



## Decision Summary LA21006

This document summarizes my reasons for issuing Authorization LA21006 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21006. 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 February 8, 2021, Kolk Farms Ltd. – Brad Deleeuw on behalf of Kolk Farms (Kolk Farms) submitted a Part 1 application to the NRCB. The application is to relocate pen space by extending the east row of pens on the east side by 7,750 m<sup>2</sup> (19 m x 408 m) (as shown in Technical Document LA21006) and to construct a synthetic lined catch basin (73 m x 73 m x 1.88 m) at an existing beef CFO.

The Part 2 application was submitted on March 16, 2021. On March 17, 2021, I deemed the application complete.

#### a. Location

The existing CFO is located at SW 3-11-20 W4M in Lethbridge County, roughly eight kilometres east of the town of Picture Butte. The terrain is flat. The closest common body of water is an open irrigation canal to the north and east that will be upgraded to an underground closed pipeline system. Following the upgrade, the nearest open part of the canal will be approximately 124 metres away from any manure collection or storage area.

#### b. Existing permits

Kolk Farms currently holds a deemed permit, including development permit 98-02, that allows the expansion of an existing 6,500 head beef finisher feedlot by an additional 3,000 head to a total of 9,500 beef finishers. This permit is a deemed permit under the act (section 18.1(1)(c)).

### 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 Transportation, and the Lethbridge Northern Irrigation District.

The NRCB received a response from Leah Olsen, a planning/development technologist with Alberta Transportation. In her response, Ms. Olsen stated a permit form her department is not required and that there are no concerns in respect to this development.

The NRCB also received a response from Alan Harrold, general manager of the LNID. Mr. Harrold stated that the LNID granted Kolk Farms permission to relocate and pipeline portions of the irrigation canal. He also stated that an additional water conveyance agreement is not required and reminded the applicant to adhere to all applicable setbacks for infrastructure and manure spreading to irrigation works.

No responses were received from AHS or AEP.

#### **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 known as the "minimum distance separation" requirements, or MDS), because the proposed construction is away from any neighbors located within the MDS and the annual manure production does not change. For that reason waivers are not required (Section 3(5)(c) Standards and Administration Regulation)
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water with the relocation and piping of the irrigation canal
- 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

#### **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 facility 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.

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).)

The assessment found that the existing facilities (feedlot pens, catch basin south and north) pose a low potential risk to groundwater and surface water.

I also assessed the potential risk of the proposed relocated feedlot pen space and the synthetic lined catch basin. Both facilities pose a low risk to groundwater and surface water.

## **8. Terms and conditions**

Authorization LA21006 permits the construction of the synthetic lined catch basin and the relocation of feedlot pen space as outlined in Technical Document LA21006. It also requires the existing pen space that will be relocated to be decommissioned.

Authorization LA21006 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 LA21006 includes conditions that generally address construction deadlines, document submission and construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

## **9. Conclusion**

Authorization LA21006 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21006.

Authorization LA21006 must be read in conjunction with Kolk Farms' deemed development permit (including municipal permit #98-20) which remains in effect.

May 19, 2021

(original signed)  
Carina Weisbach  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA21006

## 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.

Under section 20.2 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 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.)

Kolk 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 county. 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.

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 authorization which does not require public notification under AOPA.

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, the application was not for an expansion. Therefore the MDS will not change as a result of the approval of this application. Apart from that, there are no country residential clusters in the immediate vicinity of the CFO, so this MDP consideration would not apply to Kolk 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 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”.

Kolk 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 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 not address it further.

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 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: Explanation of conditions in Authorization LA21006**

Authorization LA21006 includes several conditions, discussed below:

### **a. Construction above the water table**

Section 9(2) of the Standards and Administration Regulation under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

Based on the information provided, the proposed synthetic lined catch basin meets the one metre requirement of section 9(2) Standards and Administration Regulation. However, because the height of the water table can vary over time, a condition is included requiring Kolk Farms to cease construction and notify the NRCB immediately if the water table is encountered during construction.

### **b. Construction Deadline**

Kolk Farms proposes to complete construction of the proposed new catch basin and extension to feedlot pens by December 31, 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2022 is included as a condition in Authorization LA21006.

### **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 LA21006 includes conditions requiring:

- a. Kolk Farms to provide a stamped professional engineer’s completion report certifying that the feedlot pen extension was constructed with the same liner material as that used for hydraulic conductivity testing and that the feedlot pens meet AOPA liner requirements for solid manure storages.
- b. Kolk Farms a completion report, stamped by a professional engineer, certifying that the catch basin has been constructed in accordance with the proposed design. At a minimum the report must confirm that the catch basin is constructed in the approved location; confirm the size of the catch basin, including depth below grade; confirm that the synthetic liner was installed in accordance with the liner supplier’s requirements, including under membrane surface preparation and proper sealing at all seams.

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. Authorization LA21006 includes a condition stating that Kolk Farms shall not place livestock or manure in the manure storage or collection portions of the new feedlot pen space and allow runoff to enter the new catch basin until NRCB personnel have inspected the facilities and confirmed in writing that they meet the authorization requirements.

**d. Decommissioning of the relocated pen space**

Kolk Farms proposed to relocate existing pens space. To avoid an increase in available pen space, existing pen space must be decommissioned. The pens that are proposed to be decommissioned (as shown on Technical Document LA21006) shall be decommissioned within three month after the post construction inspection of the relocated pen space. The decommissioning is to occur following Technical Guideline Agdex 096-90 for low risk solid manure storages.