

Decision Summary LA20029

This document summarizes my reasons for issuing Approval LA20029 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20029. 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 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.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On July 15, 2020, Van Der Kooij Dairy Ltd. (Van Der Kooij) submitted a Part 1 application to the NRCB to expand an existing dairy CFO.

The Part 2 application was submitted on November 20, 2020. On December 1, 2020, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 120 to 240 milking cows (plus associated dries and replacements)
- Extension of existing dairy barn – 32.0 m x 35.1 m (105 ft. x 115 ft.)
- Repurpose hayshed to house calves (calf barn) – 16.8 m x 30.5 m (55 ft. x 100 ft.)
- Extension of calf barn (repurposed hayshed) – 16.8 m x 30.5 m (55 ft. x 100 ft.)

a. Location

The existing CFO is located at NE 21-10-23 W4M in Lethbridge County, roughly 3.5 km south of the village of Nobleford. The terrain is slightly sloping to the south. The closest common body of water is a drainage ditch 30 m east of the existing liquid manure storage and 45 m from the catch basin. This ditch is connected to the local drainage system.

b. Existing permits

The CFO was originally permitted by Lethbridge County on October 13, 1998 under development permit # 98-129. This permit allowed the construction and operation of a dairy CFO with 120 dairy cows (plus associated livestock). The CFO's deemed facilities are listed in Appendix B of Approval LA20029. The CFO's grandfathered status is explained in Appendix B attached.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs 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:

- In the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a person or municipality entitled to divert water from that body within 10 miles downstream
- the municipality where the CFO is located 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 the size of this CFO the specified distance is ½ mile. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Lethbridge County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in the Sunny South News on December 1, 2020. The full application was posted on the NRCB website for public viewing. As a courtesy, eleven letters were sent to people identified by Lethbridge County as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

Under section 19 of AOPA, the NRCB also notifies persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Agriculture and Forestry (AF), Alberta Transportation, and the Lethbridge Northern Irrigation District.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

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.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Lethbridge County’s municipal development plan and land use bylaw. (See Appendix A for a more detailed discussion of the county’s planning requirements.)

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed expansion:

- Meets the required AOPA setbacks from nearby residences, with two exceptions (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS). The owners of those residences have signed written waivers of the MDS requirement to their residences
- 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/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

7. Responses from municipality and other directly affected parties

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application, and are entitled to request an NRCB Board review of the approval officer’s decision. Not all affected parties are “directly affected” under AOPA.

Municipalities that are affected parties are identified by the act as “directly affected.” Lethbridge County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Janzen, a senior development officer with Lethbridge County, provided a written response on behalf of Lethbridge County. Ms. Janzen stated that the application is consistent with Lethbridge County’s land use provisions of the municipal development plan. The application’s consistency with Lethbridge County’s municipal development plan, is addressed in Appendix A, attached.

No responses were received from any other person, or organization.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (See NRCB Operational Policy 2016-7: *Approvals*, part 6.2). Mr. and Ms. Dekker and Mr. and Ms. Lea provided an MDS waiver and are therefore directly affected parties.

8. Environmental risk of CFO facilities.

As part of my review of this application, I assessed the risk to the environment posed by the CFO’s existing manure storage facilities and manure collection areas. I used the NRCB’s environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: *Approvals*, part 8.13). The tool provides for a numeric scoring of risks, which can fall within 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.)

For the sake of efficiency, I first assessed the CFO's existing synthetic lined liquid manure storage and the catch basin using the ERST. These appear to be the CFO's highest risk facilities, because they both are the closest facilities to a common body of water. The assessment found that these facilities pose a low potential risk to groundwater and surface water. Because these are the CFO's highest risk facilities, I presume that the CFO's other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

I have considered matters that would normally be considered if a development permit were being issued. Under AOPA this means a development permit issued under the municipality's land use bylaw.

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

10. Terms and conditions

Approval LA20029 specifies the total permitted livestock capacity as 240 milking cows (plus associated dries and replacements) and permits the extension of the dairy barn, the conversion of the hay shed into a calf barn and its extension.

Approval LA20029 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 LA20029 includes conditions that:

- Set a deadline of December 31, 2023 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the dairy barn to meet the specification for category B (liquid manure shallow pits); and for the converted hay shed and its extension (calf barn) to meet the specifications for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas”
- Require written documentation that the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Van Der Kooij from placing manure or livestock in the dairy barn extension and the new calf barn (converted hay shed and its extension) until the facilities have been inspected by the NRCB following their construction
- Require the solid manure storage and the old calf barn to be decommissioned

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

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA20029: Development permit 98-129 (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 LA20029 includes all existing terms and conditions in Development permit 98-129, except the terms and conditions noted below. Construction conditions that are being carried forward are identified and included in an appendix to the new approval.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions # 3, 5, and 6 from Development permit 98-129 should be deleted and therefore are not carried forward to Approval LA20029. My reasons for deleting these conditions are provided in Appendix C.

