

## Decision Summary LA20007

This document summarizes my reasons for issuing Approval LA20007 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20007. 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.

### 1. Background

On February 11, 2020, Teunis Liefing (Mr. Liefing) submitted a Part 1 application to the NRCB to convert a hog CFO into a calf raising CFO. The Part 2 application was submitted on the April 15, 2020. On April 21, 2020, I deemed the application complete.

The proposed conversion involves:

- changing livestock numbers from 150 sow farrow to finish to 1700 feeder calves
- 2 catch basins (CB 1 and 2): 40 m x 25 m x 4 m and 43 m x 30 m x 3 m
- Manure storage pad: 45 m x 5 m
- Two additional rows of calf hutches on the east side of the entrance way (This increases the dimensions of the east part by 35 m to a total of 100 m and is included in the 'total dimensions' listed below)

The application also seeks to obtain a permit for the following already constructed facilities to house feeder calves:

- One large pen with shelter (L-shape – along the fresh water reservoir): 22 m x 71 m + 24 m x 21 m)
- Manure storage areas to house calf hutches east and west of the entrance way: total dimensions 183 m + 195 m (west: 50 m x 100 m; east: 100 m x 183 m (this includes the two additional rows mentioned above))
- Extension of prong 1 of the 'hog barn': 28 m x 11 m
- Shelters along prong 1 and 2 of the 'hog barn': 31 m x 3 m (each)

Under AOPA, this type of application requires an amendment of an approval.

#### a. Location

The existing CFO is located at SE 4-11-21 W4M in Lethbridge County, roughly one km west of the boundary of the Town of Picture Butte. The terrain is flat. The closest common body of water is a drainage ditch running along the south side of the CFO, approximately 35 m to the south of the calf hutches.

#### b. Existing permitted facilities

It is unclear when the CFO was originally established. However, on May 28, 1991, Lethbridge County issued development permit # 91-46, approving the construction of a new hog barn to replace outside corrals. This permit acknowledged a 150 sow farrow to finish operation and

clearly stipulated, that the construction must not lead to an expansion above the existing numbers.

On January 27, 1998, Lethbridge County issued a second permit, development permit # 98-01, allowing the replacement of an existing barn section. The CFO's grandfathered status is explained in Appendix B attached.

The history of this operation after 2002 has some bearing on the application. The operation was taken over by Teunis Liefing in 2005, who implemented major changes to the CFO by converting the CFO from a 150 sow farrow to finish operation into a sheep milking and dairy calf (Holstein) (feeder calves) raising facility.

On October 18, 2006, the new operator, Teunis Liefing, signed a Memorandum of Agreement (MOA) with the Town of Picture Butte, Lethbridge County and the NRCB. The memorandum set the condition of a conversion from the hog CFO to a sheep/calf raising CFO. The MOA recognized that Mr. Liefing's desire to get out of the swine business and into milking ewes and Holstein calves (feeder calves) was mutually beneficial for both the town and the operator. The animals allowed at this site were set to be 1500 Holstein calves (feeder calves) and 200 milking sheep (I assume associated livestock is included with the milking sheep).

The MOA also recognized that the CFO was located in the urban fringe zone (see page 1, section 2 of the MOA), where new and expanded CFOs were not permitted.

After the MOA, Mr. Liefing commenced a 200 sheep milking operation. The animals were housed in the converted hog barns and some outside pens. In 2010, Mr. Liefing started to include raising Holstein calves (feeder calves), and started to phase out the sheep milking operation. The shift included the establishment of several rows of calf hutches on the west side of the entry way to the residence.

By the end of 2011, the operation had switched completely to raising feeder calves and slowly increased its number of feeder calves to 1500 head which involved the establishment of additional rows of calf hutches, located on the east side of the entry way (see Picture 3 of Technical Document LA20007).

All new structures, as listed on page 1 of Technical Document LA20007, are considered not-permitted and are included as 'structures requiring a permit' in Mr. Liefing's application.

