

## Decision Summary LA24008

This document summarizes my reasons for issuing Approval LA24008 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24008. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On February 14, 2024, AVE Farms Ltd. (AVE Farms) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on March 11, 2024. On March 18, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing swine farrow to wean numbers from 40 to 500
- Decreasing swine farrow to finish numbers from 180 to 0
- Constructing a farrowing swine barn – 38.4 m x 21.6 m x 0.6 m deep
- Constructing a gestation swine barn - 39 m x 29.9 m x 2.4 m deep

The new barns are proposed to be located on top of two existing feedlot pens that are part of the 'southeast rows'. The reduction will not affect the overall housing capacity for cattle. These areas will have to be decommissioned prior to construction using the procedures laid out in Technical Guideline Agdex 096-90 – Closure of manure storage facilities and manure collection areas.

It was also noted that the earthen liquid manures storage (EMS) was constructed with different dimensions than originally permitted in Approval LA15016. The permitted dimensions as stated in Approval LA15016 were 74 m x 36.6 m x 4.5 m deep (storage volume 5,290 m<sup>3</sup>). The nine month storage requirements for 180 sow farrow to finish and 40 sows farrow to wean is 3,960 m<sup>3</sup>. The constructed dimensions are 50 m x 46 m x 5.8 m deep with a storage volume of 4,914 m<sup>3</sup>. In order to avoid unnecessary confusion of permit amendments of existing permits (Approval LA15016) and new permits for the same CFO, I decided to include the EMS with the altered dimensions (as constructed) into this approval. The EMS continues to meet the liner requirements for liquid manure storages with a naturally occurring protective layer.

#### a. Location

The existing CFO is located at SE 9-12-21 W4M in Lethbridge County, roughly 10 km north of Picture Butte, Alberta. The terrain is flat. The closest surface water bodies are an irrigation canal 1.9 km to the west and an ephemeral drain 290 m to the southeast.

## **b. Existing permits**

The CFO is permitted under Approval LA20037 allowing AVE Farms to construct and operate a 180 sow farrow to finish, 40 sow farrow to wean, and 8,000 beef finisher CFO. The CFO's existing permitted facilities are listed in the appendix to Approval LA24008.

## **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 two miles. (The NRCB refers to this distance as the "notification distance".)

None of the CFO facilities are located within 100 m of a bank of a river, stream or canal or within an area covered by a intermunicipal development plan.

A copy of the application was sent to Lethbridge County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by:

- public advertisement in Sunny South News newspaper in circulation in the community affected by the application on March 18, 2024, and
- sending 40 notification letters to people identified by Lethbridge County as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing.

## **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 Environment and Protected Areas (EPA), Alberta Transportation & Economic Corridors (TEC), and the Lethbridge Northern Irrigation District.

I also sent a copy of the application to Atco Gas and Pipelines and Lethbridge North County Potable Water Co-op Ltd. because they have right of ways on that land location.

The NRCB received a written response from Leah Olsen, development/planning technologist with Alberta Transportation (TEC); Jeff Gutsell, hydrogeologist with EPA; and the LNID.

Ms. Olsen stated in her response that a permit from her department is not required.

Mr. Gutsell stated that there are no water licenses issued and no water wells reported for this land location. He also stated that the CFO is located within the LNID and requested that the owner submits proof of adequate water to the EPA prior to populating the new facilities. He also stated that he received a copy of the water conveyance agreement and that it seemed sufficient to cover the increased water need but reminded that it is AVE Farms responsibility to ensure if the volume is adequate.

A representative of the LNID stated that the current water conveyance agreement is sufficient to cover the water needs for the 8000 beef finishers and 500 sow farrow to wean operation. No other comments in respect to the application were added.

No other responses were received from those agencies that were notified of 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 liners/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, 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 the land use provisions of Lethbridge County's municipal development plan. The application's consistency with the land use provisions of Lethbridge County's municipal development plan is addressed in Appendix A, attached. Ms. Hilary also stated that the application did not include any proof that the liquid earthen manure storage meets AOPA requirements. As illustrated in Technical Document LA24008 (pages 22-38), the EMS continues to meet AOPA groundwater protection requirements for liquid manure storages with a naturally occurring protective layer.

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 7.2.1). Paul and Lindsey Jakober 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 may be assumed to pose a low risk to surface and groundwater. The information on this file supports the assumption that risks to groundwater and surface water are low.

When reviewing a new approval 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](http://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 9.17.

In this case, the risks posed by AVE Farms' existing CFO facilities were assessed in 2018 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was done other than the EMS that was constructed deeper

as originally permitted (5.8 m instead of 4.5 m). Although it continues to meet AOPA groundwater protection requirements, I did a new assessment of the risks posed by the EMS and conclude that the risk to groundwater and surface water remains low.

## **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 requested that the proposed facilities meet these setbacks.

I have considered the effects the proposed changes may have on natural resources administered by provincial departments and have not been made aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application or written decision of the Environmental Appeals Board / the Director under the *Water Act* in respect of the subject of this application.

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, 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 Operational Policy 2016-7: *Approvals*, part 9.10.9, 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 9.10.9). In my view, this presumption is not rebutted.

## **10. Terms and conditions**

Approval LA24008 specifies the cumulative permitted livestock capacity as 8,000 beef finishers and 500 swine farrow to wean, and permits the construction of the farrowing and gestation swine barns.

