

Decision Summary LA23048

This document summarizes my reasons for issuing Approval LA23048 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23048. 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 December 12, 2023, Johan Bennen on behalf of Hejo Farms Ltd. (Hejo Farms) submitted a Part 1 application to the NRCB to a new sheep CFO.

The Part 2 application was submitted on February 21, 2024. On March 6, 2024, I deemed the application complete.

The proposed CFO construction involves:

- a new CFO with 5,000 sheep (ewes with lambs)
- constructing a new sheep facility, including:
 - a new lambing and ewe barn – 220.54 m x 42.57 m
 - finishing barn – 110.03 m x 28.70 m
 - manure room – 9.65 m x 9.65 m
- constructing a new earthen manure storage (EMS) – 75 m x 75 m x 3 m (deep)

The proposed sheep facility initially included plans to install a manure separator to be installed in the manure room, and slatted floors throughout. The manure separator has been removed from the proposed design of the sheep facility. Additionally, the slatted floors are proposed to be installed 0.3 m (1 ft) above grade for wash water management. See Appendix C for conditions specific to the slatted floors.

The application also notified the NRCB of the proposed ancillary structures attached to the sheep facility:

- feed kitchen - 34.49 m x 26.67 m
- office - 22.43 m x 18.77 m,
- handling room - 37.08 m x 9.14 m

These facilities are “ancillary structures”, under section 1(1) (a.1) of the *Agricultural Operations, Part 2 Matters Regulation*, because they will not be used to store or collect manure, or to confine livestock. Therefore, under section 4.1 of that regulation, these structures are part of the CFO but do not need to be permitted under the Act.

It should be noted, throughout this document, the term “sheep facility” is used to describe the facility in its entirety, including the lambing and ewe barn, the finishing barn, manure room, and the associated ancillary structures.

a. Location

The proposed CFO is located at SW 25-08-20 W4M in Lethbridge County, roughly 4.2 km south of the Town of Coaldale. The terrain is relatively flat, with the closest body of water being a St. Mary River Irrigation (SMRID) canal, approximately 3 km south of the proposed CFO.

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 Lethbridge County, which is the municipality where the CFO is to be located.

The NRCB gave notice of the application by:

- public advertisement in Sunny South News newspaper in circulation in the community affected by the application on March 6, 2024, and
- sending 34 notification letters to people identified by Lethbridge County as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing.

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 Transportation & Economic Corridors (TEC), and St. Mary River Irrigation District (SMRID).

I received responses from TEC and SMRID.

Leah Olsen, a development/planning technologist with the construction and maintenance division, responded on behalf of TEC. In their response, TEC stated a permit will not be required.

Micaela Azzarello, a land administrator, responded on behalf of SMRID. In their response, SMRID stated the applicant will need to remove 10 acres of PM to accommodate the new facilities, which can be sold back to the SMRID or open market. Additionally, SMRID estimated the applicant will need 13.5 acres-feet of an agriculture conveyance agreement.

I also sent a copy of the application to Atco Gas and Pipelines Ltd. (ATCO) and County of Lethbridge Rural Water Association because they are listed as utility right of way (ROW) holders at the proposed location.

I received a response from Vicki Porter, senior admin coordinator in the engineering ops, gas distribution department with ATCO. In their response, ATCO Transmission high pressure pipelines stated there were no objections.

I did not receive a response from Lethbridge Rural Water Association.

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.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of Lethbridge 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 CFO:

- 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's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10 and in Appendix C, 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." Lethbridge County is an affected party (and directly affected) because the proposed CFO is to be located within its boundaries.

Hilary Janzen, a planning and development manager with Lethbridge County, provided a written response on behalf of Lethbridge County. In their response, Lethbridge County stated that the application is consistent with Lethbridge County's municipal development plan, is not within any Intermunicipal Development Plan or Area Structure Plan areas, and is within the Rural Agricultural District. Additionally, the response states the lands within 1.5 miles of the proposed area are in the Rural Agriculture, and requested the application meets the applicable setbacks as per Lethbridge County's Land Use Bylaw 1404. The application's consistency with the land use provisions of Lethbridge County's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received a response from three individuals who reside in one residence.

One response was received from the three individuals who own or reside on land within the 1.5mile 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 parties raised concerns regarding air quality, odour, quality of life, and accuracy of the Part 2 application. These concerns are addressed in Appendix B.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. The information provided by the applicant in Technical Document LA23048 supports the assumption that risks to groundwater and surface water are low.

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.

Hilary Janzen with Lethbridge County also listed the setbacks required by Lethbridge County's land use bylaw (LUB) and requested no development to be permitted within the property line and county road right of way setbacks.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concerns submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application.

As a part of my consideration, I accessed the Environmental Appeals Board to investigate if there are any active appeals for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed April 5, 2024. There are no active appeals observed associated.

