

Decision Summary LA23025

This document summarizes my reasons for issuing Authorization LA23025 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23025. 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 April 12, 2023, the Hutterian Brethren of Wilson (Wilson Colony) submitted a Part 1 and 2 application to the NRCB to construct a standalone liquid manure storage (EMS) facility (64 m x 94 m x 4 m deep) on the NW 13-8-20 W4M. The standalone liquid manure storage facility is not associated with a confined feeding operation. It is planned to be used to store liquid manure or digestate from the Lethbridge Biogas facility, which will then be applied as a plant nutrient source to cultivated land.

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:

- i. manure comprises at least 50 percent (by weight) of the feedstock for the biodigester, and that
- ii. 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 currently apply to digestate coming from Lethbridge Biogas to the stand-alone EMS in this application.

The proposed standalone liquid manure storage facility was originally a clay borrow pit.

On April 12, 2023, I deemed the application complete.

a. Location

The proposed standalone liquid manure storage facility is located at NW 13-8-20 W4M in Lethbridge County, roughly six and a half kilometres south of the town of Coaldale. The terrain is generally flat. There is an irrigation canal approximately 800m to the south of the proposed site.

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 half a mile (805m) from the standalone manure storage facility.

A copy of the application was sent to Lethbridge County, which is the municipality where the standalone liquid manure storage facility is to be located. There are no rivers, streams, or canals within 100m of the proposed site.

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), and the St. Mary River Irrigation District (SMRID).

I also sent a copy of the application to Atco Gas and Pipelines Ltd. as they are right of way holders on the parcel where the proposed manure storage will be located.

Emails were received from AHS, EPA, SMRID and Atco Gas and Pipelines Ltd. stating that they had no objections or concerns regarding the 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)
- 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

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

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, the 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 in their municipal development plan and that there are no other planning type documents that would apply to the referred area.

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

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 a determination was made and monitoring is not required.

8. Terms and conditions

Authorization LA23025 permits the construction of the standalone liquid manure storage facility.

Authorization LA23025 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 LA23025 includes conditions that generally address bottom filling of the liquid manure storage, construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA23025 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23025.

May 23, 2023

(Original signed)
Andy Cumming
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA23025

APPENDIX A: Consistency with Lethbridge County's municipal development plan

Under section 22 of AOPA, an approval officer may approve an application for an authorization only if the approval officer finds that the application is consistent with the "land use provisions" of the applicable municipal development plan (MDP).

The NRCB interprets the term "land use provisions" as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term "land use provisions" also excludes MDP policies that impose procedural requirements. In addition, 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.")

Wilson Colony's proposed standalone liquid manure storage facility is located in Lethbridge County and is therefore subject to that county's MDP. Lethbridge County adopted the latest revision to this plan on December 5, 2019, under Bylaw #19-043.

Section 6.6 Confined Feeding Operations lists several policies under subsection 6.6.3:

a) Urban Fringe: *"The County shall exclude the development of CFOs in the Urban Fringe land use districts."*

The proposed liquid manure storage facility is not within this zoning category as shown on Map 11B.

b) Impacts:

I. *County Council will actively lobby the provincial government for additional funding to counteract impacts to the local transportation infrastructure created by the high density of CFOs within the County.*

This policy refers to lobbying for funding to counteract the impact of CFOs on County infrastructure. Municipal funding is not under the jurisdiction of the NRCB. Therefore, I will not include this policy in my MDP consistency determination.

c) Location:

I. *County Council or the relevant approval authority shall consider the results of a Minimum Distance Separation (MDS) calculation using the Agricultural Operations Practices Act Standards when considering:*

- *The re-designation of a parcel to grouped country residential or other district that may allow uses sensitive to CFO's*
- *Any development, or*
- *Any subdivision application*

II. The County will apply the MDS to the dwelling or building (restaurant, schools, etc.) wall for an existing structure and it will be measured and applied to the property line for a vacant parcel subdivision.

III. For a new proposed subdivision located within a designated urban fringe district where there is an existing CFO operation in the vicinity and also within the fringe, the County shall apply the applicable MDS measurement (from the Agricultural Operation Practices Act [AOPA] Standards and Administration Regulation) from the closest point of a CFO operation to the dwelling or property boundary, depending on the situation.

The three listed items under this policy section refer to a reciprocal MDS for residential development in the vicinity of CFOs. Development permits for residential development are under the jurisdiction of the municipality. Therefore, I will not discuss this policy any further.

d) NRCB

I) Given the County's unique perspective regarding CFOs, the County will be proactive when discussing regulation amendments regarding CFOs with Alberta's NRCB.

This policy is likely not a land use provision but rather describes how the County plans to act when considering regulation amendments. I will therefore not discuss this policy in any more detail.

II) The NRCB in its approval review should also consider:

- The cumulative effect of a new approval on any area near other existing confined feeding operations*
- Environmentally sensitive areas as shown in the report, County of Lethbridge: Environmentally Sensitive areas in the Oldman River Region (see maps in Appendix C)*
- Giving notice to adjacent landowners even in the case of applications for registration or authorizations, and*
- Applying MDS calculations to all county residential clusters whether or not designated in the land use bylaw.*

The first of these four considerations is likely not a land use provision because of its project-specific focus (viewed cumulatively with other existing CFOs), and its request the NRCB to make a discretionary judgement about the degree of cumulative effects that are acceptable. Because of this, this consideration is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: *Approvals*, part 8.2.5.)

