

Decision Summary LA23026

This document summarizes my reasons for issuing Approval LA23026 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23026. 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 April 17, 2023, de Leeuw Dairy (2006) Ltd. (de Leeuw Dairy) submitted a Part 1 application to the NRCB to expand an existing dairy CFO. The application is to:

- convert one pen into a silage storage
- construct two additional pens (45.7 m x 60.9 m each) for 750 beef finishers
- expand an existing catch basin (final dimensions: 39 m x 22 m x 3 m deep)

This will bring the total animal numbers at this CFO to 110 milking cows (plus associated dries and replacements) and 750 beef finishers.

The Part 2 application was submitted on April 24, 2023. On May 2, 2023, I deemed the application complete.

As noted above, the application also notified the NRCB of the proposed construction of a silage storage on top of an existing feedlot pen. This facility is an “ancillary structure,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure does not need to be permitted under the act. Prior to the construction of the silage pit, the existing pen will have to be decommissioned. A condition to this affect will be attached.

a. Location

The existing CFO is located on the E½ of SW 18-11-21 W4M in Lethbridge County, roughly 5.3 km west-northwest of the town of Picture Butte. The terrain is mainly flat, slightly sloping to the south. The Piyami Drain is approximately 1.8 km to the southwest.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed registration under section 18.1 of AOPA. The deemed permit includes Lethbridge County 98-132, issued September 29, 1998. This deemed registration allows for the construction and operation of a 110 dairy cow CFO (plus associated dries and replacements). The operator does not dispute this number and the footprint of the existing facilities has not changed since this permit was issued as confirmed during a site visit (see Appendix C for the determination of the deemed permit status). The deemed facilities are listed in the appendix to the Approval LA23026.

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 one (1) mile (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.

No other municipality is within the notification radius and no bank of a river, stream or canal is within 100 m of this CFO.

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Sunny South News on May 2, 2023. 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, 26 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 Protected Areas (EPA), Alberta Transportation & Economic Corridors (TRAN), and the Lethbridge Northern Irrigation District.

The NRCB received written responses from Mr. Jeff Gutsell, a hydrogeologist with EPA; Ms. Leah Olsen, a planning technologist with TRAN; Mr. Alan Harrold, general manager with the LNID; and Mr. Mike Swystun, a public health inspector with AHS.

Mr. Gutsell stated in his response that there are no groundwater or surface water licenses issued for this land location but notes that the CFO is located within the LNID. He requested proof from the applicant that all applicable water licenses or water conveyance agreements are in place.

Ms. Olsen had no concerns in respect to this application.

Mr. Harrold noted that the current water conveyance agreement is not large enough to cover the increased need for water at this CFO and listed the additional fee and payment schedule. Because water conveyance agreements are outside the jurisdiction of the NRCB, this issue will not be discussed further. However, these responses were forwarded to the applicant for his information and action. He also reminded the operator to adhere to all applicable setbacks for buildings and manure spreading to the irrigation district works. No other concerns were raised.

Mr. Swystun stated that there were no concerns with this application.

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 expansion 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 expansion:

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owners of that residence have signed a written waiver of the MDS requirement to their residence
- 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's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and protective layers of manure storage facilities and manure collection areas

7. Responses from the 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 proposed expansion is located within its boundaries.

Ms. Hilary Janzen, 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.

No responses were received from any other person, organization, or member of the public.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (see NRCB Operational Policy 2016-7: Approvals, part 6.2). The co-owners of this residence (Gerrit, Hendrika, Konrad, William, and Rebecca De Leeuw) provided an MDS waiver and are a directly affected party.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater.

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 all existing facilities pose a low potential risk to groundwater and surface water.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Ms. Janzen also listed the setbacks required by Lethbridge County's land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concern submitted under section 73 of the Environmental Protection and Enhancement Act or section 109 of the Water Act in respect subject of this application. In the response I received from EPA, Mr. Gutsell stated that the CFO is located within the LNID and that he assumes that the CFO receives water from the LNID which is correct.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ca/status.htm>, accessed May 5, 2023).

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from referral agencies and Lethbridge County, and my own observations from a site visit.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion 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.). In my view, this presumption is not rebutted because.

10. Terms and conditions

Approval LA23026 specifies the cumulative permitted livestock capacity as 110 milking cows (plus associated dries and replacements) and 750 beef finishers, permits the construction of two additional feedlot pens and the expansion of the existing runoff control catch basin.

Approval LA23026 contains terms that the NRCB generally includes in all AOPA approvals, 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, Approval LA23026 includes conditions that generally address construction deadlines, document submission, construction inspection and decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permits into Approval LA23026: Development permit 98-123 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbors 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 LA23026 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23026.

De Leeuw Dairy's deemed municipal development permit # 98-132 is therefore superseded, and its content consolidated into this Approval LA23026, unless Approval LA23026 is held invalid following a review and decision by the NRCB's board members or by a court, in which case municipal development permit # 98-132 will remain in effect.

