



Decision Summary LA20037

This document summarizes my reasons for issuing Approval LA20037 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20037. 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 approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On September 1, 2020, AVE Farms Ltd. submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on February 25, 2021. On March 9, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing beef finisher numbers from 5,400 to 8,000
- Constructing a new row of feedlot pens – 280 m x 70 m
- Relocating existing pens – 70 m x 24 m

a. Location

The existing CFO is located at SE 9-12-21 W4M in Lethbridge County, roughly 10 km north of Picture Butte, Alberta. The terrain is flat. The closest surface water body is an irrigation canal 1.9 km to the west.

b. Existing permits

To date, the NRCB has issued Approval LA15016 and Authorization LA17015. Collectively, these NRCB permits allow AVE Farms to construct and operate a 180 sow farrow to finish, 40 sow farrow to wean, and 5,400 beef finisher CFO. The CFO's existing permitted facilities are listed in the appendix to Approval LA20037.

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:

- 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 two miles. (The NRCB refers to this distance as the “notification 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 a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Sunny South News on March 9, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, thirty five letters were sent to people identified by Lethbridge County as owning or residing on land within the notification radius.

3. Notice to other persons or organizations

Under section 19 of AOPA, 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 Transportation, and the Lethbridge Northern Irrigation District.

4. Alberta Land Stewardship Act (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. (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 one exception (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS). The owners of that residence have 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 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.

7. Responses from the municipality, referral agencies, 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. 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 Lethbridge County's municipal development plan is addressed in Appendix A, attached.

The NRCB received responses from Gail Williamson, public health inspector with AHS; Jeff Gutsell, hydrogeologist with AEP; Leah Olson, development/planning technologist with Alberta Transportation, and Alan Harrold, general manager with the LNID

Ms. Williamson stated in her response that AHS has no concerns with the application.

Mr. Gutsell stated that he assumes that AVE Farms obtains water from the LNID and reminded the applicant that he is required to provide AEP with proof of access to sufficient water for the expansion. A copy has been forwarded to the applicant for his information and action.

Ms. Olsen stated that a permit from her department is not required and that they have no concerns.

Mr. Harrold stated in his response that an additional water conveyance agreement is needed to cover the increased water requirements. He also reminded the applicant to adhere to all applicable setbacks to the LNID's infrastructure. A copy of the letter was forwarded to the applicant for his information and action.

The NRCB received responses from three individuals to the application notice. All of the three people who submitted responses own or reside on land within the two mile notification radius. Because of their location within this radius, and in accordance with NRCB policy, they are presumed to be directly affected by the application.

The directly affected parties raised concerns regarding nuisance impacts, road use, health, and cumulative effects of CFOs in this area (see Appendix B for further details).

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. Jakober, who owns a residence within the MDS, provided an MDS waiver and is therefore considered to be a directly affected party.

8. Environmental risk of CFO facilities

When reviewing a new approval 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 AVE Farms' existing CFO facilities were assessed in 2018 using the ERST. According to that assessment, the facilities posed a low potential 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.

Because the proposed facilities all meet AOPA requirements it is presumed that they will pose a low risk to surface water or groundwater. Therefore an ERST scoring was not done for these facilities.

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.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

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

I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land. Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan and land use bylaw (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA20037 specifies the cumulative permitted livestock capacity as 180 swine farrow to finish, 40 swine farrow to wean and 8,000 beef finishers and permits the construction of the new feedlot pens and relocation of existing pens.

Approval LA20037 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 LA20037 includes conditions that generally address construction deadline(s) and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA20037: Approval LA15016 and Authorization LA17015 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbors and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. 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. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. All conditions from these two permits are carried forward into the new approval.

11. Conclusion

Approval LA20037 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20037.

AVE Farms' Approval LA15016 and Authorization LA17015 are therefore superseded, and their content consolidated into this Approval LA20037, unless Approval LA20037 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA15016 and Authorization LA17015 will remain in effect.

May 3, 2021

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Explanation of conditions in Approval LA20037

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.)

