

Decision Summary LA16025A

This document summarizes my reasons for issuing Approval LA16025A, an amended version of Approval LA16025, under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA16025A. 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 amendment to an existing approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background and reasons for the amendment

On June 10, 2016, Bas Mourik received Approval LA16025 for the construction of a goat barn (barn 3), a solid manure storage pad, a lean-to shelter to barn 2 and a connector between barns 1 and 2 to house 1,000 milking goats. The original construction completion deadline for the construction of these facilities was December 31, 2019. The construction completion deadline was extended on July 22, 2019, by three years to December 31, 2022.

At present, the construction of the solid manure storage pad, the lean-to shelter to barn 2 and the connector between barns 1 and 2 have been completed. Mr. Mourik applied for an extension of the construction completion deadline for the construction of the new goat barn (barn 3). The reason for the delays were herd health, access to processing facilities, and demand for goat milk.

The application for amendment was received on December 8, 2022, on February 21, 2023, I deemed the application complete.

No other changes to the CFO are proposed.

a. Location

The existing CFO is located at NW 12-10-23 W4M in the Lethbridge County, roughly 7 km north of the town of Monarch. The topography of the area is slightly undulating. The closest common body of water is an irrigation canal 144 m east of the CFO.

b. Existing permits

The CFO is currently permitted under Approval LA16025. A list of existing facility can be found in the appendix to Approval LA16045.

2. Notices to affected parties

Under section 20(1) of AOPA, the approval officer must notify all “affected parties” of a registration application. Section 5 of the AOPA’s Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the proposed CFO is located. The Lethbridge County is an affected party under the Part 2 Matters Regulation, because the CFO is located within its borders.

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 Environment and Protected Areas (EPA), Alberta Transportation and Economic Corridors, Alberta Health Services (AHS), and the Lethbridge Northern Irrigation District (LNID). Public notice was given on February 21, 2023 in the Sunny South News. Eleven courtesy letters were sent to persons identified by the Lethbridge County as living within the notification radius of 0.5 miles.

The NRCB received responses from Jeff Gutsell, a hydrogeologist with EPA. In his response, Mr. Gutsell stated that he has no questions or concerns with this application. Ms. Leah Olsen, a planning technologist with AB Transportation stated in her response that there are no concerns or requirements with respect to this proposal. Mr. Mike Swystun, a public health inspector with AHS stated that there are no objections at this time. Mr. Alan Harrold, general manager of the LNID stated that the LNID has no concerns but took the opportunity to remind the operator that application of manure is not allowed within 30 m of the LNID drain on the east edge of the property.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction remains consistent with the land use provisions of Lethbridge County's municipal development plan. However, because the MDP has been amended since Approval LA16025 was issued, I undertook a new consistency determination. (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 continues to meet all AOPA requirements (See Decision Summary LA16025 for details).

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." Newell 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 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

The risks posed by Mouriks' existing CFO facilities were assessed in 2016. The assessment determined that the potential risks to surface water and groundwater were low. Because there are no changes to the proposed development or the CFO site, a new assessment is not required.

8. Terms and conditions

For clarity and efficiency, and in accordance with NRCB policy, I am amending Approval LA16025. Rather than issue a separate amendment document, I am issuing a new, amended Approval LA16025A and cancelling Approval LA16025. The amended approval will have the same terms and conditions as Approval LA16025, except the construction completion deadline for the permitted construction which has been extended to December 31, 2024.

9. Conclusion

Approval LA16025A is issued for the reasons provided above, in the attached appendices, and in Technical Document LA16025A and becomes effective immediately.

March 29, 2023

(Original Signed)
Carina Weisbach
Approval Officer

- A. Consistency with the Municipal Development Plan
- B. Explanation of conditions in Approval LA16025A

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.) Mourik’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 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.

APPENDIX B: Explanation of the new condition in Approval LA16025A

Construction Deadline

Mourik explained that they are ready, now that their cheese production facility has been established and some succession planning issues have been sorted out, to pursue the plan to construct the dairy barn. They did not include a set time frame to complete construction. However, typically, two to three construction seasons should be sufficient to complete the project. Additionally, the permit holder has had since 2016 to construct this facility. I therefore included the deadline of December 31, 2024, as a condition in Approval LA16025A.