



Decision Summary LA20049

This document summarizes my reasons for issuing Authorization LA20049 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20049. 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.

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

1. Background

On December 14, 2020, Favour Holsteins Ltd. (Favour) submitted a Part 1 application to the NRCB to construct an extension to the calf barn and one corral, construct several new corrals with shelters at an existing dairy CFO.

The Part 2 application was submitted on January 22, 2021 and I deemed the application complete the same day.

The proposed construction involves:

- constructing an addition to the calf barn – 19 m x 13 m (dimension of the extension)
- constructing three corrals with shelters – 95 m x 65 m (total dimensions)
- extension of one corral (corral 4) by 20 m x 80 m (new total dimensions: 46 m x 80 m)
- decommissioning three corrals (corrals 1-3)

a. Location

The CFO is located at NW 36-10-22 W4M in Lethbridge County, roughly two km northwest of the village of Shaughnessy, Alberta. The topography at the site is flat. The closest common body of water is an ephemeral creek that meanders along the west side of the CFO towards the northeast. The closest part of this creek is 113 m away from this CFO.

b. Existing permits

The 200 dairy cow (plus associated dries and replacements) CFO is permitted under Approval LA17003.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as the municipality where the CFO is located or is to be located

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

3. Notice to other persons or organizations

Under NRCB policy, the NRCB may also notify 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 (LNID).

The NRCB received responses from Alberta Transportation, AEP, AF, and the LNID.

- Leah Olsen, planning technologist with Alberta Transportation, stated in her response that a permit from her department is needed. The applicant has since applied and received a permit.
- Jeff Gutsell, hydrogeologist with AEP, stated that he has no concerns with this application.
- Perry Abramenko, inspector with AF, stated that the proposed construction is in line with dairy industry regulations.
- Alan Harrold, general manager of the LNID, wrote that the LNID does not oppose the application but reminded the applicant of all applicable setbacks from irrigation works. These include setbacks for construction, manure stockpiling and manure spreading.

4. Municipal Development Plan (MDP) consistency

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

5. AOPA requirements

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

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS with an exemption under Section 3(5)(c) of the Standard and Administration Regulation)
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 8, the application meets all relevant AOPA requirements.

6. Response from the municipality

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 facilities are located within its boundaries.

Ms. Hilary Janzen, a senior planner 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 the 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 reminded the NRCB to ensure that these setbacks have been met. These setbacks have been met.

7. Environmental risk of facilities

When reviewing a new authorization application for an existing CFO, NRCB approval officers assess the CFO’s existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB’s environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST 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 supported 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 Favour’s existing CFO facilities were assessed in 2017 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

Proposed manure storage facilities/manure collection areas (MSF/MCA) which clearly meet or exceed AOPA requirements are assumed to pose a low risk to surface and groundwater.

8. Terms and conditions

Authorization LA20049 permits the construction of the calf barn extension, three corrals with shelters and the increase in the size of corral 4. It also requires the decommissioning of corrals 1 to 3.

Authorization LA20049 contains terms that the NRCB generally includes in all AOPA authorizations, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Authorization LA20049 includes conditions that generally address construction deadlines, construction inspections, and decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA20049 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20049.

Authorization LA20049 must be read in conjunction with Approval LA17003 which remains in effect.

March 11, 2021

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA20049

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization or amendment of an authorization 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 22(2.1) 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.)

Favour’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 section 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 authorization which did not trigger public notification.

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.) Favour meets all applicable MDS requirements.

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".

Favour'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)). 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 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. At any rate, all facilities, existing and proposed 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: Explanation of conditions in Authorization LA20049

a. Decommissioning of existing corrals

Favour proposes to close existing corrals to house dries and replacements (see site plan in Technical Document LA20049). A condition will therefore be included that requires Favour to decommission these corrals according to Technical Guideline Agdex 096-90 (updated January 2018) – Closure of Manure Storage Facilities and Manure Collection Areas within one year after construction of the new corrals with shelter.

b. Construction Deadline

Favour proposes to complete construction of the proposed new dairy barn extension, the new corrals with shelter and the extension of corral 4 by March 2021. This time-frame seems rather short for the proposed scope of work. In order to account for unforeseeable circumstances, I will extend the construction completion deadline to December 31, 2023. Therefore, the deadline of December 31, 2023, is included as a condition in Authorization LA20049.

c. Post-construction inspection and review

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Authorization LA20049 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the calf barn extension to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Favour to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area of the calf barn extension meets the required specifications.

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. Authorization LA20049 includes a condition stating that Favour shall not place livestock or manure in the manure storage or collection portions of the new calf barn extension, the expanded corral 4 and the new corrals with shelter until NRCB personnel have inspected the facilities and confirmed in writing that they meet the authorization requirements.