

## Decision Summary BA25011

This document summarizes my reasons for issuing Approval BA25011 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA25011. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On March 21, 2025, Linquenda Dairy Ltd. submitted a Part 1 application to the NRCB to expand an existing dairy CFO.

The Part 2 application was submitted on April 11, 2025. On April 29, 2025, I deemed the application complete.

The proposed expansion involves:

- Increasing milking cows (plus associated dries and replacements) from 150 to 270
- Constructing a new dairy barn – 152 m x 60 m
- Constructing a sand recovery unit building – 76 m x 24 m x 4 m deep
- Constructing a new synthetic liquid manure storage – 91 m x 76 m x 5 m deep
- Constructing a lean-to youngstock shelter – 12 m x 38 m
- Constructing a calf room – 21 m x 24 m

The application also notified the NRCB of the proposed construction of a utility/tank room. 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 is part of the CFO but does not need to be permitted under the Act.

#### a. Location

The existing CFO is located at NW 27-60-3 W5M in the County of Barrhead, roughly 10 km south of Neerlandia, AB. The terrain is relatively flat sloping to the south and east with the nearest common body of water being a seasonal drainage approximately 245 m to the north.

#### 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. That deemed permit includes certificate of compliance #5-91-01, issued June 7, 1991 by Alberta Agriculture. This deemed registration allows for the construction and operation of a 100 head dairy CFO. The determination of the CFO’s deemed permit status under section 18.1 of AOPA is explained in Appendix D attached. The deemed facilities are listed in the appendix to the Approval BA25011.

## **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 mile. (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 the County of Barrhead, 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 Barrhead Leader, the newspaper in circulation in the community affected by the application on April 29, 2025, and
- sending 16 notification letters to people identified by the County of Barrhead as owning or residing on land within the notification distance.

The full application was made available 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 to Alberta Environment and Protected Areas (EPA), Alberta Agriculture and Irrigation (AGI), and Alberta Transportation & Economic Corridors (TEC).

In a response from TEC, a development and planning technologist stated that a roadside development permit will be required. The applicant has been made aware of this requirement.

After a discussion with a representative from AGI, the operator is reminded they need to inform the inspector during planning and construction of the milk house area.

I also sent a copy of the application to Axiom Oil and Gas as they have a right of way on the legal land. A response was received from Axiom indicating they have no concerns with the application.

Approval BA25011 does not relieve the permit holder from complying with other applicable laws, such as safety codes, other municipal bylaws, provincial legislation (e.g. Historical Resources Act), and federal legislation (e.g. Migratory Birds Convention Act).

#### **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 expansion 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 the County of Barrhead'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:

- 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 the two residences has signed a written waiver of the MDS requirement to their residence
- Meets the required AOPA setbacks from 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 11 and in Appendix B, the application meets all relevant AOPA requirements. The exemptions that are required to address the AOPA requirements around setback to water wells are discussed in the following parts of this decision summary.

#### **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." The County of Barrhead is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Debbie Oyarzun, CAO and acting development officer with the County of Barrhead, provided a written response on behalf of the County of Barrhead. Ms. Oyarzun stated that the application is consistent with the County of Barrhead's land use provisions of the municipal development plan (MDP). The application's consistency with the land use provisions of the County of Barrhead's MDP is addressed in Appendix A, attached.

No responses were received from any other person, organization, or member of the public.

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). Gerritt and Anita Bikker provided an MDS waiver and are a directly affected party.

## **8. Environmental risk of CFO facilities**

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface water 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 environmental or construction monitoring for the facility. In this case a determination was made, and monitoring is not required.

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 9.17). 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](http://www.nrcb.ca).)

For the sake of efficiency, I first assessed the CFO's existing earthen liquid manure storage and dairy barn using the ERST. These appear to be the CFO's highest risk facilities due to the type of manure stored and location associated to water wells. 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.

## **9. Exemptions**

I determined that the proposed dairy barn is located within the required AOPA setback from 2 water wells. As explained in Appendix B, an exemption to the 100 m water well setback is warranted due to the construction details of the facilities and construction details of the water wells, and location of the wells relative to the proposed facilities.

## **10. 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. Oyarzun also listed the setbacks required by the County of Barrhead's land use bylaw

(LUB) and noted that the application meets these setbacks.

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments. A copy of the application was provided to EPA who stated that the applicant requires an additional water license. This requirement was forwarded to the applicant for their action.

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 April 5, 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, having considered all the information before me (including in Technical Document BA25011, and from my site visit), this presumption is not rebutted.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9 if the application is consistent with the MDP land use provisions then the proposed expansion is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted based on the information available.

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 because I did not see any information that suggested it was not an appropriate use of land.