## **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 persons 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 0.5 mile. (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 CFO is located within its boundaries. The Town of Picture Butte is also an affected party because the town boundaries lie within the 0.5 mile notification radius.

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 April, 21, 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, the Town of Picture Butte, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and the Lethbridge Northern Irrigation District (LNID). Fifteen 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, the Town of Picture Butte, the LNID, Alberta Transportation and AEP. No response was received from AHS.

Ms. Hilary Janzen, a senior planner with the Lethbridge County, provided a written response on behalf of the 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 written responses from Keith Davis, CAO of the Town of Picture Butte, Alan Harrold, general manager of the LNID, Leah Olsen, development/planning technologist with Alberta Transportation, and Jeff Gutsell, hydrogeologist with AEP.

Mr. Davis stated that this CFO is within the intermunicipal plan (IDP) area, and that the area, in which the CFO is located, is identified as a CFO exclusion area. He continued to state that, according to the IDP, this zone precludes the establishment of new CFOs but allows existing

CFOs to continue operating. He requested that two of the conditions that were formulated in the signed MOA (see section 1b above) should be included as conditions in this permit. He had no other concerns.

Mr. Harrold stated that an additional water conveyance agreement is required for the conversion. He also reminded the operator that all applicable setbacks to irrigation infrastructure in respect to construction and manure application have to be met.

Ms. Olsen stated in her response that a permit from her department is required for this development. Mr. Liefing has since contacted Alberta Transportation and a permit has been issued. No other concerns or issues were raised in her response.

Mr. Gutsell stated in his response that there is no water license issued for this land location but that he assumes that Mr. Liefing has access to irrigation water. He requested a copy of the water conveyance agreement for his files. He had no further concerns or comments about this application. The applicant is requested to forward a copy of the requested agreement to AEP.

#### **4. Response from a directly affected party**

One person submitted a response to the application notice (see Appendix C).

The person who submitted the response owns or resides on land within the 0.5 mile radius for affected persons. Because of his location within this radius, and because he submitted a timely response, he is presumed to be directly affected by the application.

The directly affected party raised concerns regarding:

- manure management and nuisance impacts
- permitting a CFO at this location

These concerns are addressed in Appendix C.

#### **5. 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](http://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 Approval LA20007.)

#### **6. Other factors considered**

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 7.

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

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

- Meets the required AOPA setbacks from all nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence
- Meets the required AOPA setbacks from water wells, springs and common bodies of water
- Has sufficient means to control surface runoff
- 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 and manure collection areas

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 conversion on the environment. Consistent with NRCB policy, I presumed that these effects are acceptable because the application meets all of AOPA's technical requirements. I also presumed that the application's effects on the economy and community are acceptable, and that the proposed CFO conversion is an appropriate use of land. Under NRCB policy, these presumptions 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.). I have reviewed the information before me and considered the concerns from the directly affected party; given the consistency with the planning documents and with AOPA's regulatory requirements, I do not consider the presumptions rebutted.

## **7. Terms and conditions**

Approval LA20007 specifies the new permitted livestock capacity as 1700 feeder calves and permits the construction of two catch basins, two additional rows of calf hutches and a solid manure storage pad. It also permits the use of the already constructed facilities (as listed in section 1 above).

Approval LA20007 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 LA20007 includes conditions that:

- Set a deadline of December 31, 2023 for the approved construction to be completed
- Prohibit Mr. Liefing from letting manure contaminated runoff enter the newly constructed catch basins, placing manure on the solid manure storage pad, and manure or livestock in the area of the two additional rows of calf hutches until the facilities have been inspected by the NRCB following their construction

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

### **a. Conditions carried forward from previously issued permits and the MOA**

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA20007: development permits #91-46 and #98-01 (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.

In addition, to reflect the intentions of the MOA, I also incorporated the conditions listed in the MOA and the attached manure management plan that form the basis of the memorandum.

