



Decision Summary LA22009

This document summarizes my reasons for issuing Approval LA22009 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22009. 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 January 7, 2022, Green Life Feeds Ltd. (Green Life) submitted a Part 1 application to the NRCB to reduce permitted animal numbers from 7,000 head to 1,700 beef finishers and to reduce the footprint of an existing beef CFO.

The reason for the proposed reduction of permitted animals at this CFO is to meet a reciprocal minimum distance separation (MDS) requirement by Lethbridge County for a subdivision (residential development).

The reduction of the existing footprint includes the decommissioned pen area (73 m x 204 m) (see Technical Document LA22009 – yellow area).

The Part 2 application was submitted on August 18, 2022. On August 30, 2022, I deemed the application complete.

a. Location

The existing CFO is located at NW 36-10-20 W4M in Lethbridge County, roughly 14 km north of the Town of Coaldale. The terrain is flat at the immediate site. The outer limits of the Oldman River coulee system is approximately 110 m south of the CFO.

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. That deemed permit includes development permits 92-93 and 97-105, issued by Lethbridge County in 1992 and 1997 respectively. This deemed approval allows for the construction and operation of a 7,000 head beef CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix C attached. The deemed facilities are listed in the appendix to Approval LA22009.

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:

- 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 person or municipality entitled to divert water from that body

- within 10 miles downstream
- 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 1.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Lethbridge County, which is the municipality where the CFO is located. None of the remaining parts of the CFO is within 100 m of a bank of a river, stream, or canal.

The NRCB gave notice of the application by public advertisement in the Sunny South News on August 30, 2022. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. As a courtesy, 32 letters were sent to people identified by Lethbridge County as owning or residing on land within the affected party 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 Agriculture, Forestry and Rural Economic Development (AFRED), Alberta Transportation (AT), and the Lethbridge Northern Irrigation District (LNID).

The NRCB received responses from Jeff Gutsell, hydrogeologist with AEP; Leah Olson, planning technologist with AT; Sandip Gill, public health inspector with AHS; and Alan Harrold, manager of the LNID.

Mr. Gutsell, AEP, stated in his response that there is an existing license to divert water from the Oldman River that would cover the needs of this CFO. Ms. Olson, AT, stated that a permit from her department is not required. Mr. Gill, AHS, stated that they do not foresee any new public health problems. Mr. Harrold, LNID, stated in his response that there are no current water conveyance agreements with the applicant (Green Life). He then continued to state that fees will be charged unless Green Life provides proof that an alternative water source is available. A copy of the letter has been forwarded to the applicant for his information and action.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable 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 modification 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, this is a grandfathered CFO to which AOPA requirements do not apply as stated in section 20(1) subsection (1.2)(a) AOPA. There is no new construction proposed.

7. Responses from municipality 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 CFO 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.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB did not receive any responses from individuals or other parties.

8. Environmental risk of CFO 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.)

The assessment found that the existing feedlot pens pose a low potential risk to groundwater and surface water.

9. Other factors

Because this is an existing CFO some of the existing pens have been decommissioned, and the permitted animal numbers will be reduced to a total of 1,700 beef finishers, a detailed analysis on the impact on natural resources administered by provincial departments has not been done.

Nevertheless, as required under section 20(1) AOPA, I considered the effects of the proposed changes 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 is a reduction of the existing, grandfathered CFO. In my view, this presumption is not rebutted because there were no risks identified and any risks would be reduced as a result of the size reduction.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed change is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted because the reduction of animal numbers will result in a reduction of the overall effects of this CFO.

I also presumed that the proposed modification is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.).

10. Terms and conditions

Approval LA22009 specifies the permitted livestock capacity as 1,700 beef finishers.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA22009: municipal development permits # 97-105 and 92-93 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours 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. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA22009 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22009.

Green Life's deemed approval, including municipal development permits # 97-105 and 92-93, issued by Lethbridge County, are therefore superseded, and their content consolidated into this Approval LA22009, unless Approval LA22009 is held invalid following a review and decision by the NRCB's board members or by a court, in which case municipal development permits # 97-105 and 92-93 will remain in effect.

November 1, 2022

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22009
- C. Determination of deemed permit status

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.)

Green Life’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 bordering but not in an environmentally significant area of provincial significance. Therefore this application is consistent with this policy. However, it is in a paleontological sensitive zone of high importance (Map 4 of the report). Having said that, no prehistoric sites are recorded in the immediate area where the CFO is located (Map 3 of the report).