June 19, 2023

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA23026
- 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.)

De Leeuw Dairy’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 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.

This CFO is not within any of the identified areas. It is also not a new CFO.

3.4 elaborates on municipal plan consistencies of neighbouring municipalities. I therefore do not consider this section as a land use provision.

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).

This CFO is not within any of the identified areas.

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

The proposed construction meets all applicable setbacks.

3.7 states that CFOs are only permitted in ‘Rural Agriculture’ land use districts and cannot be established on properties smaller than 80 acres.

This is an existing CFO and is located within the ‘Rural Agriculture’ land use district. This section is therefore met.

Sections 3.8-3.11 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 interactions (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 Approval LA23026

Approval LA23026 includes several conditions, discussed below, and carries forward all conditions from municipal development permit # 98-132 other than those discussed below (see section 2 this appendix). Construction conditions from historical municipal development permit # 98-132 are in the appendix to Approval LA23026.

Approval LA23026 includes several conditions, discussed below:

1. New conditions in Approval LA23026

a. Construction Deadline

De Leeuw Dairy proposes to complete construction of the proposed new feedlot pens and catch basin expansion by August 31, 2024. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of August 31, 2024, is included as a condition in Approval LA23026.

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, Approval LA23026 includes conditions requiring:

- de Leeuw Dairy to provide evidence or written confirmation from a qualified third party that the catch basin expansion and the feedlot pens have been constructed to the dimensions specified in this permit

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA23026 includes a condition stating that de Leeuw Dairy shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens and allow manure contaminated runoff to enter the catch basin until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

c. Decommissioning/manure removal

Prior to commencing construction of the silage pit, the permit holder shall decommission the existing pen as shown on the site picture of Technical Document LA23026, according to the provisions for low risk facilities, in Technical Guideline Agdex 096-90, "*Closure of Manure Storage Facilities and Manure Collection Areas.*"

2. Conditions not carried forward from municipal development permit # 98-132

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #1, 2, 4, 6, and 7 from municipal development permit # 98-132 should be deleted or re-written and therefore are not carried forward to Approval LA23026. My reasons are below:

Condition 1 states: "*The expansion of the dairy barn (total 110 stalls) will be replacing a 180 head beef feedlot. The existing corrals will be used for young stock and replacement cows.*"

This condition is no longer applicable. The feedlot pens that were used as pens for replacements in this condition are now part of a 750 head finisher cattle feedlot. Replacement stock is being held in other grandfathered pens with shelters. This condition should therefore be deleted and is replaced by the new conditions in this approval, specifically the new approved site layout plan (see Technical Document LA23026).

Condition 2 states: *“Maintenance or access to 176 acres of irrigated land is required for manure application.”*

The required land base of 176 acres irrigated land is not sufficient to support the proposed expansion permitted in this approval. The required land base to accommodate the addition of 750 head finisher cattle is 316.6 acres irrigated land. Hence, this condition 2 will be adjusted to meet the current AOPA requirement. De Leeuw has proven that a sufficient large land base is available for manure spreading.

Condition 4 states: *“Manure is to be incorporated within 48 hours of spreading. A reduced incorporation time should be considered in the immediate area of neighbours.”*

This condition consists of two parts: 1) The incorporation within 48 hours of spreading and 2) a tighter timeframe of incorporation if necessary. The first part is included within the terms and conditions laid out in the opening paragraph of this approval which requires the permit holder to abide by the act and associated regulations. The second part is a flexible, case by case adjustment of incorporation times. This seems a rather subjective and undefined condition which is difficult to enforce. Due to its difficulty to enforce, I will not carry this condition forward into the new approval according to NRCB policy (Amending Municipal Permit Conditions 2016-1).

Condition 7 states: *“All surface runoff from outside facilities for dairy cows and replacement stock must be contained in the immediate area.”*

AOPA and its regulations require operators to install and maintain runoff control systems for manure contaminated surface water runoff. The existing catch basin is too small to contain all runoff generated by the existing and expanding pen areas. The new dimensions will provide the required runoff volume (see Technical Document LA23026). This condition will therefore be replaced by the terms and conditions in this permit.

APPENDIX C: Determination of deemed permit status

De Leeuw claims that its CFO is grandfathered (that is, 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 conducted an investigation into the deemed permit status of the CFO/MSF.

The CFO has development permit # 98-132, issued by Lethbridge County on September 29, 1998. This permit allowed the expansion of an existing dairy CFO by converting 180 head of beef into 39 milking cows. This development permit is a deemed (i.e. grandfathered) registration under section 18.1(1)(b) of AOPA. The footprint of the existing facilities has not changed since April 2004 (as determined using Google Earth) and I assume that no construction occurred between January 1, 2002 and that date. The CFO’s deemed facilities are listed in the appendix of Approval LA23026.

Under section 11 of the Administrative Procedures Regulation, notice of a deemed permit determination is not required if the CFO 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 110 milking cows (plus associated dries and replacement).