Finally, I considered the effects of the proposed CFO 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 in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted by any other information in this application or provided by directly affected parties.

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 by any other information in this application or provided by directly affected parties.

I also presumed that the proposed CFO 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 by any other information in this application or provided by directly affected parties.

10. Terms and conditions

Approval LA23048 specifies the cumulative permitted livestock capacity as 5,000 sheep (ewes with lambs) and permits the construction of the following confined feeding operation facilities:

- new sheep facility, consisting of the following facilities:
 - lambing and ewe barn – 220.54 m x 42.57 m
 - finishing barn – 110.03 m x 28.70 m
 - manure room – 9.65 m x 9.65 m
- a new earthen manure storage (EMS) – 75 m x 75 m x 3 m (deep)

and,

Ancillary structures attached to the sheep facility:

- feed kitchen - 34.49 m x 26.67 m
- office - 22.43 m x 18.77 m,
- and handling room - 37.08 m x 9.14 m

Approval LA23048 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 LA23048 includes conditions that generally address construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

11. Conclusion

Approval LA23048 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23048.

April 16, 2024

(Original signed)
Cailyn Wilson
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns
- C. Explanation of conditions in Approval LA23048

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.

The relevant section in the MDP that governs CFOs is Part 4: Plan Policies, section 3 Intensive Livestock/Confined Feeding Operations. Lethbridge County adopted the latest revision to this plan on March 10, 2022, under Bylaw 22-001. The policies relevant to this application are:

3.1 and 3.2 stipulate that establishment/development of new CFOs within the MDP CFO exclusion areas (Map 2A and 2B of the MDP), exclusion zones identified in an IDP, or identified residential growth center are not permitted.

This proposed CFO is not located within any of the exclusion areas. These policies (3.1 and 3.2) therefore the application is consistent with them.

3.3 states that the expansion of existing CFOs within the county’s CFO urban fringe districts may be permissible “in consideration of any IDP policy that allows for such.”

This proposed CFO is not within any exclusion zones identified by the county’s MDP.

3.4 commits the County to update CFO policies in the MDP to reflect any exclusion area changes in an IDP. It is not a land use provision, and therefore, is not relevant to my consistency determination.

3.5 states that “CFOs shall not be supported to establish or expand within the environmentally sensitive areas as shown in the *Cotton Wood Report: County of Lethbridge: Environmentally Sensitive Areas in the Oldman River Region (1988)*”.

The proposed CFO is not within any of the identified areas. Therefore, this application is consistent with this policy.

3.6 states that all land use bylaw setbacks should be adhered to (e.g. property lines, road setbacks). The sheep facility and the EMS both meet these setbacks as identified in Technical Document LA23048. Therefore, this application is consistent with this policy.

3.7 states that CFOs are only permitted in ‘Rural Agriculture’ land use districts and cannot be established on properties smaller than 80-acres.

The proposed CFO is located within a 'rural agriculture' land use district. Therefore, this application is consistent with this part of the policy. The second part of this provision refers to what size parcels of land are acceptable to establish a CFO. At any rate, the proposed CFO meets this provision, as it is to be located on a parcel greater than 80 acres. Additionally, this provision is not a land use provision because it refers to specifics with respect to the site of a CFO, rather than the use of specified lands. I also consider it to be a test or condition which AOPA directs me not to consider. I have therefore not taken this into consideration in my MDP consistency determination. Therefore, this part of the provision does not apply to this proposed CFO.

Policies 3.8, 3.9, 3.10, and 3.11 are not considered land use provisions because they either deal with conditions under which CFOs are allowed to continue to operate ("acceptable operating practices" and within AOPA; policy 3.8), manure application (policy 3.9), reciprocal MDS (policy 3.10), or county-NRCB interaction (policy 3.11). Therefore, they are not relevant to my consistency determination.

For these reasons, I conclude that the application is consistent with the land use provisions of Lethbridge County's MDP that I may consider. This conclusion is supported by the County's response.

APPENDIX B: Determining directly affected party status and concerns

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:

- Mark, Jeremy and Leonard Vaselenak – NE 25-8-20 W4M

This response had the following concerns, followed by my comments. Responses were forwarded to Hejo Farms for their consideration and opportunity to reply.

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

Concerns

a.) Odour from operations

“The distance from our residents is not great enough based on the size of the proposed operation and prevailing wind corridor.”

Approval officer comments:

AOPA’s minimum distance separation (MDS) requirements are a proxy for minimizing odours, flies, and other nuisance effects from CFOs. The proposed CFO consists of an under-roof sheep facility and an earthen manure storage (EMS) for wash water and liquid manure pressed from solid sheep manure. Based on the numbers of 5,000 sheep (lambs with ewes) operation, and as stated in Lethbridge County, the surrounding lands (within 1.5 miles) of the proposed CFO are categorized as ‘rural agriculture’. This places the minimum distance separation (MDS) as 404 m (category 1) for a new operation.

