

Decision Summary LA20005

This document summarizes my reasons for issuing Approval LA20005 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20005. 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.

1. Background

On February 5, 2020, Westview Dairy Ltd. submitted a Part 1 application to the NRCB to expand an existing multi species CFO. The Part 2 application was submitted on February 13, 2020. On February 25, 2020, I deemed the application complete.

The application involves:

- Constructing five feedlot pens (3 pens: 41.1 m x 54.8 m each and 2 pens: 46.6 m x 54.8 m each)
- Increasing beef finisher numbers by 1,500 to a total of 2,800.

Under AOPA, this type of application requires an approval.

a. Location

The existing CFO is located at SE 4-10-23 W4M in Lethbridge County, roughly four km southeast of Monarch, Alberta. The topography is slightly undulating, gently sloping to the north. The closest common body of water is a lake approximately 200 meters to the southeast.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval LA18029. This approval allows the construction and operation of a 1,300 beef finishers and 300 meat goat CFO. The CFO's existing permitted facilities are listed in an appendix of Approval LA20005.

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 February 25, 2020 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 (AEP), Alberta Transportation, and the Lethbridge Northern Irrigation District (LNID). Thirty nine 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, referral agencies and other parties

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

Ms. Hilary Janzen, a senior development officer 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, are 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 written responses from Leah Olsen, a development/planning technologist with Alberta Transportation, Jeff Gutsell, a hydrogeologist with AEP, and Alan Harrold, general manager of the LNID.

Ms. Olsen stated in her response that her department has no concerns with this application and that no permit is required.

Mr. Gutsell stated in his response, that no proof has been provided in the application that the additional water needs are covered by any licences or water conveyance agreements and requested proof that the adequate water is available. A copy of the response was forwarded to the applicant for his information and action.

Mr. Gutsell was also concerned about the soil test results was conducted at this site, in particular about the timing of the tests. Because the hydraulic conductivity testing was conducted by an accredited professional engineer who took all necessary precaution and measures to conduct the testing (the testing was conducted during the winter months), and the report was stamped by the same engineer, I will not address this concern any further.

Mr. Harrold stated in his response that an additional water conveyance agreement is required. He also reminded the applicant to observe all required setbacks for construction and manure spreading from all irrigation district works. A copy was forwarded to the applicant for his information and action. The applicant indicated that he has chosen to pursue to drill a water well and will contact AEP. The applicant is further reminded that they are responsible to obtain additional licensed water prior to increasing livestock numbers and that any construction carried out at the CFO without having the necessary licences and permits is at the operators own risk.

4. Environmental risk screening of existing and proposed facilities

When reviewing new approval 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 Westview Dairy's existing CFO facilities were assessed in 2018. The assessment indicated that the risks to surface water and groundwater were low. Because no changes have occurred since that time, this risk assessment is still valid.

I also assessed the proposed new feedlot pens, using the NRCB's risk screening tool, and determined that they all pose 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 for a more detailed discussion of the county's planning requirements.)

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

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.)

6. Terms and conditions

Approval LA20005 specifies the new permitted livestock capacity as 2,800 beef finishers and 300 meat goats and permits the construction of additional feedlot pens.

Approval LA20005 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 LA20005 includes conditions that:

- Set a deadline of December 31, 2022 for the approved construction to be completed
- Prohibit Westview Dairy from placing manure or livestock in the feedlot pens until the facilities have been inspected by the NRCB following their construction

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

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA20005: Approval LA18039 (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions, and then cancelling all existing permits once the new permit is issued. This

consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

Therefore, in addition to containing the new terms and conditions summarized above, Approval LA20005 includes all existing terms and conditions from Approval LA18039. Construction conditions that have been met are identified and included in an appendix to Approval LA20005.

7. Conclusion

Approval LA20005 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20005.

Westview Dairy's NRCB-issued Approval LA18039 is therefore cancelled, unless Approval LA20005 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA18039 will remain in effect.

April 14, 2020

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA20005

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 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 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.”)

Westview Dairy’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 December 5, 2019, under Bylaw #19-043.

Section 6.6 confined Feeding Operations lists several policies under subsection 6.6.3:

- a) Urban Fringe:” *The County shall exclude the development of CFOs in the Urban Fringe land use districts.*”

The proposed CFO is not within this zoning district as identified in the land use bylaw

- b) Impacts

This policy refers to lobbying for funding to counteract the impact of CFOs on county infrastructure. Municipal funding is not under the jurisdiction of the NRCB and is not a land use provision. Therefore, I will not include this policy in my MDP consistency determination.

- c) Location

The three listed items under this policy section refer to a reciprocal MDS for residential development in the vicinity of CFOs. Development permits for residential development is under the jurisdiction of the respective municipality. Therefore, I will not discuss this policy any further.

- d) NRCB

- 1) *Given the County’s unique perspective regarding CFOs, the county will be proactive when discussing regulation amendments regarding CFOs with Alberta’s NRCB.*

This policy is likely not a land use provision since it provides guidance for the municipality to engage with the NRCB regarding CFOs applications within the municipality. I will therefore not discuss this policy in any more detail.

