

Decision Summary LA20018

This document summarizes my reasons for issuing Approval LA20018 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20018. 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 April 8, 2020, Anker Holsteins Ltd. (Anker) submitted a Part 1 application to the NRCB to expand an existing multi species CFO by constructing a feeder calf barn (43 m x 36 m) and increasing beef calf numbers by 200 to 700. The Part 2 application was submitted on May 20, 2020. On May 26, 2020, I deemed the application complete.

Under AOPA, this type of application requires an approval. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The existing CFO is located at NW 28-010-23 W4M in Lethbridge County, roughly 2.4 km south of the Town of Nobleford. The terrain is softly rolling with an overall slope to the southeast. The closest common body of water is a Lethbridge Northern Irrigation District (LNID) canal, 13 metres away and upslope from an existing CFO pen. The canal flows parallel to the CFO on the south and east sides, and continues to flow northwards.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval LA18030. The permit allows the construction and operation of a 75 milking cow dairy (plus associated livestock) and 500 beef calves. The CFO’s existing facilities are listed in the appendix of LA20018.

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 ½ 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 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 May 26, 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, Town of Nobleford, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and the LNID. Eleven 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 LNID and Alberta Transportation. No response was received from AEP, AHS, any individuals or other non-government parties.

Ms. Hilary Janzen, supervisor of planning and development 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 a written response from Alan Harrold, general manager of the LNID and Leah Olson, development/planning technologist with Alberta Transportation.

Mr. Harrold stated in his response that the increase of livestock would require an additional water conveyance agreement. He also stated that all permanent structures must adhere to a 30 m setback to LNID infrastructure and that no manure storage or application is allowed within 30 m of any of the LNID infrastructure.

The proposed calf barn meets these setbacks.

Ms. Olson stated that a permit from Alberta Transportation is not required and that they have no concern with this application.

4. Environmental risk screening of existing and proposed facilities

When reviewing a new approval application 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, 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.) 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 Anker's existing CFO facilities were assessed in 2018. According to that assessment, the facilities posed a low risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

I also assessed the proposed new 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.

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.)

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.). I have carefully considered the information in the application along with information from referral agencies. In my view, these presumptions are not rebutted

6. Terms and conditions

Approval LA20018 specifies the new permitted livestock capacity as 700 beef calves and 75 dairy cows (plus associated livestock), and permits the construction of the new calf barn.

Approval LA20018 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 LA20018 includes conditions that:

- Set a deadline of December 31, 2021 for the approved construction to be completed
- Require written confirmation from a qualified third party that the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Anker from placing manure or livestock in the calf barn until the facility has been inspected by the NRCB following its 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 LA20018: Approval LA18030 (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 LA20018 includes all existing terms and conditions from Approval LA18030. Construction conditions that have been met are included in an appendix to Approval LA20018.

7. Conclusion

Approval LA20018 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20018.

Anker's NRCB-issued Approval LA18030 is therefore cancelled, unless Approval LA20018 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA18030 will remain in effect.

July 2, 2020

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA20018

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.”)

Anker’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 Map 11B.

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. 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 MDP 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

I) 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 new 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 CFOs 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.) At any rate, there are no country residential clusters in the immediate vicinity of the CFO, so this MDP consideration does not apply to Dogwood'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 determining consistency with the MDP (section 22(1)) and only refers to the MDP document. 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".

Ankers'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 (IV) 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)). The new barn meets 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 apply under this circumstance.

e) 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.

APPENDIX B: Explanation of conditions in Approval LA20018

Conditions in Approval LA20018

a. Construction Deadline

Anker proposes to complete construction of the proposed new calf barn by December 31, 2021. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2021 is included as a condition in Approval LA20018.

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, Approval LA20018 includes conditions requiring:

- Anker Holsteins to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the calf barn.

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 LA20018 includes a condition stating that Anker Holsteins shall not place livestock or manure in the manure storage portions of the new calf barn until NRCB personnel have inspected the calf barn and confirmed in writing that it meets the approval requirements.