

Decision Summary LA17071B

This document summarizes my reasons for issuing Approval LA17071B, an amended version of Approval LA17071A, under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA17071B. 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 May 23, 2018, Henk Vander Veen Dairy Ltd. (Vander Veen) received Approval LA17071A for the construction of an earthen liquid manure storage (EMS), a dairy barn expansion, the use of already constructed feedlot pens, and a catch basin for a 375 milking cow (plus associated livestock), and 500 beef feeder CFO. The original construction completion deadline for the construction of these facilities was December 1, 2020. The construction of the dairy barn extension and the EMS were completed on March 2, 2020 and all conditions in respect to these facilities have been met.

However, the construction of the catch basin is still outstanding. Although this facility should be amended out of this permit according to current NRCB policy (Construction Deadlines – Operational Policy 2015-1, Section 4: Handling missed deadlines), the reason for not doing so is the location of the existing feedlot pens in respect to a common body of water (Pyiami drain) and the associated risk of manure contaminated surface runoff to enter the Pyiami drain. Therefore, I accepted the application to extend the construction completion deadline.

The application for amendment was received on May 29, 2023, and on June 6, 2023, I deemed the application complete.

No other changes to the CFO were proposed.

a. Location

The existing CFO is located at NW 6-11-21 W4M in the Lethbridge County, roughly 3 km north of the Village of Monarch. The topography of the area is generally flat with a gentle slope towards the Pyiami drain that flows approximately 100 m to the east.

b. Existing permits

The CFO is currently permitted under Approval LA17071A. A list of existing facilities can be found in the appendix to Approval LA17071B.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct 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:

- the municipality where the CFO is 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 individuals who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For this application, the distance is one mile. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. Lethbridge County is an affected party (and therefore also a directly affected party) because the proposed expansion is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB published notice of the application in the Sunny South News on June 6, 2023, and posted the full application on the NRCB website for public viewing. Thirty-four notification 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 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 (TEC), and Alberta Health Services (AHS).

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 TEC stated in her response that there are no concerns or requirements with respect to this proposal.

No other responses were received.

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 LA17071A 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 LA17071 for details).

6. Responses from municipality and other 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 facilities are 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 the land use provisions in Lethbridge County's 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.

No responses were received from other affected parties or individuals.

7. Environmental risk of facilities

The risks posed by Vander Veen's existing CFO facilities were assessed in 2018. 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 LA17071A. Rather than issue a separate amendment document, I am issuing a new, amended Approval LA17071B and cancelling Approval LA17071A. The amended approval will have the same terms and conditions as Approval LA17071A, except the construction completion deadline for the permitted construction which has been extended to December 31, 2024 and that the feedlot pens shall not be populated until the catch basin has been constructed. All construction conditions that have been met are listed in the appendix of Approval LA17071B.

9. Conclusion

Approval LA17071B is issued for the reasons provided above, in the attached appendices, and in Technical Document LA17071B and becomes effective immediately.

July 10, 2023

(original signed)
Carina Weisbach
Approval Officer

Appendices

- A. Consistency with the Municipal Development Plan
- B. Explanation of conditions in Approval LA17071B

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.)

Vander Veen’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 catch basin continues to meet 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 LA17071B

Construction Deadline

Vander Veen proposed a one-year extension to construct the catch basin. One year seems reasonable for a project of this size. I therefore included the deadline of August 31, 2024, as a condition in Approval LA17071B.

As a precautionary measure, I will also add, that the feedlot pens shall not be populated until the catch basin has been constructed and inspected by the NRCB.