## **11. Terms and conditions**

Approval BA25011 specifies the cumulative permitted livestock capacity as 270 milking cows (plus associated dries and replacements), and permits the construction of the new dairy barn, sand recovery building, synthetic liquid manure storage, calf room, and lean to youngstock shelter.

Approval BA25011 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 BA25011 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval BA25011: the deemed Registration and Certificate of Compliance 5-91-01 (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 C discusses which conditions from the historical permits are or are not carried forward into the new approval.

## **12. Conclusion**

Approval BA25011 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA25011.

Linquenda Dairy's deemed registration, including certificate of compliance 5-91-01 are therefore superseded, and their content consolidated into this Approval BA25011, unless Approval BA25011 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed registration and certificate of compliance 5-91-01 will remain in effect.

June 18, 2025

(Original signed)

Nathan Shirley  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Exemptions from water well setbacks
- C. Explanation of conditions in Approval BA25011
- D. Determination of deemed permit status

## **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.)

Linquenda Dairy’s CFO is located in the County of Barrhead and is therefore subject to that County’s MDP. The County 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 includes 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, only 10 and 11 relate specifically to CFOs.

Policy 10 states “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 (see NRCB Operational Policy 2016-7, *Approvals* 8.2.4). Therefore, this policy is not relevant to the MDP consistency determination required by section 20(1.1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA.

Policy 11 states that “minimum distance separations shall conform to standards set out in the Agricultural Operation Practices Act.” “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 2016-7, *Approvals*, part 8.2.5). That said, the CFO has obtained the necessary waivers required to meet AOPA’s MDS requirements.

I conclude that the application is consistent with the relevant land use provisions of the County of Barrhead’s MDP that I may consider.

## APPENDIX B: Exemptions from water well setbacks

### 1. Water Well Considerations

The proposed dairy barn is to be located less than 100 m from 2 water wells. I have confirmed that the 2 water wells are located approximately 75 m and 40 m from the proposed barn during a site visit and using google earth. This is in conflict with the section 7(1)(b) of the *Standards and Administration Regulation* (SAR) under AOPA.

Section 7(2), however, allows for exemptions if, before construction, the applicant can demonstrate that the aquifer into which the water well is drilled is not likely to be contaminated by the manure collection area (MCA), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MCA are presumed to be low if the applicant's proposed MCA meets AOPA's technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. The distance between the well and the proposed MCA
- d. Whether the well is up- or down-gradient from the MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 9.10.2.

The water wells:

ID 394393

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 40 m south of the proposed dairy barn is likely EPA water well ID # 394393. This well is reported to have been installed in 1990 and has a perforated or screened zone from 21.34 m to 36.58 m below ground level across shale and coal stratigraphy. The well is installed below ground surface and is located in an existing building. It is covered with a steel plate and surround by mounded concrete. This well is used for non-domestic purposes. The well's log identifies protective layer or layers from ground surface to 9.14 m below ground level. The well has a driven shoe seal from ground surface to 12.8 m below ground level (across a shale layer). The well appeared to be in good condition at the time of my site inspection.

ID 354623:

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 75 m west of the proposed dairy barn is likely EPA water well ID # 354623. This well is reported to have been installed in 1993 and has a perforated or screened zone from 12.19 m to 41.15 m below ground level across shale, sandstone, and coal stratigraphy. The well is located next to the house and



is above grade and mounded at ground surface. This well is used for domestic purposes. The well's log identifies protective layer or layers from ground surface to 7.62 m below ground level. The well has a driven shoe seal from ground surface to 9.14 m below ground level (across a shale layer). The well appeared to be in good condition at the time of my site inspection and is protected from the CFO facilities by the house.

The NRCB has developed a "water well exemption screening tool," based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well.<sup>1</sup>

In this case, the results of the water well exemption screening tool suggest that an exemption is more likely as seen in Technical Document BA25011.

Under the regulation, an approval officer may require a groundwater monitoring program of the water wells in question. In my view, given that the proposed facilities meet AOPA technical requirements and are low risk, monitoring is not required.

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<sup>1</sup> A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at [www.nrcb.ca](http://www.nrcb.ca).

## **APPENDIX C: Explanation of conditions in Approval BA25011**

Approval BA25011 includes several conditions, discussed below:

### **a. Construction Deadline**

Linquenda Dairy proposes to complete construction of the proposed new facilities by December 2028. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2028, is included as a condition in Approval BA25011.

