

Decision Summary RA24010

This document summarizes my reasons for issuing Authorization RA24010 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24010. 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 March 4, 2024, Ad Bertens on behalf of Bertens Holsteins Ltd. (Bertens) submitted a Part 1 application to the NRCB to expand a calf barn at an existing dairy CFO.

The Part 2 application was submitted on March 4, 2024, and I deemed the application complete on March 5, 2024.

The proposed modification involves constructing an extension to the existing calf barn of 43 m x 22.5 m (for total dimensions of 57 m x 43 m).

a. Location

The existing CFO is located at NE 20-32-28 W4M in Mountain View County, roughly 6 km southeast of Olds, Alberta. The topography of the site is flat to gently undulating.

b. Existing permits

The CFO was permitted by Mountain View County development permit 024-97, which is considered “deemed” (i.e. grandfathered permits) under AOPA, and by NRCB issued Approval RA07017 and Authorization RA14027A.

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 Mountain View County, which is the municipality where the 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) and Alberta Agriculture and Irrigation (AGI).

I also sent a copy of the application to Crossroads Gas Co-op Ltd. which is a right of way holder.

I received no responses from any of these organizations.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed facility 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.)

5. AOPA requirements

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

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

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

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

7. Environmental risk of facilities

New MSF/MCA 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 Bertens' existing CFO facilities were assessed in 2014 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was 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 RA24010 permits the extension of the calf barn.

Authorization RA24010 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 RA24010 includes conditions that generally address a construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA24010 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24010.

Authorization RA24010 must be read in conjunction with Bertens' municipal development permit 024-97, NRCB issued Approval RA07017 and Authorization RA14027A which remain in effect.

April 22, 2024

(Original signed)
Francisco Echegaray, P.Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA24010

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for 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.)

Bertens’ 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 September 14, 2022, under Bylaw #20/20.

As relevant here, section 2.0 of the MDP provides a “growth management strategy” that is reflected in the land use map in Figure 3 of the MDP. Because the land use designations in Figure 3 are not meant to be definitive, the MDP’s “growth management strategy” based on these designations is not considered to be a “land use provision”, but rather helps identify where the location of CFO’s would be more suited within the county. Because of this, I do not consider it to be relevant to my MDP determination.

At any rate, Bertens’ 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...”

Sub-section 3.3.15 precludes new CFOs within 1.6 km (1 mile) of any identified growth centre or an IDP with adjacent urban municipalities, as shown in Figure 3. Bertens is an existing CFO, so this policy is not relevant to my MDP consistency determination. Regardless, the CFO is not within this 1.6 km setback.

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’ application meets AOPA requirements, as discussed in part 5 above.

Section 3.3.18 states that following provincial approval, CFO construction “shall be subject to Mountain View County Road Use Agreement Policy”. This policy is outside of the NRCB’s jurisdiction, and therefore is not relevant to my MDP determination. The applicant is reminded that it is their responsibility to ensure CFO construction meets the requirements of this policy.

No other policies in section 3.0 preclude Bertens’ application. Therefore, the proposed CFO construction is an acceptable land use within the Agricultural Preservation Area of the MDP.

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

APPENDIX B: Explanation of conditions in Authorization RA24010

Authorization RA24010 includes several conditions, discussed below:

a. Construction Deadline

Bertens proposes to complete construction of the proposed extension to the existing calf barn by December 2025. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2025, is included as a condition in Authorization RA24010.

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 RA24010 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the expansion to the calf barn to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.” Bertens shall provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.

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 RA24010 includes a condition stating that Bertens shall not place livestock or manure in the manure storage or collection portions of the expansion to the calf barn until NRCB personnel have inspected it and confirmed in writing that it meets the authorization requirements.