

Decision Summary LA22039

This document summarizes my reasons for issuing Authorization LA22039 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22039. 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 July 21, 2022, Farview Holsteins Ltd. (Farview) submitted a Part 1 application to the NRCB to construct a calf barn (15.2 m x 30.5 m) at an existing dairy CFO.

The Part 2 application was submitted on January 23, 2023 and I deemed the application complete the same day.

a. Location

The CFO is located approximately 3.2 km north west of Coaldale. The topography of the site is level, with a general slope to the west.

b. Existing permits

The CFO is already permitted under Lethbridge County development permit 97-08 and NRCB Authorization LA11012.

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 0.5 mile 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 Protected Areas (EPA), Alberta Agriculture and Irrigation (AGI), Alberta Transportation and Economic Corridors (TRAN), and the St. Mary River Irrigation District (SMRID).

I also sent a copy of the application to Fortis AB Inc.

Responses were received from EPA, TRAN, AHS, and SMRID.

None of the respondents raised concern with the application nor required follow-up for their own permitting requirements.

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 construction:

- Meets the required AOPA setbacks from all nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). As explained below in Appendix B, MDS does not apply for this application
- 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 of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 8, the application meets all relevant AOPA requirements. The inapplicability of MDS requirements is discussed in the following parts of this decision summary and in Appendix B.

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 supervisor of 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 appears to meet these setbacks.

7. Environmental risk of facilities

New manure catchment areas (MCAs) which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require groundwater surface water or construction supervision monitoring for the facility. In this case a determination was made, and monitoring is not required.

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, which can fall 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 Farview's existing CFO highest risk facilities were assessed in 2011 using the ERST during a Risk Based Compliance Program. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

Since the 2011 risk assessment, a new version of the ERST has been made available. For these reasons, I reassessed the risks posed by the CFO's existing facilities. My reassessment found that they pose a low potential risk to groundwater and surface water.

8. MDS

I determined that the proposed addition to the new calf barn is located within the minimum distance separation from 2 residences. As explained in Appendix B, under the Standards Administration Regulation 3(5)(c)(ii) MDS does not apply to this application due to the CFO not moving closer to the residence and the CFO not increasing permitting livestock numbers or manure production.

9. Terms and conditions

Authorization LA22039 permits the construction of the calf barn.

Authorization LA22039 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 LA22039 includes conditions that generally address construction deadlines, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

10. Conclusion

Authorization LA22039 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22039.

Authorization LA22039 must be read in conjunction with Farview's deemed permit, including municipal development permit 97-08, and NRCB previously issued Authorization LA11012 which remain in effect.

April 4, 2023

(Original signed)
Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Minimum distance separation requirement
- C. Explanation of conditions in Authorization LA22039

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.) Farview’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 22(2.1)).

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: Minimum distance separation requirement

The proposed construction is located within the footprint of Farview's CFO. The existing dairy barn is does not meet MDS to 2 residences and the proposed calf barn will be on the east side of the dairy barn further away from these residences. Due to this proximity, the applicant's proposed construction does not meet the minimum distance separation (MDS). However, the Standards and Administration Regulation 3(5)(c)(ii) provides approval officers authority to issue an authorization without adhering to the MDS in certain circumstances.

Under part 1 of the Standards and Administration Regulation, section 3(5)(c)(ii), an approval officer may issue an authorization without adhering to MDS if the applicant is applying to build an additional building on the site of the CFO and the amount of manure, composting materials and compost produced annually will not increase.

Section 1(1)(d)(ii) of the Part 2 Matters Regulation under AOPA defines "expansion" as the construction of additional facilities to store more manure, compost materials or compost. Farview's proposed calf barn is moving further away from the nearest residence. They are not proposing to increase livestock numbers, so they will not be increasing the annual amount of manure the CFO will produce. Additionally, the operation will not be moving any closer to the nearest residence.

Considering each of these factors, I have concluded that the Standards and Administration Regulation, section 3(5)(c)(ii) applies to this application and therefore the MDS requirement is met.

APPENDIX C: Explanation of conditions in Authorization LA22039

Authorization LA22039 includes several conditions, discussed below:

a. Construction Deadline

Farview proposes to complete construction of the proposed new calf barn by September 2023. This time-frame is considered to be reasonable for the proposed scope of work. However, to allow for delays in construction, a deadline of December 1, 2025 is included as a condition in Authorization LA22039.

b. 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 LA22039 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the calf barn to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Farview to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the calf barn.

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 LA22039 includes a condition stating that Farview 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.