



Decision Summary LA19006

This document summarizes my reasons for issuing Approval LA19006 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA19006. That document and the full application are available from the decisions search engine on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca. 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.

1. Background

On February 19, 2019, Prairie View Feeders submitted a Part 1 and Part 2 application to the NRCB to expand an existing beef confined feeding operation (CFO). On March 5, 2019, I deemed the application complete.

The proposed expansion involves:

- Increasing beef feeder numbers from 2,000 to 2,800
- Constructing new feedlot pens (60.9 m x 198.1 m)

Under AOPA, this type of application requires an approval.

a. Location

The existing CFO is located at NW 22-010-22 W4M in Lethbridge County, roughly 3.5 km northeast of the hamlet of Diamond City. The terrain is flat. The nearest common body of water is a slough 450 metres northeast of the CFO.

b. Existing permitted facilities

The CFO is grandfathered with a deemed approval under section 18.1 of AOPA. The CFO's deemed facilities are listed in the appendix of this approval. The CFO's grandfathered status is explained in Appendix B, attached.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct 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:

- the municipality where the CFO is 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 individuals who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For this application, the distance is 1.5 miles. (The NRCB refers to this distance as the "affected party radius.")

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. Lethbridge County is an affected party (and therefore also a directly affected party) because the proposed expansion is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB published notice of the application in the Sunny South News on March 5, 2019 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to Lethbridge County, Alberta Health Services (AHS), Alberta Environment and Parks (EP), Alberta Transportation, and the Lethbridge Northern Irrigation District (LNID). Forty-one courtesy letters were sent to people identified by Lethbridge County as owning or residing on land within the affected party radius.

3. Responses from the municipality and referral agencies

I received responses from Lethbridge County, Alberta Transportation, and the LNID. No response was received from AHS, EP, individuals or other non-government parties.

Ms. Hilary Janzen, a senior planner with Lethbridge County, provided a written response on behalf of Lethbridge County. As noted in section 2, Lethbridge County is a directly affected party.

Ms. Janzen stated that the application is consistent with Lethbridge County’s municipal development plan. The application’s consistency with Lethbridge County’s municipal development plan is addressed in appendix A, attached.

Ms. Janzen also listed the setbacks required by Lethbridge County’s land use bylaw (LUB) and noted that the application meets these setbacks.

The NRCB also received responses from:

- John Thomas, development/planning technologist with Alberta Transportation. Mr. Thomas stated that Alberta Transportation does not object to this proposal and that a permit from his department is not required.
- Alan Harrold, general manager of the LNID. In his response, Mr. Harrold stated that the feedlot expansion has sufficient water. He pointed out that all permanent structures must be constructed a minimum of 15 metres from the outside boundary of all LNID pipeline right-of-ways or interests within this parcel and that a 30 metre setback applies to all irrigation infrastructure for manure spreading. A copy of the LNID’s response was forwarded to the applicant.

4. Environmental risk screening of existing and proposed facilities

As part of my review of this application, I assessed the risk to surface water and groundwater posed by the CFO's existing and proposed manure storage facilities. I used the NRCB's environmental risk screening tool for this purpose (see NRCB Operational Policy 2016-7: *Approvals*, part 8.13). The tool 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.)

All of the CFO's existing and proposed facilities pose a low potential risk to groundwater and surface water: (The CFO's existing facilities are listed in the Appendix to LA19006.)

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.¹

In addition, the proposed expansion is consistent with the land use provisions of Lethbridge County's municipal development plan and with Lethbridge County's land use bylaw. (See Appendix A, attached for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed expansion:

- 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 of manure storage facilities

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.

In addition, I assessed the effects of the proposed expansion on the environment. Consistent with NRCB policy, I determined that these effects are acceptable because the application meets all of AOPA's technical requirements. I also determined that the application's effects on the economy and community are acceptable, and that the proposed expansion is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipal development plan and land use bylaw. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

1. For a summary of these requirements, please see the [2008 AOPA Reference Guide](#), available on the NRCB website at www.nrcb.ca/about/documents).

6. Terms and conditions

Approval LA19006 specifies the new permitted livestock capacity as 2,800 beef feeders and permits the construction of the new feedlot pens.

Approval LA19006 also 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 LA19006 includes conditions that:

- Set a deadline of December 20, 2021 for the approved construction to be completed.
- Prohibit Prairie View Feeders from placing manure or livestock in the new feedlot pens until the pens have been inspected by the NRCB following their construction.

For an explanation of the reasons for these conditions, see Appendix C, attached.

7. Conclusion

Approval LA19006 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19006.

Prairie View Feeders' deemed approval, is therefore cancelled, unless Approval LA19006 is held invalid following a review and decision by the NRCB's board members or by a court.

April 9, 2019



Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Grandfathering determination
- C. Explanation of conditions in Approval LA19006

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for an approval only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgments relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

Prairie View Feeders’ CFO is located in Lethbridge County and is therefore subject to that county’s MDP. Lethbridge County adopted the latest revision to this plan on August 2, 2018 under Bylaw 18-016.