Approval LA24008 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 LA24008 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 permit with Approval LA24008: Approval LA20037 (see NRCB Operational Policy 2016-7: *Approvals*, part 11.5). Permit consolidation helps the permit holder, municipality, neighbours 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. All conditions are carried forward into the new approval.

## 11. Conclusion

Approval LA24008 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24008.

AVE Farms' Approval LA20037 is therefore superseded, and its content consolidated into this Approval LA24008, unless Approval LA24008 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA20037 will remain in effect.

May 6, 2024

(Original signed)  
Carina Weisbach  
Approval Officer

## Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA24008

## **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.

“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 9.2.7.)

AVE Farms’ is located in Lethbridge County and is therefore subject to that county’s MDP. Lethbridge County adopted the latest revision to this plan in March 2022, under Bylaw #22-001.

The relevant sections in the MDP can be found in section 3 – Intensive livestock/confined feeding operations.

Section 3.0 states that the county is supportive of CFOs that are in areas less prone to conflict and where the municipal infrastructure can support such development.

I do not consider this section as a land use provision because it is rather subjective in respect of what can be supported by municipal infrastructure in addition to the fact that such an assessment is not under the jurisdiction of the NRCB. Additionally, approval officers shall not consider any tests or conditions related to the site of a CFO (section 20(1)(1.1) AOPA).

Section 3.1 and 3.2: These sections state that new CFOs are not permitted in areas zoned as CFO exclusion areas (as illustrated on Map 2 (2A & 2B), in particular areas with higher density residential growth centers, or within areas designated as CFO exclusion areas in any of the intermunicipal development plans.

This CFO is located within the CFO exclusion area of Lethbridge County; however, this application is to expand an existing CFO and is not for a new CFO. Therefore, this section does not apply.

Section 3.3 continues to state that established CFOs located within an urban fringe district may be permitted to expand or make improvements to the operations in consideration of any IDP policy that allow for such.

This section does not apply because the CFO, although located within the CFO exclusion area, is not in proximity or within an urban fringe district.

Section 3.4 talks about consistency of planning documents.

This is not a land use provision, and I can therefore not consider it.

Section 3.5 states that CFOs shall not be supported to establish or expand within environmentally sensitive areas as shown in the *Cotton Wood Report: County of Lethbridge: Environmentally Significant Areas in the Oldman River Region (1987)*.

The CFO is not close to any areas identified in that report.

Section 3.6 speaks on required setbacks of manure storage areas to property lines and roadways.

The CFO meets all of these setbacks.

Section 3.7 discusses the land zoning, stating that CFOs are only allowed in areas zoned Rural Agriculture in which they are a discretionary use. The minimum parcel size for CFOs is 80 acres.

Apart from the fact this is not a new CFO, the stipulation of a minimum parcel size to establish a new CFO would appear to fall under section 20(1)(1.1) AOPA that states that approval officers shall not consider any tests or conditions related to the site of a CFO.

Section 3.8 states that the county supports existing CFOs located within the MDP area.

Because this is not a land use provision, I will not discuss this topic any further.

Section 3.9 expresses the county's expectation in respect to manure spreading within the CFO exclusion zones and that manure spreading occurs according to AOPA and its regulations.

Because this is not a land use provision, I will not discuss this topic any further. In addition, section 20(1)(1.1) AOPA applies, stating that approval officers are not to consider any provision respecting the application of manure.

Section 3.10 discusses the application of a reciprocal MDS.

Because this is not a land use provision, I will not discuss this topic any further.

Section 3.11 states that the county will continue to consult with the NRCB on CFO matters.

Because this is not a land use provision, I will not discuss this topic any further.

For the reasons provided above, I conclude that the application is consistent with the land use provisions of Lethbridge County's MDP that I may consider.



## **APPENDIX B: Explanation of conditions in Approval LA24008**

Approval LA24008 includes several conditions, discussed below, and carries forward all conditions from Approval LA20037. Construction conditions from historical Approval LA20037 are in the appendix to Approval LA24008.

### **1. New conditions in Approval LA24008**

#### **a. Construction Deadline**

AVE Farms proposes to complete construction of the proposed new farrowing and gestation swine barn by December 1, 2027. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2027, is included as a condition in Approval LA24008.

#### **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 LA24008 includes conditions requiring:

a completion report, prepared by a qualified third party, certifying that the manure storage and collection portions of the farrowing and gestation swine barns have been constructed in accordance with the proposed design. At a minimum the report must confirm that the facility is constructed in the approved location; the specifications of the concrete used; the thickness of the concrete walls and slabs; the type of water stop; and, the size and spacing of reinforcement.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization LA24008 includes a condition stating that AVE Farms shall not place livestock or manure in the manure storage or collection portions of the new farrowing and gestation swine barns until NRCB personnel have inspected the farrowing/gestation swine barn and confirmed in writing that it meets the authorization requirements.

#### **c. Decommissioning of pen space in feedlot pens southeast**

AVE Farms proposed to construct the new barns partially on top of existing feedlot pens that are located adjacent to the hog operation (southeast rows). I will therefore include a condition requiring AVE Farms to decommission these areas using Technical Guideline Agdex 096-90 – Closure of Manure Storage Facilities and Manure Collection Areas, prior to commencing construction.