

Decision Summary LA23012

This document summarizes my reasons for issuing Authorization LA23012 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23012. 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 February 2, 2023, Leeuwenburgh Dairy Farms Ltd. (Leeuwenburgh) submitted a Part 1 application to the NRCB to construct a new stand-alone earthen liquid manure storage facility (EMS) at a different site from their dairy CFO.

On April 26, 2022, Leeuwenburgh received NRCB Approval LA21063 to increase livestock numbers at their dairy on NW 36-9-22 W4M, and construct new facilities. Leeuwenburgh's dairy CFO does not have 9 months of manure storage at their permitted CFO site. To address this, Leeuwenburgh is proposing to construct a new stand-alone liquid manure storage on the NW 35-9-44 W4M to address the AOPA manure storage requirement.

Under Approval LA21063, Leeuwenburgh has an agreement to provide the additional manure to Lethbridge Biogas and have them deliver an equal amount of digestate to the liquid manure storage at the proposed location addressed in this application.

A condition in Approval LA21063 states that Leeuwenburgh must prove to the NRCB where the dairy CFO's manure will be stored and transported to adhere to AOPA's manure requirements. As a result, this stand-alone EMS will store both the dairy's manure and digestate.

A permit for the stand-alone liquid manure storage is required because the proposed EMS has a capacity of 500 tonnes or more of manure, which requires a permit under the Matters Part 2 regulation Section 4(1). The proposed stand-alone liquid manure storage is also required to address the manure storage requirement for the dairy CFO.

In accordance with a Memorandum of Understanding relating to digestate storage from April 2020, among the NRCB, Environment and Protected Areas, and Agriculture and Irrigation (MOU), the NRCB agreed to assume regulatory responsibility under AOPA for the storage of digestate in manure storage facilities that met two circumstances. The two circumstances are that (a) manure comprises at least 50 percent (by weight) of the feedstock for the biodigester, and that (b) the remainder of the feedstock for the biodigester consists only of feedstocks from a list identified in the MOU. It is my understanding that these two circumstances apply to digestate coming from Lethbridge Biogas to the stand-alone EMS in this application.

The Part 2 application was submitted on March 10, 2023. On March 13, 2023, I deemed the application complete.

a. Location

The proposed EMS is located at NW 35-9-22 W4M in Lethbridge County, roughly 4.6 km north of the town Coalhurst, and approximately 2.8 km southwest of the Hamlet of Diamond City. The proposed EMS is located approximately 1.0 km southwest from the applicant's dairy CFO (located at NW 36-9-22 W4M). The terrain of the area is predominantly flat. The closest body of water is approximately 590 metres from the proposed EMS.

The proposed EMS is a stand-alone facility, to store manure from the applicant's dairy, and digestate from Lethbridge Biogas (relating to NRCB Approval LA21063).

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(s) from the CFO

A copy of the application was sent to Lethbridge County, which is the municipality where the CFO is located. There are no rivers, streams, or canals within 100m of the proposed liquid manure storage. No other municipalities have boundaries within the notification distance.

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 Lethbridge Irrigation District (LNID).

The NRCB received written responses from Mr. Jeff Gutsell, a hydrogeologist with EPA, Mr. Mike Swystun, an executive officer / public health inspector with AHS, Mr. Evan Neilsen, developing and planning technologist with TRAN, and Mr. Alan Harrold, general manager with LNID.

Mr. Gutsell with EPA stated in his response that given the information in the application, no additional water will be needed for the proposed construction of a stand-alone EMS, and therefore did not have any further concerns or questions.

Mr. Swystun indicated that AHS had no concerns or comments.

Mr. Neilsen with TRAN stated in his response that he has no concerns or requirements with the application at this time as the applicant will not need to receive a permit.

Mr. Harrold with LNID stated in his response that he has no objections or requirements with the application at this time.

4. 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, interim director of community services, 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 applicant should not conduct development within those setbacks.

5. 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.)

6. 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)
- 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 protective layers of manure storage facilities and manure collection areas.

With the terms and conditions summarized in part 8 and Appendix B, the application meets all relevant AOPA requirements.

7. Environmental risk of facilities

New manure storage facilities 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 monitoring for the facility. In this case I determined that the naturally occurring materials at the site satisfy AOPA requirements for liquid manure storages, therefore, monitoring is not required.

8. Terms and conditions

Authorization LA23012 permits the construction of the stand-alone EMS.

Authorization LA23012 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 LA23012 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 LA23012 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23012.

April 21, 2023

(Original signed)
Cailyn Wilson, P.Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA23012

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.)

Leeuwenburgh’s stand-alone earthen manure storage (EMS) 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 10, 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 set out below:

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.

Although this stand-alone EMS is considered new, it is also not located within any of the exclusion areas. There are no applicable intermunicipal development plans (IDPs) for this site. Therefore, the development is consistent with these policies (3.1 and 3.2).

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 EMS is not within any of the identified areas and is not a CFO application. 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 EMS 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 EMS 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 site characteristics are acceptable to establish a CFO. This application is not for a CFO, but for a new stand-alone EMS. Even if this application were considered a new CFO, I cannot have regard for this provision as it appears to be 'a test or condition related to the site characteristics for an EMS (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, which is a test or condition), reciprocal MDS (section 3.10), or county-NRCB interaction (section 3.11, which is procedural).

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

APPENDIX B: Explanation of conditions in Authorization LA23012

a. Construction Deadline

Leeuwenburgh proposes to complete construction of the proposed new EMS by May 30, 2023. In my experience, a longer time frame has proven beneficial to account for any unforeseeable delays within the construction season. Therefore, the deadline of October 31, 2023, is included as a condition in Authorization LA23012.

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 manure is placed in the newly constructed facility. Authorization LA23012 includes a condition stating that Leeuwenburgh shall not place manure or digestate in the new EMS until NRCB personnel have inspected the EMS and confirmed in writing that it meets the authorization requirements.

c. Operating conditions

Leeuwenburgh will be using the stand-alone EMS for both liquid manure from their dairy CFO and digestate from Lethbridge Biogas.