### **b. Post-construction inspection and review**

The NRCB's general practice is to include conditions in new permits to ensure that the new facilities are constructed according to the required design specifications. Accordingly, Approval BA25011 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dairy barn, sand recovery unit, calf room, and youngstock shelter to meet the specification for category B (liquid manure shallow pits), category C (solid manure – wet), and category D (solid manure – dry), as applicable, in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Linquenda Dairy to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dairy barn, sand recovery unit, calf room, and youngstock shelter.
- c. A written completion report for the synthetic lined liquid manure storage, signed by a qualified third party certifying that the synthetic lined liquid manure storage has been constructed in accordance with the liner manufacturer's requirements. At a minimum, the report must confirm that the liquid manure storage is constructed in the approved location; confirm the size of the synthetic lined liquid manure storage, including depths below grade; and confirm that the synthetic liner was installed in accordance with the liner manufacturer's requirements, including under membrane surface preparation and proper sealing of any seams.

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 BA25011 includes conditions stating that Linquenda Dairy shall not place livestock or manure in the manure storage or collection portions of the dairy barn, sand recovery unit, calf room, youngstock shelter or place manure in the synthetic lined liquid manure storage until NRCB personnel have inspected each facility and confirmed in writing that they meet the approval requirements.

### **1. Conditions not carried forward from Alberta Agriculture issued Certificate of Compliance**

The Certificate of Compliance had several conditions which are now contained in the general terms and requirements under AOPA. Therefore, none of these conditions are carried forward into Approval BA25011.

## **APPENDIX D: Determination of deemed permit status**

Linquenda Dairy 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. A grandfathering determination is necessary in this case because:

- It is necessary to determine which facilities/footprint is grandfathered and, therefore, exempt from having to meet AOPA regulations under section 20(1.2) of AOPA).

See NRCB Operational Policy 2023-1: Grandfathering (Deemed Permit), part 3.1.

Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO. I also determined the capacity of the CFO that was in place on January 1, 2002.

In this case, the operator bears the onus of providing sufficient evidence to support their claim (See NRCB Operational Policy 2023-1: Grandfathering (Deemed Permit), part 2.3).

The CFO holds a certificate of compliance issued June 7, 1991 by Alberta Agriculture. This certificate of compliance recognized the operation of a 100 head dairy CFO. This certificate is a deemed (i.e. grandfathered) registration under section 18.1(1)(b) of AOPA.

Under section 18.1(2)(b) of AOPA, a grandfathered CFO’s deemed capacity (that is, the animal numbers allowed by its deemed permit) is the capacity authorized by the CFO’s municipal permit. However, if the operator claims that the capacity on January 1, 2002, was more than the capacity authorized by the municipal permit, the NRCB interprets section 18.1(2) as allowing a grandfathered CFO’s deemed capacity to be based on its physical capacity as of January 1, 2002. (See NRCB Operational Policy 2023-1: Grandfathering (Deemed Permit), part 6.3.3.)

Linquenda Dairy claims that its CFO’s physical capacity on January 1, 2002 was 150 milking cows (plus associated dries and replacement), which is more than the above-stated capacity in its certificate of compliance.

### Notice:

As required under section 11(2) of the Administrative Procedures Regulation, I provided notice to those parties who would be entitled to notice if this were an application for a new registration.

In this case, the NRCB provided notice of the deemed permit determination as part of the notice for the proposed application.

### Evidence:

I was able to locate some records relevant to the capacity of the enclosures on January 1, 2002, including aerial photos, number of stalls, and the certificate of compliance.

In response to notice of the grandfathering determination, I did not receive any submissions relating to the capacity of the enclosures on January 1, 2002.

### Findings:

- a. what category of livestock the operation was confining and feeding on January 1, 2002;
- b. whether the operation was at livestock numbers that exceeded the AOPA thresholds;
- c. the footprint of the operation on January 1, 2002;

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

Technical Guideline Agdex 096-81 Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002.

To determine the capacity of the CFO, I used "Technical Guideline Agdex 096-81 Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002". Using this calculator, the existing dairy barn has a stall count of around 145 stalls which, using the calculator of freestalls at 1.2 cows per stall, allows the operator to house at least 150 milking cows.

There are also several pens with shelters present to house dries and replacements.

The CFOs existing facilities are listed in the appendix to Approval BA25011.

Based on the evidence and findings above, the CFO is considered to have a deemed registration and deemed capacity of 150 milking cows (plus associated dries and replacements).

Validity today:

Finally, Operational Policy 2023-1: Grandfathering (Deemed Permit), part 9.0 suggests that field services staff assess the validity of a deemed permit today.

Under Operational Policy 2023-1: Grandfathering (Deemed Permit), part 9.1, I considered whether the CFO has been abandoned since January 1, 2002. I considered factors relevant to abandonment, as identified in Operational Policy 2016-3: Permit Cancellations under AOPA Section 29. I conclude this CFO has not been abandoned.

Under Operational Policy 2023-1: Grandfathering (Deemed Permit), part 9.2, I considered if any of the liners have been disturbed, or any facilities changed in a way that constitutes "construction," since January 1, 2002. My conclusion is the liners are in good condition.