Therefore, in addition to containing the new terms and conditions summarized above, Approval LA20007 includes all existing terms and conditions in development permits #91-46 and #98-01 renumbered, except the terms and conditions noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions # 3 to 5 from development permit #91-46, and conditions # 1 to 3 from development permit #98-01 should be deleted and therefore are not carried forward to Approval LA20007. I also determined that conditions 5 a) to 5 d) of the MOA have to be rewritten to match the new requirements. My reasons for deleting or re-writing these conditions are provided in Appendix D.

## **8. Conclusion**

Approval LA20007 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20007.

Mr. Liefing's deemed approval, including development permits # 91-46 and 98-01 are therefore cancelled, unless Approval LA20007 is held invalid following a review and decision by the NRCB's board members or by a court, in which case municipal development permits # 91-46 and 98-01 will remain in effect.

June 4, 2020

(Original signed)  
Carina Weisbach  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan and intermunicipal development plan
- B. Grandfathering determination
- C. Concerns raised by the directly affected party
- C. Explanation of conditions in Approval LA20007

## APPENDIX A: Consistency with the municipal development plan and intermunicipal 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.”)

Mr. Liefing’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 category as shown on Figure 11B. (It is also not within the Rural Urban Fringe land use district as shown on Map 1 or Map F10 – Town of Picture Butte Fringe of the LUB).

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 are 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 but rather a ‘mode of action’. 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 near other existing confined feeding operations*
- *Environmentally sensitive areas 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 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, this provision is likely not a land use provision because of its referral to a specific site. However, I considered it in respect to the CFO's 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 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 public notification requirements.

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.)

*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 determining consistency with the MDP (section 20(1)) and only refers to the MDP document and only to land use provisions. It is implied that this also includes any planning documents that are directly incorporated into the MDP. At any rate, 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".*

Liefting'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 exceptions of rights-of-way”*

This provision is likely not a land use provision because it refers to specifics in respect to a site of a CFO, rather than the use of a specific land. At any rate, the quarter section on which the CFO is located meets this requirement.

*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 considered Lethbridge County’s Land Use Bylaw #1404 (consolidated to Bylaw 19-044 and Bylaw 19-032 (maps)). Under those bylaws, 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 for CFOs is 64.7 hectares (160 acres).

This provision is the same as section 6.6.3(d)(V) in the MDP. Hence, I will look at it in a similar manner as the MDP provision.

The subsequent sections (Rural Agriculture) in this land use bylaw, require minimum setbacks (sections 4 to 7). These include setbacks to property lines, roadways, canals and distance to neighbouring residences (section 6(6)). Apart from the MDS requirement which has been discussed previously, these requirements could be defined as being ‘siting’ requirements and would subsequently be exempt from consideration by an approval officer under section 20(1.1) of AOPA. Nevertheless, I am of the opinion that they ensure proper development of the rural areas in respect to future development and hence dictate a land use or are related to safety issues and will therefore be considered as impact on the community as part of other factors considered in section 6 of this decision summary. At any rate, the already constructed facilities and the two additional rows of calf hutches would meet these setbacks.

The above subsection of the MDP also seems to clearly incorporate the Animal Control Bylaw (Bylaw17-008). 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 does not impact the consistency of the application with the MDP under this circumstance.

#### MDP 6.6.3e) Development Setbacks

This provision requires CFO developments to meet the setbacks to roadways and property lines as set out in the LUB.

The development meets all of these setbacks.

The CFO is located within the subject area of the Intermunicipal Development Plan with the Town of Picture Butte (Lethbridge County & Picture Butte Intermunicipal Development Plan Bylaws 18-009 and 865-18, May 2018) and is therefore also subject to this plan. The MDP of Lethbridge County cross-references this IDP in several places, so under Approvals Policy 8.2.3, I will consider the consistency of the application in relation to the IDP's land use provisions.

The area in which the CFO is located is currently zoned RA (Rural Agriculture) (Map 13) and is within the CFO exclusion area (Map 14).

There are several sections referencing CFOs and their importance to both municipalities, however, sections 5.1.1 to 5.1.9 specifically address CFOs.

