

Decision Summary LA24013

This document summarizes my reasons for issuing Approval LA24013 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24013. 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 March 22, 2024, Hutterian Brethren Church of White Lake (White Lake Colony) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The application was initiated through an inspection conducted by the compliance division as part of the Feedlot Population Verification Program. The inspection identified that the CFO was exceeding its permitted livestock number of 2660 beef finishers as permitted in Approval LA17060. The NRCB inspector for this file instructed White Lake Colony to become compliant with AOPA, with a deadline of June 17, 2024, for the submission of a complete Part 2 application or reducing animal numbers to the permitted livestock number.

The Part 2 application was submitted on May 1, 2024. On May 7, 2024, I deemed the application complete.

The proposed expansion involves:

- Permitting an increasing in livestock numbers from 2,660 to 4,500 beef finishers

No construction is proposed. The applicant stated that the additional livestock can be accommodated within the existing enclosures.

I will also take the opportunity to amend the permitted dimensions of the runoff control mechanism that consisted of three catch basin (45 m x 30m x 3.5 m deep) in Approval LA17060, to what was constructed. The middle catch basin was expanded and combined with the catch basin south to form one catch basin (80 m x 33 m x 3.4 m deep). The catch basin north was constructed slightly bigger than permitted (55 m x 33 m x 3.4 m deep rather than 45 m x 30 m x 3.5 m deep). To avoid unnecessary confusion of amended permits with existing permits (Approval LA17060) for the same CFO, I decided to include the catch basins with the altered dimensions (as constructed) into this approval. The catch basins continue to meet AOPA groundwater protection requirements for catch basins with a naturally occurring protective layer.

a. Location

The proposed CFO is located at S½ 27-11-24 W4M in Lethbridge County, roughly 12 km northwest of the Town of Nobleford, Alberta. The proposed feedlot is located approximately 1 km north of White Lake Colony and is not part of the colony's existing facilities. The terrain is undulating. The closest body of water is a slough 150 m to the east of the CFO.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA17060. This permit allows the construction and operation of a 2,660 beef finisher CFO. The CFO's existing permitted facilities, as amended, are listed in the appendix to the Approval LA24013.

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 1.5 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, and no other municipality is located within the notification radius.

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:

- posting it on the NRCB website,
- public advertisement in the Sunny South newspaper in circulation in the community affected by the application on May 7, 2024, and
- sending 7 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.

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), and Alberta Transportation & Economic Corridors (TEC).

I also sent a copy of the application to Prairie Sky Royalty Ltd. which has Right of Ways on that land.

The NRCB received responses from Jeff Gutsell, a hydrogeologist with EPA, and Leah Olson, a

development/planning technologist with Alberta Transportation.

Mr. Gutsell stated that there are no groundwater or surface water licenses issued for that land location. He also stated that White Lake Colony is located within the LNID and therefore has the possibility to obtain water from the LNID. He pointed out that he has not seen the documents and reminded the applicant that he is required to provide EPA with proof of access to sufficient water for the expansion. A copy has been forwarded to the applicant for his information and action. Because of EPA's concern, I also sent a copy to the Lethbridge Northern Irrigation district (LNID). Ms. Janet Beck, an administration/land manager with the LNID responded, stating that White Lake Colony has an agreement with the LNID for 52 acre feet of water but would need an additional 9 acre feet for the additional animals. That response was also forwarded to EPA and White Lake Colony for their information and action.

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

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 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
- Meets AOPA's nutrient management requirements regarding the land application of manure

7. Responses from 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, the manager 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 the land use provisions of the 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.

8. Environmental risk of CFO facilities

No construction was proposed as part of this application. The risk analysis provided in Technical Document LA17060 remains valid.

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 expansion may have on natural resources administered by provincial departments, and I was not 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 any 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 on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and is supported by the fact that sufficient land base is available for manure spreading and that the facilities permitted in Approval LA17060 are determined to pose a low risk to groundwater and surface water.

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, and I have not received any information contradicting this presumption.

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 and is supported by the comments received from Lethbridge County.

10. Terms and conditions

Approval LA24013 specifies the cumulative permitted livestock capacity as 4,500 beef finishers and the amended dimensions of the two catch basins as 80 m x 33 m x 3.4 m deep (catch basin south) and 55 m x 33 m x 3.4 m deep (catch basin north).

Approval LA24013 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.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA24013: Approval LA17060 (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 LA24013 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24013.

White Lake Colony's Approval LA17060 is therefore superseded, and its content consolidated into this Approval LA24013, unless Approval LA24013 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA17060 will remain in effect.

June 11, 2024

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

A. Consistency with the municipal development plan

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.)

White Lake Colony’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 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 not located within any of the CFO exclusion areas in Lethbridge County. Therefore, this application meets this provision.

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 is not in proximity or within an urban fringe district.

Section 3.4 talks about consistency of planning documents.

I do not consider this as 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 continues to meet 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 the 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 to 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.