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

The feedlot pens are grandfathered. However the existing feedlot pens meet 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 provision 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.

APPENDIX B: Explanation of conditions in Approval LA22009

Approval LA22009 includes no conditions other than those carried forward from municipal development permits 92-93 and # 97-105 (see sections a and b of this appendix). Construction conditions from historical municipal development permits 92-93 and # 97-105 are listed in the appendix to Approval LA22009.

Conditions not carried forward

Approval LA22009 includes the terms and conditions in development permits #92-83 and 97-105, except those noted below.

a) from development permit 92-83

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition #2 and subsequently condition #1 of the 'Certificate of Compliance' should be deleted and therefore are not carried forward to Approval LA22009. My reasons for deleting these conditions:

Condition 2 states:” *The applicant is required to obtain a “Certificate of Compliance” as issued by Alberta Agriculture.*”

The previous owner – Takeda – has obtained this certificate which recommended two conditions. The first conditions will be discussed below, the second comment/condition will be carried over as construction condition into the appendix of the Approval. Because the certificate was obtained, this condition can be deleted.

Condition 1 of the Certificate of Compliance states:” Proper management of animal wastes and annual removal from pens.”

This condition will be removed because currently, manure management is regulated by AOPA and its regulations. The relevant sections clearly set out where manure can be stored and what rules apply to manure spreading. Hence, these are enforceable in comparison to the rather vague condition in the development permit. I therefore determined that this condition should be deleted and is replaced by the opening statement in this approval which states that the permit holder shall adhere to AOPA and its regulations.

b) from development permit 97-105

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #4 and 6 will not be carried forward for the following reasons:

Condition 4 states:” *A minimal amount of manure is to be applied to “no-till” areas. Adequate lands are to be obtained for the spreading and immediate incorporation of manure.*”

This condition consists of three parts:

- a) A minimal amount of manure is to be applied to “no-till” areas
- b) Adequate lands are to be obtained for the spreading
- c) immediate incorporation of manure

The first part is rather vague in that it does not define what 'minimal amount' means. Although the likely intent is to minimize runoff from manure laying on the soil surface, it is hard to enforce because of the ambiguity of the word 'minimal'. I therefore determined that this part of the conditions should be deleted due to its difficulty to enforce.

The second part is pertaining to available manure spreading lands. Again, the condition is rather vague in its language and requirement. AOPA has set rules and requirements that the permit holder has to adhere to as stated in the opening statement of this approval. I therefore determined that this condition should be deleted.

The third part is the immediate incorporation of manure. This condition is stricter than the regulations that require incorporation within 48 h of manure application. As per NRCB policy, this condition will be carried forward into the new approval.

Condition 6 states: " *a prompt and acceptable method of disposing of deads is to be maintained.*" Currently, the disposal of deads is regulated by AFRED under the Animal Health Act. To avoid concurrent oversight that could lead to misunderstandings I will delete this condition.

APPENDIX C: Determination of deemed permit status

Ryan Bos (Green Life) claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. 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 investigated the deemed permit status of the CFO.

The investigation was to determine the capacity of the CFO that was constructed pursuant to a municipal development permit before January 1, 2002.

There is no permit available stating the original establishment of this CFO, however on August 5, 1992 Lethbridge County issued development permit # 92-83, permitting the expansion of the existing feedlot by 2,000 head to a total of 4,500 head cattle. The CFO received an additional development permit on August 5, 1997, allowing a second expansion to a total of 7,000 head (cattle). Collectively, these development permits allow the construction and operation of a 7,000 head cattle feedlot. These development permits are deemed (i.e. grandfathered) permits under section 18.1(1)(b) of AOPA. The CFO’s deemed facilities have not changed since January 1, 2002 (as confirmed with aerial photos taken between 1999 and 2003) other than those that were decommissioned (see Technical Document LA22009) and are listed in the appendix of Approval LA22009.

Under section 11 of the Administrative Procedures Regulation, notice of a deemed permit determination is not required if the CFO/MSF was constructed pursuant to a development permit issued before January 1, 2002.

Under section 18.1(2)(c), the CFO’s deemed capacity is the capacity stated in the CFO’s development permit. Therefore, the CFO has a deemed capacity of 7,000 head of cattle. Because Ryan Bos (Green Life) proposed a substantial reduction of animal numbers at this CFO and the proposed animal number of 1,700 head finisher cattle is small than either – in respect to MDS and manure spreading lands - 7,000 head feeder cattle or 7,000 finisher cattle, I did not determine what category the permitted animal number should have been.