Section 5.1.5 states that new CFOs are not permitted to be established within the CFO exclusion area. Mr. Liefing's CFO is located within the CFO exclusion area but is not a new CFO. Therefore this section does not apply.

Section 5.1.6 states that manure spreading on lands in the CFO exclusion area shall abide by AOPA and its regulations. Although I do not consider this section as a land use provision and is therefore not part of my considerations, I would like to point out that the first paragraph in Approval LA20007 states that the permit holder, Mr. Liefing, must adhere to AOPA and its regulation which includes manure management.

Section 5.1.7 requests that all applications are circulated between the two municipalities. This consideration is likely not a land use provision because it requests circulation of applications between the two municipalities. At any rate, the application was forwarded to both municipalities for their comments as part of notice provisions under AOPA.

Section 5.1.8 states that existing CFOs will be allowed to continue to operate under acceptable operating practices and within the requirements of AOPA. As mentioned above, Mr. Liefing's CFO is a grandfathered operation. The application was for a conversion of the permitted 150 farrow to finish hog operation to a 1700 feeder calf operation. All AOPA requirements, including MDS, setbacks, ground and surface water protection requirements have been met.

Section 5.1.9 speaks on intermunicipal cooperation in cases of complaints arising from malpractices of CFO operators. This section is likely not a land use provision and I will therefore not include this section in my MDP consistency determination. Having said that, the county, town or anyone from the public is encourage to contact the NRCB's 24 hour a day reporting line (1-866-383-6722 toll free line) to report an incidence of non-compliance or an inappropriate disturbance.

## APPENDIX B: Grandfathering determination

My authority to determine the deemed (grandfathered) status of the CFO comes from section 11 of the Administrative Procedures Regulations under AOPA.

Because the CFO was constructed under two municipal development permits before January 1, 2002, there was no need for public notice of the grandfathering determination.

As explained in section 1.b) above, it is unclear when the CFO was originally established but it was issued two development permits by Lethbridge County. Development permit # 91-46 was issued on May 28, 1991, approving the construction of a new hog barn to replace outside corrals. The second permit, development permit # 98-01, was issued on January 27, 1998, allowing the replacement of an existing barn section.

Both permits explicitly mention that the allowed number of animals at this CFO is 150 sows farrow to finish and also established that the CFO is not allowed to expand beyond these numbers.

These development permits are technically deemed (i.e. grandfathered) permits and clearly state the existing animals present at the time of issuing. For this reason I would consider them as deemed approvals under section 18.1(1)(b) of AOPA.

Although these permits both allow the construction of a specific facility, no site plans or a specific list of any other existing facilities is available in the NRCB records.

In order to establish the existing facilities as they existed on January 1, 2002, I consulted aerial pictures taken between 1999 and 2003 (Valtus). On these pictures I could identify the following structures (See Technical Document LA20007):

- A 4 prong hog barn with a head structure, connecting the 4 sections (prongs):
  - Head structure: 63 m x 10 m
  - Prong 1 (west): 36 m x 15 m
  - Prong 2: 47 m x 14 m
  - Prong 3: 46 m x 14 m
  - Prong 4 (east): 49 m x 11 m
- Earthen liquid manure storage: 50 m x 24 m

Under section 18.1(2)(c), the CFO's deemed capacity is the capacity stated in the CFO's development permit. Therefore, the CFO has a deemed capacity of 150 sows farrow to finish.

## **APPENDIX C: Determining directly affected party status and concerns raised by the directly affected party**

The following person owns or resides on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

Rick Paskal  
Van Raay Paskal Farms Ltd  
Iron Springs

Therefore, under NRCB policy, because he submitted a timely response, this person is presumed to be “directly affected” by the application. See NRCB Operational Policy 2016:7 – *Approvals*, part 6.2.

Mr. Paskal raised the following concerns:

- manure management and nuisance impacts
- permitting a CFO at this location

### Manure management and nuisance impacts

Mr. Paskal commented that the operator of this CFO does not manage manure properly which causes unnecessary nuisance impacts (e.g. odor and flies) for residents living in the Town of Picture Butte.

