



Decision Summary LA19003

This document summarizes my reasons for issuing Authorization LA19003 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA19003. 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 January 21, 2019, Beumer Cattle (Beumer) submitted a Part 1 application to the NRCB to expand an existing beef confined feeding operation (CFO). The Part 2 application was submitted and I deemed the application complete on March 5, 2019.

The proposed expansion involves constructing a new calf barn (34 metres x 27.5 metres)

There is no proposed increase in livestock.

Under AOPA, this type of application requires an authorization.

a. Location

The existing CFO is located at NW 11-008-19 W4M in Lethbridge County, roughly 11 km southeast of the town of Coaldale and approximately 1,700 metres southwest of McQuillan Lake. The terrain is gently rolling.

b. Existing permitted facilities

The CFO was originally permitted by Registration LA02010 which the NRCB issued on July 31, 2002. The CFO has since been issued NRCB Registration LA02002A, Authorization LA05014, and Approval LA10035. Approval LA10035 set the permitted capacity of the CFO at 4,000 beef feeders.

2. Notices to affected parties

Under section 21 of AOPA, notice of an authorization application must be provided to municipalities that are “affected” by the application. Section 5 of AOPA’s Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the existing CFO is located. Under section 21(2) of the act, all affected municipalities are automatically also “directly affected” parties. The NRCB interprets section 21(3) as allowing affected municipalities to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Lethbridge County is both an affected and directly affected party because the proposed expansion is located within its boundaries.

On March 5, 2019 the NRCB emailed referral letters and a copy of the application to Lethbridge County; Alberta Health Services (AHS); Alberta Environment and Parks (AEP); Alberta Transportation; and the St. Mary River Irrigation District (SMRID).

3. Responses from the municipality and referral agencies

I received responses from Lethbridge County, AEP, Alberta Transportation, and the SMRID. No response was received from AHS.

Ms. Hilary Janzen, a senior planner, 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 stated that development is not permitted within 125 feet of the county road right-of-way centerline or within 20 feet of any side or rear property lines. The application meets these setbacks.

Mr. Jeff Gutsell, a hydrogeologist, provided a written response on behalf of AEP. Mr. Gutsell raised no concerns with the application.

Mr. Darren Davis, an assistance development / planning technologist, provided a written response on behalf of Alberta Transportation. Mr. Davis stated a permit would not be required from his department.

Ms. Linda Park, a land administrator, provided a written response on behalf of the SMRID. Ms Park raised no concerns with the application.

4. Environmental risk screening of existing and proposed facilities

When reviewing new authorization applications for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool provides for a numeric scoring of risks, 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 done with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: *Approvals*, part 8.13.

In this case, the risks posed by Beumer's existing CFO facilities were assessed in 2011. The assessment indicated that the risks to surface water and groundwater were low. Since the 2011 risk assessment, the NRCB has updated its risk screening tool. For this reason, I re-assessed the risks posed by the CFO's existing facilities. My re-assessment found that all existing facilities pose a low risk to surface water and groundwater.

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

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 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.

6. Terms and conditions

Authorization LA19003 permits the construction of a new calf barn.

Authorization LA19003 also contains terms that the NRCB generally includes in all AOPA authorization, 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 LA19003 includes conditions that:

- Set a deadline of November 30, 2022 for the approved construction to be completed.
- Require the concrete used to construct the liner of the manure collection and storage portion of the calf barn pits to meet the specification for category B (liquid manure shallow pits); and for the remaining portions of the barn to meet category C (solid manure – wet); in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas".
- Require written confirmation from a qualified third party that the concrete used for the manure collection and storage areas meet the required specifications.
- Prohibit Beumer from placing manure or livestock in the calf barn until the barn has been inspected by the NRCB following its construction.

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

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

7. Conclusion

Authorization LA19003 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19003.

Authorization LA19003 should be read in conjunction with previously issued Approval LA10035, Authorization LA05014, and Registration LA2010A, which remain in effect.

April 11, 2019



Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA19003

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may approve an application for an authorization 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 judgements 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 22(2.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of 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.”).

Beumer’s 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.

CFO and by extension, related facilities, are addressed in section 6.6 of the MDP.

As relevant here, section 6.6.3(a) states that the county “shall restrict the development of CFOs in the Rural Urban Fringe.” Beumer’s CFO is not in any of the rural urban fringe areas designated in the MDP, so the proposal is consistent with this policy.

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* (see maps in Appendix C).
- Giving notice to adjacent landowners even in the case of applications for registrations or authorization, and
- Applying MDS calculations to all county residential clusters whether or not they are specifically designated in the land use bylaw.

The first of these four items 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 policy is not relevant to my MDP consistency determination (See Operational Policy 2016-7: *Approvals*, part 8.2.6.). That said, AOPA provides guidance with respect to the siting of facilities to minimise nuisance effects on neighbouring residences.

As for the second item, the CFO is not located in or close to any of the environmentally significant areas noted in the report referenced in the MDP.

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.

The fourth item appears to refer to the “minimum distance separation” (MDS) requirements under AOPA. 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.) Nonetheless, Beumer’s CFO meets AOPA’s required MDS to the nearest country residential cluster.

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.” Beumer’s CFO is not located in any of the designated CFO exclusion areas, so the application is consistent with this policy.

Finally, section 6.6.3(e) of the MDP imposes and lists development setbacks. The proposed facility meets these setbacks.

For these reasons, I conclude that the application is consistent with the relevant land use provisions of Lethbridge County’s MDP. As stated above, the municipality has no concerns with this application, and stated that the application is consistent with its MDP and that no other planning-type documents apply to this 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: Explanation of conditions in Authorization LA19003

Authorization LA19003 includes several conditions, discussed below:

1. Conditions in Authorization LA19003

a. Construction Deadline

Beumer proposes to complete construction of the proposed new calf barn by November 30 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2022 is included as a condition in Authorization LA19003.

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 LA19003 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the calf barn pits to meet the specification for category B (liquid manure shallow pits) and for the remaining portions of the barn to meet the specifications for category C (solid manure – wet); in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- written proof, signed by a qualified third party, certifying that the calf barn pits have been constructed in accordance with the proposed design. At a minimum the report must confirm the specifications of the concrete used; the thickness of the concrete walls and slabs; the type of water stop; and, the size and spacing of reinforcement.

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. Authorization LA19003 includes a condition stating that Beumer shall not place livestock or manure in the manure storage portions of the new calf barn until NRCB personnel have inspected the barn and confirmed in writing that it meets the authorization requirements.