- II) *The NRCB in its approval review should also consider:*
- *The cumulative effect of a new approval on any area new other existing confided feeding operations*
 - *Environmentally sensitive area as shown in the report, County of Lethbridge: Environmentally Sensitive areas in the Oldman River region (see maps in Appendix C)*
 - *Giving notice to adjacent landowners even in the case of applications for registration or authorizations, and*
 - *Applying MDS calculations to all county residential clusters whether or not 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 is a request of the NRCB to make a discretionary judgment 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, although this provision is likely not a land use provision because of its referral to a specific site, I considered it in respect to this CFO's potential impact on the environment as discussed in sections four and five above. At any rate, 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 is procedural in nature. Section 20 of AOPA determines the required notification process. In this case, the application was for an approval and public notice was given.

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 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 Westview Dairy's application.

- III) *The NRCB is requested to take into consideration the requirements and policies of the County Council when making decision on such applications.*

This provision is likely not a land use provision because it requests the consideration of policies and requirements of the county's council. AOPA is very specific in what approval officers must consider when determined consistency with the MDP (section 20(1)) and only refers to the land use provisions in the MDP document. This sometimes includes planning documents that are directly incorporated in the MDP but not any documents that were developed to guide council members or that do not address land use. I observe that the deemed application was sent to Lethbridge county for their input.

- IV) *CFOs "shall not be approved in the areas shown and designated on Figure 11B as exclusion areas."*

Westview Dairy's CFO is not located in any of the designated CFO exclusion areas, so the application is consistent with this provision.

- V) CFOs *“shall not be approved on parcels less than 64.7 hectares (160 acres) or an unsubdivided quarter section, having a minimum of 4.0 hectares (10 acres) of registered exception of rights-of-way”*.

Section 20 of AOPA specifies what criteria must be considered by the approval officer before a permit will be issued. As mentioned above, section 20(1) specifies that the approval officer must determine if the application is consistent with the MDP land use provisions.

Not all MDP policies are land use provisions. In my opinion, policy 6.6.3(d)(V) is a test or condition that I cannot consider. Section 22(2.1) says that, when considering MDP land use provisions “an approval officer shall not consider any provisions respecting test or conditions related to [...] the site for a confined feeding operation ...” It is my determination that section 6.6.3(d)(V) refers to a test or condition in respect to a site: “shall not be approved on parcels less than 64.7 hectares”. This is in contrast to the land use provision stated in subsection 6.6.3 (d)(IV) which prohibits the establishment of CFOs in CFO exclusion zones – which defines a specific land use of a designated area.

The county also advised me that the parcel size restriction was to ensure CFOs were locating on parcels that have the means (land base) to handle their manure. To me, this suggests the parcel size “condition” is related to the application of manure, which further supports my opinion that this is a test or condition.

I therefore conclude that, because this is a test or condition with respect to a CFO site and with respect to manure application, it is not to be considered in my MDP consistency determination.

- VI) *The NRCB should consider the requirements and regulations as stipulated in the Lethbridge County Land Use Bylaw and Animal Control Bylaw, including the exclusion of confined feeding operations on parcels less than the specified sizes as specified in those bylaws.*

In my view, this section provides a clear intent to adopt provisions from the land use bylaw (LUB). Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I therefore also consider Lethbridge County’s Land Use Bylaw #1404. Under that bylaw, the subject land is currently zoned Rural Agriculture, CFOs are a discretionary use under this zoning category.

As stated in Part 2 (RA) section 3(3) in this bylaw, the minimum parcel size of CFOs is 64.7 hectares (160 acres).

This provision is the same as section 6.6.3 (d)(IV) in the MDP. As stated previously, the parcel size minimum was not a land use provision, and was a prohibited consideration under the MDP. For the same reason, I am not considering the identical policy in the land use bylaw as part of the MDP consistency determination.

The subsequent sections (Rural Agriculture) of the land use bylaw require minimum setbacks (sections 4 to 7). These included setbacks to property lines, roadways, canals and distance to neighbouring residences (section 6(6)). The proposed feedlot pens meet these setbacks.

The above subsection for the MDP also mentions the Animal Control Bylaw (Bylaw 17-008). Given that the application is for a CFO that triggered an application process under AOPA and therefore falls under the jurisdiction of the NRCB, I determined that the animal control bylaw is not a land use provision and therefore is outside of what I have to consider in my MDP consistency determination.

Ms. Janzen stated that the proposed feedlot pens are consistent with the MDP and LUB which supports my determination that, for the reasons provided above, the application is consistent with the land use provision of Lethbridge County's MDP.

APPENDIX B: Explanation of conditions in Approval LA20005

a. Construction Deadline

Westview Dairy proposes to complete construction of the proposed new feedlot pens by December 31, 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2022 is included as a condition in Approval LA20005.

b. Post-construction inspection and review

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 LA20005 includes a condition stating that Westview Dairy shall not place livestock or manure in the new feedlot pens until NRCB personnel have inspected the pens and confirmed in writing that it meets the approval requirements.