According to Google Earth, the NE 25-8-20 W4M residence is approximately 1 km (1000 m) from the proposed sheep facility, and 1.2 km (1,200 m) from the proposed EMS. The proposed CFO meets the MDS to all neighbouring residences. It is presumed that nuisance effects from a proposed CFO will be acceptable if the MDS has been met.

Complaints about CFO-related issues can be reported to the NRCB’s 24-hour reporting line (1-866-383-6722). Neighbours can also call any NRCB office during regular business hours if they have questions about permit conditions or ongoing AOPA operational requirements.

b.) Air quality

“The size of the operation and the Lagoon location site puts my home in the direct transit of the prevailing wind based on the proposed site.”

Approval officer comments:

Nuisance and other impacts outside of the MDS for a CFO are typically not considered when making a permitting decision, unless there is a direct and adverse impact greater than what may be normally expected, and which can be directly linked to the application. The strength of the consideration will vary depending on the evidence, pertinent to the particular application put before the approval officer.

In the absence of specific information to show otherwise, approval officers generally do not consider the health and odour effects of CFO air emissions on their own initiative when reviewing approval applications.

c.) Accuracy of Part 2 application

“...the distances recorded on page 8 of Part 2 of the Technical Requirements does not accurately reflect the distance to our house versus the other neighbours concerning this application.”

Approval officer comments:

Page 9 of Technical Document LA23048 is the portion of the application where the applicant can provide the name, legal land description, and distance in meters where the proposed CFO will be to the surrounding neighbour's residences. It was noted by the respondent that the representation of the distance was not accurate. Hejo Farms described the Vaselenak residence as being 1,206 m away from the proposed manure storage facility.

AOPA and its regulations prescribe several procedures for approval officers to follow when they review permit applications. Sections 2(2) and 2(3) of AOPA Administrative Procedures Regulation (AR106/2017) set out the information required in Part 1 and Part 2 applications, respectively, for approval and registration applications. Approval officers verify this information by conducting their own measurements and calculations. The approval officer's findings are reflected in the NRCB use only sections of the technical documents.

In this specific case, the NE 25-8-20 W4M (Vaselenak) residence was found to be approximately 1 km (1,000 m) from the proposed sheep facility, and 1.2 km (1,200 m) from the proposed EMS. This distance meets the MDS for the proposed sheep CFO. This has been documented in Technical Document LA23048.

d.) Decline of quality of life

“It is obvious the concentration of odours and the airborne particles from 5000 head of sheep and lagoon will have a significant effect on our home and quality of life.”

Approval officer comments:

This factor is relevant to my consideration of “effects on the community.” As explained in part 9 of the decision summary, above, following NRCB policy, I presumed that the effects of the proposed CFO expansion on the community are acceptable because the application meets the land use provisions of the municipal development plan, and the municipality did not specifically preclude CFOs from this area under its land use bylaw.

The application's consistency with the South Saskatchewan Regional Plan (see part 9 above), provides further support for my conclusion that its effects on the community are acceptable. As explained previously, the nuisance effects will likely be within an acceptable range because the CFO meets the MDS requirements. MDS is a means for mitigating nuisance impacts.

APPENDIX C: Explanation of conditions in Approval LA23048

Approval LA23048 includes several conditions, discussed below:

a. Sheep facility liner requirements

Hejo Farms has proposed to construct the liner of the proposed sheep facility out of concrete to meet AOPA technical requirements. Typically, sheep CFOs are solid manure systems, and would require category d (solid manure - dry) as described in Technical Guideline Agdex 096-93 *“Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”* In this application, Hejo Farms has proposed to construct slatted floors above grade to allow for easier management of wash water to enter the proposed earthen manure storage (EMS).

This proposed system within the sheep facility would have manure that may be similar to category c (solid manure – wet). Therefore, there will be a condition in Approval LA23048, stating that the sheep facility’s liner must meet the specification of category C (solid manure – wet) in Technical Guideline Agdex 096-93 *“Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”*

b. Construction Deadline

Hejo Farms proposes to complete construction of the proposed new sheep facility and EMS by October 2025. Based on my experience, a construction deadline to of October 31, 2026, is more realistic of a timeframe to consider any delays that may incur during construction. The deadline of October 31, 2026, is included as a condition in Approval LA23048.

c. 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 LA23048 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the sheep facility 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. Hejo Farms to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the sheep facility.

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 LA23048 includes a condition stating that Hejo Farms shall not place livestock or manure in the manure storage or collection portions of the new sheep facility, or manure or wash water in the EMS until NRCB personnel have inspected the sheep facility and EMS and confirmed in writing that they meet the approval requirements.