11. Conclusion

Approval LA20029 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20029.

Van Der Kooij's deemed municipal permit 98-129 is therefore cancelled and superseded unless Approval LA20029 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed registration will remain in effect.

January 18, 2021

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determination of deemed permit status
- C. Explanation of conditions in Approval LA20029

APPENDIX A: Consistency with the municipal development plan

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

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, 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.”). “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.)

Van Der Kooij’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 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

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 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 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 Van Der Kooij'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".

Van Der Kooij'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 un subdivided 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)). 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. Nevertheless, I am on 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. At any rate, the already constructed and proposed facilities meet these setbacks.

The above subsection of the MDP also seems to clearly incorporate the Animal Control Bylaw (Bylaw17-008). Given that this is not a land use provision and 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.

I therefore conclude that this application is consistent with Lethbridge County’s MDP, a conclusion that is supported by the comments provided by Lethbridge County’s development officer.

APPENDIX B: Determination of deemed permit status

The CFO was originally permitted by Lethbridge County on October 13, 1998, under development permit # 98-129. This permit allowed the construction and operation of a dairy CFO with 120 dairy cow (plus associated livestock). This development permit is a deemed (i.e. grandfathered) registration under section 18.1(1)(b) of AOPA. The CFO's deemed facilities are listed in the appendix of Approval LA20029.

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 120 dairy cows (plus associated livestock). However the development permit does not list any facilities. I therefore determined the grandfathered footprint of this CFO using historical aerial photos. The following facilities are considered grandfathered under the AOPA:

- Dairy barn (32 m x 35 m and 24 m x 24 m)
- Synthetic lined liquid manure storage (triangular shape with a capacity of 5660 m³)
- Dry cow/heifer pens (corrals) (48 m x 27 m)
- Catch basin (31 m x 15 m)
- Dairy cow pen (west of dairy barn)(32 m x 29 m)
- Solid manure storage (12 m x 12 m)
- Calf barn (15 m x 20 m)

APPENDIX C: Explanation of conditions in Approval LA20029

Approval LA20029 includes several conditions, discussed below, and carries forward a number of conditions from Development permit 98-129 (see section 2 of this appendix).

1. New conditions in Approval LA20029

a. Construction Deadline

Van Der Kooij proposes to complete construction of the proposed dairy barn extension and the conversion of the hay shed into a calf barn and extending this calf barn 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 LA20029.

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 LA20029 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dairy barn extension to meet the specification for category B (liquid manure shallow pits), and for the converted hay shed and its extension (calf barn extension) to meet the specification of category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Van Der Kooij to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dairy barn extension and the conversion of the hay shed into a calf barn and extending this 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, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA20029 includes a condition stating that Van Der Kooij shall not place livestock or manure in the manure storage or collection portions of the new dairy barn extension and the conversion of the hay shed into a calf barn and extending this calf barn until NRCB personnel have inspected the dairy barn extension and the conversion of the hay shed into a calf barn and extending this calf barn and confirmed in writing that it meets the approval requirements.

c. Decommissioning of existing facilities

Van der Kooij also proposed to permanently close (decommission) the old calf barn and the solid manure storage pad. The decommissioning of the solid manure storage and the old calf barn shall be done in accordance with Technical Guideline Agdex 096-90 Closure of Manure Storage Facilities and Manure Collection Areas for facilities with a low risk to groundwater and surface water.

Conditions not carried forward from Development permit 98-129

Condition 3 states: "Maintenance or access to 390 acres dryland or 200 acres irrigated is required for manure utilization."

The current application to expand the existing 120 dairy cow CFO to a 240 dairy cow (plus associated livestock) CFO requires an increase in required land base available for manure spreading to 440 acres irrigated (See page 15 Technical Document LA20029). Van Der Kooij has the required land base available for spreading manure produced at this CFO. This condition is therefore superseded by the new requirements of the expansions and is no longer applicable or necessary. I therefore determined that this condition should be deleted to avoid confusion on the required land base.

Condition 6 states: "All surface runoff from outside corrals, for replacement and dry stock must be contained in the immediate area of the facilities."

This condition is included in the opening paragraph of this approval which states that the operator shall adhere to AOPA and its regulations. This condition is therefore redundant and will be deleted.