AVE Farms’ 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

l) 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 six 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 AVE Farms' 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 20(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".

AVE Farms' 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 the site of a CFO, rather than the use of 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, the 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. Concerns raised by directly affected parties

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

Martina, Karl, and Dirk Bexte
NW 33-11-21 W4M

Therefore, under NRCB policy, these individuals are presumed to be “directly affected” by the application. See NRCB Operational Policy 2016:7 – *Approvals*, part 6.2.

The directly affected parties raised the following concerns: nuisance impacts (odor, noise, dust), road conditions, health issues, and cumulative effects of CFOs and enjoyment of property.

Approval officer comments and conclusions:

- Nuisance impacts

AOPA’s minimum distance separation (MDS) requirements are a proxy for minimizing odours, flies, and other nuisance effects from CFOs. The proposed CFO can meet the MDS to all neighbouring residences other than one residence. The owner of this residence signed a waiver, waiving the required minimum distance separation between the CFO and his residence. Typically, it is presumed that nuisance effects from the CFO facilities are acceptable if the MDS requirement has been met.

It is true that there will be odours resulting from the land application of manure. However, these odours and dust emissions are normally of short duration and typically occur once or twice per year. In order to limit the nuisance impact of manure application on direct seeded or tame forage land, Section 24 of the Standards Regulation precludes manure spreading without incorporation within 150 m of residences. Manure that is spread on conventionally tilled land must be incorporated within 48 hours. Setbacks and incorporation can help to minimize normal odours from manure spreading. Incidences of non-compliance can be reported to the NRCB’s 24 hour a day response line (1-866-383-6722 or 310-0000 toll free line).

- Road conditions (deteriorating roads and dust due to heavy traffic)

The NRCB does not have direct responsibility for regulating road use. Section 18 of the *Municipal Government Act* gives counties “direction, control and management” of all roads within their borders. Because of this it would be impractical and inefficient for the NRCB to attempt to manage road use through AOPA permits. (See Operational Policy 2016-7: *Approvals*, part 8.9.)

- Negative impact on health

The application was sent to AHS for their comments. In addition, I sent the statement of concern to AHS to gather further, more specific input. In her response, the responsible AHS public health inspector stated, that she does not have any health-related objections at this time.

- Cumulative effects of CFOs in the area and enjoyment of property

The directly affected parties commented on the increased presence of CFOs in the area that impede the enjoyment of their property (“quiet and peaceful surrounding”) due to the resulting constant noise from heavy machinery and hauling equipment.

Applications for new or expanding CFOs are evaluated on an individual basis. There are no provisions in AOPA that set out parameters or limits to evaluate cumulative effects of CFO development in any specific area. This application does meet all AOPA requirements in respect to distance to neighbours as explained above as well as meets the land zoning requirements set out by the county.

APPENDIX C: Explanation of conditions in Approval LA20037

Approval LA20037 includes several conditions, discussed below, and carries forward all of the conditions from Approval LA15016 and Authorization LA17015. Construction conditions from historical Approval LA15016 and Authorization LA17015 that have been met are identified in the appendix to Approval LA20037.

1. New conditions in Approval LA20037

a. Construction deadline

AVE Farms proposes to complete construction of the proposed new feedlot pens and relocation of existing feedlot pens by December 30, 2021. This time-frame seems short for the proposed scope of work. The deadline is therefore set as December 31, 2022 and is included as a condition in Approval LA20037.

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 LA20037 includes conditions stating that AVE Farms shall not place livestock or manure in the manure storage or collection portions of the new and relocated feedlot pens until NRCB personnel have inspected the new and relocated feedlot pens and confirmed in writing that they meet the approval requirements.

c. Decommissioning of existing feedlot pens

AVE Farms proposes to relocate pens from the southeast row to north of the catch basin. A condition will therefore be included that requires AVE Farms to decommission the pens that are relocated according to Technical Guideline Agdex 096-90 (updated January 2018) – Closure of Manure Storage Facilities and Manure Collection Areas- within one year of constructing the relocated pens.