AOPA’s minimum distance separation is a means for mitigating odor and other nuisance impacts from CFOs. The NRCB generally considers the MDS as the distance beyond which the odors and other nuisance effects of a CFO are considered to be acceptable under AOPA. In addition, section 20 of the Standards and Administration Regulation requires the operator to apply reasonable measures to control the level of infestation of flies.

In addition to odors arising from the CFO itself, odors and other nuisance impacts are also likely to occur during manure spreading events. However, the frequency of these exposures will likely be limited and of short duration.

In order to limit nuisance impacts of manure applications on conventionally tilled land must be incorporated within 48 hours of spreading. Incorporation can help to minimize normal odors from manure spreading.

Incidences of non-compliance or inappropriate disturbance can be report to the NRCB’s 24 hour a day response line (1-866-383-6722 toll free line).

### Permitting a CFO at this location

Mr. Paskal’s concern is that the location of the CFO, near to the Town of Picture Butte, is inappropriate and that a permanent license to operate should not be granted.

Mr. Liefing’s CFO was determined to be a grandfathered operation as explained in Appendix B. It therefore has a right to continue operating under the Act. As discussed in Appendix A, I determined that the application is consistent with the current MDP and IDP. Despite the fact that the CFO is located in a CFO exclusion zone and also falls within the rural urban fringe in the IDP, the IDP specifically states that existing CFOs are allowed to continue operating (section 5.1.8 of the IDP).

## **APPENDIX D: Explanation of conditions in Approval LA20007**

Approval LA20007 includes several conditions, discussed below, carries forward a number of conditions from development permits # 91-46 and 98-01) and rewrites or cancels a number of conditions (see sections 2 and 3 of this Appendix).

### **1. New conditions in Approval LA20007**

#### **a. Construction Deadline**

Mr. Liefing proposes to complete construction of the proposed new catch basins, the solid manure storage pad and the two additional rows of calf hutches by December 31, 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2023, is included as a condition in Approval LA20007.

#### **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 LA20007 includes a condition stating that Mr. Liefing shall not place livestock or manure in the manure storage portions of the new manure storage pad and the two additional rows of calf hutches or allow manure contaminated runoff to enter the new catch basins until NRCB personnel have inspected the facilities and confirmed in writing that it meets the approval requirements.

### **2. Conditions not carried forward or re-written from development permits # 91-46 and 98-01**

#### Development permit # 91-46

Condition 4 states: "That a waste management plan be presented to the Barons Eureka Warner Health Unit which includes a program of shanking in effluent from this operation."

The Barons Eureka Warner Health Unit does no longer exist. In addition to the fact that manure management is now under the jurisdiction of the NRCB, this condition is impossible to enforce as written due to the passage of time. I will therefore delete this condition. However, the operator is reminded that he is obligated to adhere to the manure management requirements under AOPA and its regulations.

Condition 5 states: "The shanking or injecting of effluent is not to be done during or just prior to weekends."

This condition precludes the operator from applying manure just prior to or during weekends. This condition is rather vague as written in addition to the fact that the manure produced at this site changed from liquid to solid manure. The first rather vague requirement is 'just prior' to weekends. The second – unwritten- vagueness is that there is no location given to which this restriction applies.

However, despite the fact that this condition is more stringent than AOPA I will not carry this condition forward for the reason explained below (NRCB policy, Amending Municipal Permit Conditions, Operational Policy 2016-1).

This condition is not reflected in the MOA that was signed in 2006. When the MOA was signed, all parties had an opportunity to revisit and revise standing conditions. As part of the MOA, Mr. Liefing was obliged to submit a manure management plan that was approved by all parties. Because condition 4 of permit 91-46 was altered in the 2006 MOA, I will not carry this condition forward into this approval. Irrespective, the operator is required to follow the manure application requirements set out in AOPA.

