

## Decision Summary BA24007

This document summarizes my reasons for issuing Authorization BA24007 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA24007. 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 authorization. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On May 21, 2024, Peeters Farms Ltd. submitted a Part 1 application to the NRCB to construct a manure collection area (MCA) at an existing dairy CFO.

The Part 2 application was submitted on July 13, 2024. On August 13, 2024, I deemed the application complete.

The proposed construction involves:

- Constructing a new dairy barn (#3) – 125 m x 51 m

The application also notified the NRCB of the proposed construction of a milk house (80 m x 25 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 is part of the CFO but does not need to be permitted under the Act.

#### a. Location

The proposed construction is located at NE 1-49-27 W4M in Leduc County, roughly 5 km south of the town of Calmar, AB. The terrain is relatively flat sloping slightly to the west with Conjuring Creek located approximately 60 m to the west.

#### b. Existing permits

The CFO is already permitted under NRCB Approval BA09004 and Authorization BA20008. These permits allow the construction and operation of a 460 milking cows (plus associated dries and replacements) dairy CFO.

## 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 1 mile

A copy of the application was sent to Leduc 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), Alberta Agriculture and Irrigation (AGI), and Alberta Transportation and Economic Corridors (TEC).

Jason Moodie, an inspector, replied a verbal response on behalf of AGI. Mr. Moodie stated they had no concerns with the application and requested that Peeters Farms communicate with AGI prior to and during construction of the proposed milk house. Peeters Farms has been made aware of this request.

### **4. Municipal Development Plan (MDP) consistency**

I have determined that the proposed construction is consistent with the land use provisions of Leduc 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) with the exception of one residence. However, the proposed dairy barn is to be located further away than existing CFO facilities relative to the residence and qualifies for an exemption (see section 9 below)
- Meets the required AOPA setbacks from 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 10, the application meets all relevant AOPA requirements. The exemption that is required to address the AOPA requirements around water well and MDS setbacks is discussed in the following parts of this decision summary.

### **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.” Leduc County is an affected party (and directly affected) because the proposed facilities are located within its boundaries.

Mr. Benjamin Ansaldo, a planner with Leduc County, provided a written response on behalf of the County. Mr. Ansaldo stated that the application is consistent with the land use provisions of the municipal development plan. The application’s consistency with the Leduc County’s municipal development plan is addressed in Appendix A, attached.

Mr. Ansaldo also noted that the application meets the setbacks required by Leduc County’s land use bylaw (LUB).

## **7. Environmental risk of facilities**

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](http://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 Peeters Farms’ 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.

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.

I also assessed the proposed dairy barn, using the NRCB’s risk screening tool, and determined that it poses a low risk to groundwater and surface water.

## **8. Water well exemption**

I determined that the proposed dairy barn will be located within the required AOPA setback from a water well. As explained in Appendix B, an exemption to the 100 m water well setback is warranted due to the construction and completion of the well.

## **9. MDS**

I determined that the currently existing CFO is located within the minimum distance separation from one residence. As explained in Appendix C, under the Standards Administration Regulation 3(5)(c)(ii) an approval officer can issue an authorization despite MDS if the application is to build an additional building on the site of the CFO when the total annual manure production will not be increased. The proposed CFO facility is not moving closer to the residence (than the existing CFO facilities) and the CFO not increasing permitting livestock numbers or manure production.

## 10. Terms and conditions

Authorization BA24007 permits the construction of the new dairy barn (#3).

Authorization BA24007 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 BA24007 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix D.

## 11. Conclusion

Authorization BA24007 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA24007.

Authorization BA24007 must be read in conjunction with previously issued Approval BA09004 and Authorization BA20008 which remain in effect.

October 4, 2024

(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 Authorization BA24007

## **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.)

Peeters Farms CFO is located in Leduc County and is therefore subject to that county’s MDP. Leduc County adopted the latest revision to this plan on June 23, 2019, under Bylaw #08-19.

Section 4.3.0.2 of the MDP lists planning objectives and policies for the county’s four agricultural areas. (The locations of these areas are shown on Map 4 of the MDP.) The existing CFO is in Area South Central/East. The MDP provisions applicable to Peeters Farms CFO are discussed below.

Section 4.3.0.2(c) states that the purpose of Agricultural Area South Central/East is “to provide for a broad range of agriculture including confined feeding operations. This area currently has a number of dairy operations that will be adversely impacted by significant increases in population and/or development.” This is likely a general guiding principle and is not considered a valid land use provision, therefore it’s not relevant to my decision.

Section 4.3.2 states that the county supports the development and expansion of CFOs provided the operation is compatible with the surrounding land uses. More specifically, section 4.3.2.1 states support for new or expanded CFOs provided the operation:

- a) does not create adverse impacts on environmentally significant lands;
- b) has a satisfactory access;
- c) is located within Agricultural Areas A, B or C,
- d) is carried out in accordance with generally accepted farming practices regarding the storage, disposal and spreading of manure and the disposal of animal carcasses; and
- e) meets the minimum setback distances to urban communities and residential development as regulated by the Agricultural Operation Practices Act.

As this application is not for a new or expanding CFO, these policies are not relevant to my decision. At any rate, the proposed application does meet all of these requirements.

For these reasons, I conclude that the proposed CFO construction is consistent with the relevant land use provisions of the county’s MDP. The county’s response supports this conclusion.

## APPENDIX B: Exemption from water well setbacks

### 1. Water Well Considerations

The proposed dairy barn is to be located less than 100 m from a water well. I have confirmed that one water well is located approximately 5 m from it during a site visit and with imagery. 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. 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 well:

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located adjacent to the dairy barn is likely EPA water well ID 2086326. This well is reported to have been installed in 2020 and has a perforated or screened zone from 48.77 m to 53.24 m below ground level across stratigraphy. The well has an above ground casing and is protected from damage. This well is used for non-domestic purposes. The well's log identifies protective layer or layers from ground surface to 11.58 m below ground level. The well has a bentonite seal from ground surface to 23.47 m below ground level (across the sandstone, shale, and coal layers).

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 likely as seen in Technical Document BA24007.

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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 Authorization BA24007**

### **a. Construction Deadline**

Peeters Farms proposes to complete construction of the proposed new dairy barn (#3) by November 2026. Given the scope of the project additional time is recommended to account for any unforeseen project delays. Therefore, the deadline of December 1, 2027 is included as a condition in Authorization BA24007.

### **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 BA24007 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) and category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Peeters Dairy 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 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 BA24007 includes a condition stating that Peeters Dairy shall not place livestock or manure in the manure storage or collection portions of the new dairy barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the authorization requirements.