

Decision Summary LA21043

This document summarizes my reasons for issuing Authorization LA21043 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21043. 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 August 10, 2021, Kasko Cattle Co. Ltd. (Kasko) submitted a Part 1 application to the NRCB to enlarge an existing catch basin to new dimensions of 55 m x 55 m x 3 m at an existing beef CFO.

The Part 2 application was submitted on October 12, 2021 and I deemed the application complete the same day.

a. Location

The proposed catch basin is located at W ½ 4-10-20 W4M in Lethbridge County, roughly 6.4 km northwest of Coaldale. The topography of the site is generally flat with a gentle slope to the south.

b. Existing permits

The CFO holds a grandfathered Lethbridge County development permit # 99-67 with a capacity for 5,000 beef finishers, as well as NRCB issued Authorization's LA13019 and LA07008.

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 1.5 miles from the CFO

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 St. Mary River Irrigation District (SMRID).

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 nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has 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 groundwater protection requirements for 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 catch basin 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 their 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 asked that the NRCB ensures the application meets these setbacks, which it does.

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, 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 Kasko's existing CFO facilities were assessed in 2013. Since this time, the NRCB has updated its risk screening tools and process. For this reason, I reassessed the risks posed by the CFO's existing facilities. My reassessment found that the existing CFO and the expanded catch basin pose a low potential risk to groundwater and surface water.

8. Terms and conditions

Authorization LA21043 permits the construction of the expanded catch basin.

Authorization LA21043 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 LA21043 includes conditions that generally address the construction deadline and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA21043 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21043.

Authorization LA21043 must be read in conjunction with Kasko's deemed approval, including municipal development permit #99-67, and NRCB previously issued Authorizations LA07008 and LA13019 which remain in effect.

December 1, 2021

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA21043

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.)

Kasko’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 does not require 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 Kasko 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".

Kasko'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 LA21043

Authorization LA21043 includes several conditions, discussed below:

1. Conditions in Authorization LA21043

a. Construction Deadline

Kasko proposes to complete construction of the proposed new catch basin by December 30, 2022. This time-frame is considered unreasonable for the proposed scope of work as it only allows for one construction season and does not account for the potential of construction delays which could result from weather or related delays. The deadline of December 30, 2023 is therefore included as a condition in Authorization LA21043 allowing for two full construction seasons.

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, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization LA21043 includes a condition stating that Kasko shall not allow manure impacted runoff to enter the expanded catch basin until NRCB personnel have inspected the catch basin and confirmed in writing that it meets the authorization requirements.