The second provision is likely not a land use provision because of its referral to a specific site. However, I considered it in respect to the CFOs impact on the environment as discussed above. At any rate, the CFO is not located in any of the environmentally significant areas noted in the County's report.

The third consideration is likely not a land use provision because it requests notification to adjacent landowners about registration and authorization applications. Sections 19 and 21 of AOPA provide details on notification requirements for AOPA applications. In this case, the application is for an authorization. AOPA limits notification to the municipality, and as identified previously in section 2 of this decision summary, notice was provided to the county.

The fourth consideration appears to refer to AOPA's MDS requirements. Under NRCB policy, approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. (See also Operational Policy 2016-7: *Approvals*, part 8.2.5.) At any rate, there are no country residential clusters in the immediate vicinity of the proposed standalone liquid manure storage and it meets the AOPA MDS requirements.

III) The NRCB is requested to take into consideration the requirements and policies of the County Council when making decision on such applications.

This provision is likely not a land use provision because it requests the consideration of requirements and policies of the county's council. AOPA is very specific in what approval officers must consider when determining consistency with the MDP (section 22(1)) and only refers to the MDP document. The provision is also not specifically a land use provision. At any rate, the application was sent to Lethbridge County for their input which has been considered for this application.

IV) CFOs "shall not be approved in the areas shown and designated on Figure 11B as exclusion areas".

The Wilson Colony standalone liquid manure storage facility is not located in any of the designated CFO exclusion areas, so the application is consistent with this provision.

V) CFOs "shall not be approved on parcels less than 64.7 hectares (160 acres) or an un-subdivided quarter section, having a minimum of 4.0 hectares (10 acres) of registered exceptions of rights-of-way"

This provision is not a land use provision because it refers to specifics in respect to a site of a CFO, rather than the use of specified lands. I also consider it to be a test or condition which AOPA directs me not to consider. This provision also appears to apply specifically to CFOs and not stand alone manure storage facilities. In any case the parcel of land on which the liquid manure storage facility is to be located is approximately 160 acres.

VI) The NRCB should consider the requirements and regulations as stipulated in the Lethbridge County Land Use Bylaw and Animal Control Bylaw, including the exclusion of confined feeding operations on parcels less than the specified sizes as specified in those bylaws.

In my view, this section provides a clear intent to adopt provisions from the land use bylaw (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I therefore also considered Lethbridge County's Land Use Bylaw #1404 (consolidated to Bylaw 19-016). Under those bylaws, the subject land is currently zoned Rural Agriculture. CFOs are a discretionary use under this zoning category.

As stated in Part 2 (RA) section 3(3) in this bylaw, the minimum parcel size for CFOs is 64.7 hectares (160 acres).

This provision is the same as section 6.6.3.d) V. in the MDP which has been addressed above.

The subsequent sections (Rural Agriculture) in this land use bylaw, require minimum setbacks (sections 4 to 7). These include setbacks to property lines, roadways, canals and distance to neighbouring residences (section 6(6)). Apart from the MDS requirement which has been discussed previously, these requirements could be defined as being 'siting' requirements and would subsequently be exempt from consideration by an approval officer. Nevertheless, I am of the opinion that they ensure proper development of the rural areas in respect to future development and hence dictate a land use or are related to safety issues and will therefore be considered as impact on the community. At any rate, the already constructed facilities meet these setbacks with the provision of the road setback waiver which was issued by the County.

Subsection 6.6.3.d) VI of the MDP also seems to clearly incorporate the Animal Control Bylaw (Bylaw17-008). Given that this is not a land use provision, I determined that the Animal Control Bylaw does not apply to my MDP consistency determination. In any event, this operation will hold a permit under AOPA.

e) Development Setbacks

This provision requires CFO developments to meet the setbacks to roadways and property lines as set out in the LUB.

The development meets these setbacks.

I therefore conclude that this application is consistent with the land use provisions in Lethbridge County's MDP. The response from the County supports this conclusion.

APPENDIX B: Explanation of conditions in Authorization LA23025

Authorization LA23025 includes several conditions, discussed below:

a. Construction deadline

Wilson Colony has identified that the standalone liquid manure storage facility is substantially complete as it is being converted from an existing clay borrow pit. A construction completion deadline of October 31, 2023 is therefore included as a condition in Authorization LA23025. This will allow a full construction season to complete any remaining required construction.

b. Bottom filling

AOPA requires liquid manure storage facilities to be filled within the bottom quarter of the facility. Because this is a standalone facility which is likely to be filled using trucks, a condition will be added requiring that the liquid manure storage be filled within the bottom quarter of the facility.

c. 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, this inspection must occur before manure or digestate is placed in the newly constructed facility. Authorization LA23025 includes a condition stating that Wilson Colony shall not place manure or digestate in the standalone liquid manure storage facility until NRCB personnel have inspected the facility and confirmed in writing that it meets the authorization requirements.