an IDP.

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, Bertens Holsteins’ application meets AOPA requirements.

Sub-section 3.3.18 requires approved applications for new and expanding CFOs be subject to Mountain View County Road Use Agreement Policy. The NRCB does not have direct responsibility for regulating road use. Section 18 of the *Municipal Government Act* gives counties “direction, control and management” of all roads within their borders. However, I have informed the applicant of this County requirement.

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.

APPENDIX B: Determining directly affected party status

The following individual qualifies for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing:

- Frank Richardson (on behalf of Richardson Bros (Olds) Limited – NE 29-32-28 W4M)

See NRCB Operational Policy 2016-7: Approvals, part 7.2.1.

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:

- Howard Leach, Jason Leach, Sarah Leach, and Erik Neumeyer (on behalf of Leach Farms (1984) Ltd.) - NW 27-32-28 W4M

See NRCB Operational Policy 2016-7: Approvals, part 7.2.1.

APPENDIX C: Concerns raised by directly affected parties

The directly affected parties (other than the municipality and the MDS waiver) raised the following concerns:

Odours and air quality – concern was raised over the negative effects of odours and the negative impacts on air quality and quality of life.

Approval officer's conclusion:

AOPA's minimum distance separation (MDS) requirements are a proxy for minimizing odours, flies and other nuisance impacts from CFOs. Bertens Holsteins meets the required MDS to neighbouring residences with one exception. The owner of that residence provided a signed waiver, waiving the MDS requirement to their residence.

Nuisance and other impacts outside of the MDS for a CFO are typically not considered when making a decision, unless there is a direct and adverse impact greater than what may be normally expected, which can be directly linked to the application. These effects would ordinarily be considered in the analysis on 'effects on the community' in an approval officer's decision. In this case, the land zoning within several miles of the operation is 'Agriculture'. As such, I would consider the nuisance impacts of the proposed CFO as acceptable, because of the land zoning and because it meets the AOPA MDS requirements. Having said that, the public can call the NRCB's 24-hour reporting line (1-866-383-6722) should they have concerns in respect to a CFO.

Manure application – concern was raised over the negative effects of manure spreading and possible excessive nutrient loading.

Approval officer's conclusion:

Manure application is addressed in section 24 of the Standards and Administration Regulation. Section 24(1) requires manure to be incorporated within 48 hours of application when it is applied to cultivated land, or by surface application on forages, or on no-till cropland (this requires increase setbacks from residences). Incorporating reduces odours by working the manure into the soil. Manure application is typically of short duration once or twice per year and associated nuisance impacts typically do not persist for extended periods of time.

Complaints about CFO related issues can be reported to the NRCB's 24-hour reporting line (1-866-383-6722) and will be followed up on by an NRCB inspector.

AOPA has requirements to protect the soil, groundwater, and surface water from excessive application of manure nutrients. These include soil testing requirements, soil salinity limits, nitrate-nitrogen limits, and setbacks from water bodies, water wells, and residences. Operators are required to keep manure spreading and soils sampling records and must provide them to the NRCB upon request.

Disposal of waste – concern was raised over the negative effects of the burning of landfill waste.

Approval officer's conclusion:

AOPA does not have provisions regarding the disposal of general agricultural waste. It is the expectation that the applicant works with the Alberta Agriculture and Irrigation,

Environment and Protected Areas, and the County to ensure they are properly disposing of all waste on site.

Nuisance from increase in weeds – concern was raised over the increase in Kochia on to neighbouring lands.

Approval officer's conclusion:

AOPA does not regulate the control of weeds, rather this is completed through the *Weed Control Act* and Regulation and may also involve working with the County. The response was forwarded to the applicant for their information and to ensure they are properly controlling weeds as required.

Suggestions for applicant's consideration – Several suggestions were offered to the applicant for their consideration as a part of the submission.

Approval officer's conclusion:

The party included in their response the appreciation for the use of the drag line injection manure system and hopes that this practice will continue. They also suggested the establishment of a shelter belt to reduce odours, the removal of waste to a landfill as opposed to burning, and the control of weeds be considered by the applicant.

Although I will not be including specific conditions for these, it is expected that, through good neighbour communication, a respectful relationship can be established between the parties. The NRCB encourages neighbours to communicate with each other to address questions or concerns they may have.

APPENDIX D: Explanation of conditions in Approval RA24011

Approval RA24011 includes several conditions, discussed below, and carries forward some construction conditions that have not yet been met from Approval RA20035 (see section 2 of this appendix).

1. New conditions in Approval RA24011

a. Construction Deadline

Bertens Holsteins proposes to complete construction of the proposed new facilities by December 31, 2027. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2027 is included as a condition in Approval RA24011.

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, Approval RA24011 includes conditions requiring:

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

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. Approval RA24011 includes conditions stating that Bertens Holsteins Ltd. shall not place livestock or manure in the manure storage or collection portions of the new facilities until NRCB personnel have inspected each facility and confirmed in writing that it meets the approval requirements.

2. Conditions carried forward and modified from RA20035

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions 1, 2 and 3 from Approval RA20035 will be carried forward as construction conditions. An extension to condition 2 to complete the construction of a loose housing barn was granted, and as such that new construction deadline is included as a condition in Approval RA24011. However, as only one extension can be granted before a new application is required to amend the deadline the new deadline will not be flexible, and an application will be required if additional time is needed.