

## Decision Summary LA21019

This document summarizes my reasons for issuing Authorization LA21019 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21019. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://www.nrcb.ca) under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an authorization. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On March 25, 2021, Teunis Beijer (Beijer) submitted a Part 1 application to the NRCB to construct a berm in an existing lagoon (28 m x 20 m x 3.3 m) and a concrete manure transfer pit (1.2 m x 1.8 m x 4.5 m) at an existing dairy CFO.

After deeming the permit complete, I discussed the file with the NRCB's compliance division and it was decided a permit was not required for the addition of the berms in and around the lagoon as the grandfathered liner was not to be disturbed and that the work could occur as part of general upkeep and maintenance at the CFO. The CFO would be maintaining AOPA's 9 month manure storage requirements. The proposed maintenance (including a berm within the existing facility and a proposed surface water exclusion berm) would increase the available winter storage volume of the EMS and help satisfy the AOPA requirement that the EMS be filled in the lower quarter. There is to be no increase to the depth or footprint of the CFO as a result of the proposed works. An NRCB permit is however, required for the proposed manure transfer pit.

Beijer has received no permits from the NRCB but currently holds a deemed registration under the AOPA which includes municipal permits 99-62 and 97-171. These permits at minimum, state the dairy has a capacity for at least 100 dairy cows (plus associated dries and replacements). As the operation meets the definition of a CFO under the AOPA, I am satisfied that an authorization can be issued for the proposed manure transfer pit. This determination is not an official grandfathering determination under AOPA aside from confirming that the site holds at least a deemed registration under the act. It should be stated that Beijer claims the deemed capacity of the CFO to be 130 milking cows (plus associated dries and replacements).

The Part 2 application was submitted on April 8, 2021 and was determined complete the same day.

#### a. Location

The proposed manure transfer pit is located at SE 15-10-22 W4M in Lethbridge County, roughly four kilometres northwest of Diamond City. The terrain is flat to gently undulating.

## **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
- 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 municipality entitled to divert water from that body within 10 miles downstream
- any other municipality whose boundary is within a notification distance. In this case, the notification distance is 0.5 miles from the CFO

A copy of the application was sent to Lethbridge County, which is the municipality where the CFO is located. The CFO is not located within 100 m of a river, stream or canal and not within 0.5 miles of another municipality so no other municipalities needed to be notified.

## **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).

I received responses from AEP, Alberta Transportation, and the LNID. No concerns were expressed though the LNID response relating to water allocation however, their response was forwarded to the applicant for their information.

## **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:

- Considering S3(5)(b) of the Standards and Administration Regulations, 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 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. Responses from 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 in their municipal development plan. The application's consistency with Lethbridge County's municipal development plan is addressed in Appendix A, attached.

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

## **7. Environmental risk of 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](http://www.nrcb.ca).)

For the sake of efficiency, I first assessed the CFO's existing earthen liquid manure storage using the ERST. This appears to be the CFO's highest risk facility. The assessment found that the earthen liquid manure storage poses a low potential risk to groundwater and surface water. As this is the CFO's highest risk facility, 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.

## **8. Terms and conditions**

Authorization LA21019 permits the construction of the proposed manure transfer pit.

Authorization LA21019 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 LA21019 includes conditions that generally address construction deadline, and document submission. For an explanation of the reasons for these conditions, see Appendix B.

## **9. Conclusion**

Authorization LA21019 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21019.

Authorization LA21019 must be read in conjunction with Beijer's deemed registration, including municipal development permits #99-62 and #97-171.

May 12, 2021

(Original signed)  
Joe Sonnenberg  
Approval Officer

### **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA21019

## APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for 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.)

Beijer’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 is titled Confined Feeding Operations; subsection 6.6.3 lists several policies for CFOs, as relevant here:

a) Urban Fringe: *“The County shall exclude the development of CFOs in the Urban Fringe land use districts.”*

This CFO is not located within this zoning category as shown on Map 11B. I therefore conclude the application is consistent with this provision. The county response also supports this conclusion and has no concerns with this application.

b) Impacts

This policy refers to the county lobbying for funding to counteract the impact of CFOs on county infrastructure. Municipal funding for transportation infrastructure 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 minimum distance separation (MDS) for residential development in the vicinity of CFOs. Development permits for residential development are under the jurisdiction of the respective municipality, not the NRCB. 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 further.

*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 and seven of the decision summary 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 for 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 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.) As Beijer is not increasing livestock numbers and there will be no decrease in the distance to neighbouring residences, the application meets AOPA 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. Lethbridge County raised no concerns relating to the application.

IV) CFOs “shall not be approved in the areas shown and designated on Figure 11B as exclusion areas”.

Beijer’s CFO is not located within any of the designated CFO exclusion areas. As such, this application is consistent with the applicable Lethbridge County planning documents.

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, this is not a new or expanding CFO and 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 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 Authorization LA21019**

Authorization LA21019 includes several conditions, discussed below:

### **1. Conditions in Authorization LA21019**

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

Beijer proposes to complete construction of the proposed new manure transfer pit by December 29, 2021. I think a timeline allowing for two entire building seasons would be more appropriate considering the scope of work. The deadline of December 29, 2022 is included as a condition in Authorization LA21019.

#### **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 facilities are constructed according to the required design specifications. Accordingly, Authorization LA21019 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the manure transfer pit to meet the specification for category B (liquid manure shallow pits as described in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas."
- b. Beijer to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the manure transfer pit.

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 LA21019 includes a condition stating that Beijer shall not place or manure in the manure storage or collection portions of the manure transfer pit until NRCB personnel have inspected the pit and confirmed in writing that it meets the authorization requirements.