Condition 6 of this permit states: "The applicant is required to obtain a "Certificate of Compliance" as issued by Alberta Agriculture."

Certificates of Compliance are no longer issued. I therefore consider this condition as impossible to enforce as written due to the passage of time and therefore delete this condition. However, the operator is reminded that he is obligated to adhere to the manure management requirements under AOPA and its regulations.

#### Development permit # 98-01

Condition 4 states: "That an amended Manure management plan be prepared and submitted at the applicant's expense which will include the provision to direct-inject all liquid manure from this operation".

As mentioned above, this operation has changed from a hog operation to a beef feeder calf operation that produces solid manure. The requirement of direct-injection is therefore not applicable and will be replaced by the first paragraph of this permit that requires the operator to adhere to AOPA and its regulations. The regulations stipulate that manure has to be incorporated within 48 hours of application on cultivated land (section 24 (1), Standards and Administration Regulation).

Condition 5 states: "The applicant is to provide written verification by a qualified veterinarian that the population of the barns be maintained at no more than 150 sows. This report is to be submitted to the County of Lethbridge every 6 months".

Due to the change from a hog operation to a beef feeder calf operation this condition is no longer relevant as written. I will therefore delete this condition. However, the operator is reminded that the maximum number of feeder calves allowed at this site is 1700 head.

#### Memorandum of Agreement (2006)

While not a permit, in my view the MOA reflects the understanding of the County, the Town, the NRCB and the operator in 2006. The MOA listed several "conditions":

Condition 5 a) states: "That the development proceed in accordance with the attached plans and air-photos.

The site plan that is attached to the 2006 manure management plan shows a different layout than Mr. Liefing currently has at his CFO and is therefore inconsistent with this Application LA20007. I therefore determined that it is not useful to carry this condition forward but to replace it with the following condition that is part of the opening paragraphs of Approval LA20007:

*" The permit holder shall adhere to the descriptions contained in the filed Application LA20007 together with the site plan, engineering reports and other documents attached, unless otherwise noted in the following conditions."*

Condition 5 b) states: " That the developer adheres to the attached Manure Management Plan."

In this plan, Mr. Liefing explains that the feeder calves will produce less manure than the 150 sow farrow to finish operation. He then continues to state that all manure from his CFO will be collected as required and stockpiled at an approved location. Stockpiled manure will be land spread and cultivated once per year on the balance of the farmland.

I made several observations in respect to this plan:

First, the plan does not exclude manure spreading on weekends, indicating that this requirement was no longer of concern in comparison to the permit issued in 1991 (see above). For this reason, and as explained above, I did not carry this condition over into Approval LA20007.

Second, it does not prescribe any methods of manure incorporation. This too is in contrast to the conditions included in the previous permits. Hence, these specific conditions will be replaced by the general requirements under AOPA as explained above.

Third, the attached site plan does not point out an area where manure will be stockpiled. Mr. Liefing proposes in this current application, to construct a solid manure storage pad east of the existing EMS. I will therefore delete this part of condition 5b) and replace it with the second paragraph of this permit that states that the permit holder shall adhere to the descriptions contained in the filed Application LA20007 together with the site plan.

Fourth, manure spreading will occur once a year. In a phone conversation, Mr. Liefing explained that he plans on spreading twice a year in order to minimize manure pile up and the associated odor and flies. However, this is in conflict with the commitment that was made in the manure management plan. Nevertheless, to allow for unforeseeable weather events that might not allow for manure spreading to happen in a single event as planned, I will change this condition to a flexible condition that will include an option for Mr. Liefing to contact the NRCB to seek permission to spread manure more than once a year.

Fifth, the manure management plan is in general less stringent than what AOPA and its regulations require. For this reason I determined that this condition needs to be updated to reflect current AOPA requirements. These include nutrient limits, incorporation of manure within 48 hours on cultivated land, manure spreading setbacks and record keeping. These requirements are included in the opening paragraph of Approval LA20007 that requires the permit holder to adhere to AOPA and its regulations.