

Decision Summary LA22032

This document summarizes my reasons for issuing Authorization LA22032 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22032. 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 May 16, 2022, Hummel Dairy Ltd. (Hummel Dairy) submitted a Part 1 application to the NRCB to reconstruct a calf barn (30.5 m x 18.3 m x 0.432 m below ground level) at an existing dairy CFO.

The Part 2 application was submitted on July 26, 2022 and I deemed the application complete the same day.

a. Location

The existing CFO is located at SE 11-10-23 W4M in Lethbridge County, roughly 7.5 km northwest of the Village of Coaldale. The terrain is sloping to the southwest.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix B attached. The deemed facilities are listed in the appendix to Authorization LA22032.

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

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

None of the CFO's facilities are within 100 m of a bank of a river, stream or canal.

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, Forestry and Rural Economic Development (AFRED), and Alberta Transportation (AT).

The NRCB received responses from Mr. Jeff Gutsell, a hydrogeologist with AEP and Ms. Leah Olson, a planning/development technologist with AT. Mr. Gutsell stated that he has no concerns with this application. Ms. Olsen stated that a permit from her department is not required and that she has no concerns with this application.

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). The MDS will not change because the calf barn will be constructed within the existing CFO footprint
- 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

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, supervisor for planning and development 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.)

For the sake of efficiency, I first assessed the CFO's existing dairy barn and dry cow pens using the ERST. These appear to be the CFO's highest risk facilities, because the dairy barn is the deepest facility, and therefore with the highest potential to contaminate groundwater, and the dry cow pens are an open facility with the highest potential for surface water runoff. The assessment found that these facilities pose a low potential risk to groundwater and surface water. Because these are the CFO's highest risk facilities, I presume that the CFO's other existing facilities, including the new calf barn, 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. Because the proposed calf barn meets AOPA liner requirements and is a covered facility, I presume that the risk to surface water and groundwater is low.

8. Terms and conditions

Authorization LA22032 permits the construction of the calf barn.

Authorization LA22032 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 LA22032 includes conditions that generally address a construction deadline, document submission, construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix C.

9. Conclusion

Authorization LA22032 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22032.

Authorization LA22032 must be read in conjunction with Hummel Dairy's deemed approval which remains in effect.

August 25, 2022

(Original signed)

Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Grandfathering Determination
- C. Explanation of conditions in Authorization LA22032

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.)

Hummel Dairy’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 March 2022, under Bylaw #22-001.

The relevant section in the MDP that governs CFOs is section 3 Intensive Livestock/Confined Feeding Operations. The policies relevant to this application are:

3.1 and 3.2 stipulate that establishment/development of new CFOs within the MDP CFO exclusion areas (Map 2 of the MDP), exclusion zones identified in an IDP, or identified residential growth center are not permitted.

This CFO is not a new CFO and is also not located within any of the exclusion areas. These policies (3.1 and 3.2) therefore do not apply.

3.3 states that the expansion of existing CFOs within the county’s CFO exclusion zones is permissible if an IDP exists which allows for such.

This CFO is not within any exclusion zones identified by an IDP or the county’s MDP.

3.4 elaborates on municipal plan consistencies of neighbouring municipalities and is therefore not a land use provision. I will therefore not further discuss this section.

3.5 states that “CFOs shall not be supported to establish or expand within the environmentally sensitive areas as shown in the *Cotton Wood Report: County of Lethbridge: Environmentally Sensitive Areas in the Oldman River Region (1988)*.”

The CFO is not within any of the identified areas. Therefore, this application is consistent with this policy.

3.6 states that all setbacks should be adhered to (e.g. property lines, road setbacks)

The calf barn meets the applicable setbacks. Therefore, this application is consistent with this policy.

3.7 states that CFOs are only permitted in 'Rural Agriculture' land use districts and cannot be established on properties smaller than 80-acres.

The CFO is located within a 'rural agriculture' land use district. Therefore, this application is consistent with this part of the policy. The second part of this provision is referring to what sites are acceptable to establish a CFO. Apart from the fact that this is not a new CFO, I cannot regard this provision as it appears to be 'a test or condition related to the site for a CFO' (section 20(1.1)).

Sections 3.8, 3.9, 3.10, and 3.11 are not considered land use provisions because they either deal with conditions under which CFOs are allowed to continue to operate (section 3.8), manure application (section 3.9), reciprocal MDS (section 3.10), or county-NRCB interaction (section 3.11).

For these reasons, I conclude that the application is consistent with the land use provisions of Lethbridge County's MDP that I considered. This conclusion is supported by the County's response.

APPENDIX B: Determination of deemed permit status

Hummel Dairy claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA and is operating at 250 dairy cows (plus associated dries and replacements). I am treating that as a request for a determination of deemed permit status. Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO.

The investigation was to determine the capacity of the CFO that was in place on January 1, 2002.

The CFO is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities were at a size that was at or greater than the permit threshold sizes under AOPA. (See NRCB Operational Policy 2016-6: *Public Notice on Grandfathering Decisions*, part 1.)

To determine whether the CFO meets these two criteria, the NRCB must consider, among other things:

- a. What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics
- b. How each of those facilities was being used on January 1, 2002

I found that the livestock type and capacity of the structures could reliably be determined by viewing historical aerial photos and records provided by the owner or operator. Accordingly, under section 11(3) of the Administrative Procedures Regulation, I waived the notice that might otherwise be required for determination of a deemed permit.

During my site visit on August 5, 2022, I inspected the site. Although I did not enter the barn due to bio security reasons, there were no visual signs that would indicate modifications to increase the number of freestalls from the present 254 stalls in the barn.

I also compared aerial pictures taken between 1999 and 2003 (Valtus and google earth) with recent aeriels and determined that the footprint of the facilities at this CFO have not changed. I have also determined, based on the facilities present at this CFO, that this dairy has housed its own dry cows and raised replacement stock. A list of all existing facilities has been included in an appendix to Authorization LA22032.

Based on these findings, the CFO is considered to have a deemed approval and a deemed capacity of animal 250 dairy cows (plus associated dries and replacements) which is consistent with the number of dairy cows claimed by Hummel Dairy.

APPENDIX C: Explanation of conditions in Authorization LA22032

a. Construction Deadline

Hummel Dairy proposes to complete construction of the proposed new calf barn by January 31, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of January 31, 2025 is included as a condition in Authorization LA22032.

b. Decommissioning

Hummel Dairy proposed to tear the existing calf barn down and reconstruct the new barn in the same place as the existing barn. The decommissioning shall occur according to the requirements in Technical Guideline Agdex 096-90 for manure collection areas posing a low risk to groundwater and surface water.

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 LA22032 includes a condition requiring:

- a. Hummel Dairy to provide evidence or written confirmation from a qualified third party that the concrete used for the calf barn meets the required specifications as proposed in their applications.

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 LA22032 includes a condition stating that Hummel Dairy shall not place livestock or manure in the manure storage or collection portions of the new calf barn until NRCB personnel have inspected the calf barn and confirmed in writing that it meets the authorization requirements.