The MDP provisions relating to CFOs are in part 6.6 of the plan.

As relevant here, section 6.6.3(a) states that the county “shall restrict the development of CFOs in the Urban Fringe land use districts.” Prairie View Feeders’ CFO is not in any of the rural urban fringe areas designated in the MDP, so the proposal is consistent with this provision.

Section 6.6.3(d)(II) states that the NRCB “should also consider” the following:

- The cumulative effect of a new approval on any area near other existing confined feeding operations
- Environmentally sensitive areas as shown in the report, *County of Lethbridge: Environmentally Significant Areas in the Oldman River Region*
- Giving notice to adjacent landowners even in the case of applications for registration or authorization, and
- Applying MDS calculations to all country residential clusters whether or not they are specifically designated in the land use bylaw

The first of these four considerations is likely not a land use provision because of its project-specific focus (viewed cumulatively with other existing CFOs), and its request for the NRCB to make a discretionary judgement about the degree of cumulative effects that are acceptable. Therefore, this consideration is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: *Approvals*, part 8.2.5.)

As for the second consideration, the CFO is not located close to any of the environmentally significant areas noted in the county’s report.

The third of these four considerations is likely not a land use provision because it requests notification to adjacent landowners about registration and authorization applications. Sections 19 and 21 of AOPA determine the required notification process. In this case, the application was for an approval which triggered the notification requirements set out in section 19.

The fourth consideration appears to refer to AOPA's "minimum distance separation" (MDS) requirements. Under NRCB policy, approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. (See also Operational Policy 2016-7: *Approvals*, part 8.2.5.) At any rate, there are no country residential clusters in the immediate vicinity of the CFO, so this MDP consideration does not apply to Prairie View Feeders' application.

Section 6.6.3(d)IV of the MDP states that a CFO "shall not be approved in the areas shown and designated on Figure 11B as exclusion areas". Prairie View Feeders' CFO is not located in any of the designated CFO exclusion areas, so the application is consistent with this provision.

Finally, section 6.6.3(e) of the MDP requires the application of development setbacks as set out in the county's land use bylaw. As mentioned above, the proposed new feedlot pens meet these setbacks.

For these reasons, the proposed CFO expansion is consistent with the relevant land use provisions of Lethbridge County's MDP. As stated above, the county agrees with this conclusion (and has no concerns with the application).

The CFO is also subject to Lethbridge County's Land Use Bylaw (LUB) #1404, which the MDP clearly intends to incorporate as stated in section 6.6.3. (e) *development setbacks: "council will require the application of development setbacks for confined feeding operations to meet the current setbacks applicable to public roadways and property lines as per the Lethbridge County Land Use Bylaw stipulations"*. Under that bylaw, the subject land is currently zoned Rural Agriculture. CFOs and CFO expansions are a discretionary use under this bylaw. Under NRCB policy, CFO expansions are considered to be consistent with a LUB's land use zoning provisions, if CFOs are listed as either a permitted or discretionary land use for the relevant land use district (See NRCB Operational Policy 2016-7: *Approvals*, part 8.3.).

APPENDIX B: Grandfathering determination

Prairie View Feeders claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA.

The CFO is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still be grandfathered if:

- the CFO “existed” on January 1, 2002; and,
- the CFO facilities were at a size that was at or greater than the permit threshold sizes under AOPA. (See NRCB Operational Policy 2016-6: *Public Notice on Grandfathering Decisions*, part 1.)

To determine whether the CFO meets these two criteria, the NRCB must consider, among other things:

- What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics

Aerial pictures taken between 1999 and 2003 (Valtus) show the following facilities at this site:

- Feedlot pens with a total footprint of 23,201 m² (37 m x 173 m, 222 m x 40 m, 88 m x 47 m, 86 m x 44 m)
- Catch basin: (46 m x 36 m x approximate depth of 4.5 m)

The dimensions of these facilities have not changed since that time.

Under section 18.1(2)(a) of AOPA, if a CFO existed on January 1, 2002, the CFO’s deemed capacity is its physical capacity to confine livestock on January 1, 2002.

The applicant claims to have had 2,000 feeder cattle on January 1, 2002. Because the applicant proposed to expand the existing feedlot and to increase livestock numbers, I have not conducted a detailed capacity determination other than to determine that the existing facilities would have required a permit under AOPA.

Based on these findings, this CFO is considered to have a deemed approval.

APPENDIX C: Explanation of conditions in Approval LA19006

a. Construction deadline

Prairie View Feeders proposes to complete construction of the proposed new feedlot pens by December 20, 2021. The deadline of December 20, 2021 is included as a condition in Approval LA19006.

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.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA19006 includes a condition stating that Prairie View Feeders shall not place livestock or manure in the manure storage portions of the new feedlot pens until NRCB personnel have inspected the pens and confirmed in writing that they meet the approval requirements.