



Decision Summary LA24026

This document summarizes my reasons for issuing Approval LA24026 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24026. 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 May 21, 2024, Barrhill Feeders Inc. (Barrhill) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on June 7, 2024. On June 18, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing beef finisher numbers from 25,000 to 37,500

No construction has been proposed.

The renovation of the feedlot allows higher stocking density. The renovation (placement of a secondary liner) does not require a permit because the existing liner will not be removed in the process. The existing catch basin has sufficient volume to hold the expected increase in runoff volume due to the secondary liner (see page 21 of Technical Document LA24026).

a. Location

The existing CFO is located at NE 35-11-22 W4M in Lethbridge County, roughly 11 km northwest of the town of Picture Butte, Alberta. The terrain is mainly flat with an overall slope to the south. The closest common body of water is an LNID irrigation canal that runs in west-southeast direction approximately 1 km south of the CFO.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. The deemed permit, Lethbridge County development permit 97-41, was issued April 29, 1997. This deemed approval allows for the construction and operation of a 25,000 head beef CFO. Barrhill does not claim to be grandfathered for more livestock than the permitted livestock capacity. I confirmed by aerial imagery taken between 1999 and 2003 and July 24, 2023 that the footprint of the CFO has not changed since January 1, 2002. The deemed facilities are listed in the appendix to the Approval LA24026.

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 four 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 boundary of any other municipality is within the notification distance.

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,
- advertisement in the Sunny South News, a newspaper in circulation in the community affected by the application, on June 18, 2024, and
- sending 86 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), Alberta Transportation & Economic Corridors (TEC) and the Lethbridge Northern Irrigation District (LNID).

I also sent a copy of the application to Little Bow Gas Co-op Ltd. because they hold a utility right of ways on this property.

The NRCB received responses from Ms. Adriane Gomes Preissler, a water administration technologist with EPA, Ms. Leah Olson, a development/planning technologist with TEC, and Ms. Janet Beck, an administration and land manager with the LNID.

- Ms. Gomes Preissler stated in her response that there are currently no groundwater

diversion nor surface water diversion authorizations for this land location and that it is unclear where the legal source of water of the additional water for the proposed expansion will be obtained from. She continued to state that the water conveyance agreement with the LNID is under the name of Cor Van Raay Farms Ltd. and not Barrhill Feeders Inc. and would need to be amended. She also pointed out the current agreement is far below the water needed for the expansion. Water license and water conveyance agreements are outside the jurisdiction of the NRCB. I will therefore not discuss this issue any further. However, a copy of the response was forwarded to Barrhill for their information and action.

- Ms. Olson stated that a permit from TEC will not be required.
- Ms. Beck stated that the LNID does not oppose the application. She also pointed out that additional a water conveyance agreement was required to cover the increased need. In a second response, sent on July 24, 2024, Ms. Beck informed me that the application had been approved by the LNID Board.

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 owner of that residence has signed a written waiver of the MDS requirement to their residence
- Has sufficient means to control surface runoff of manure
- 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, 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 Lethbridge County's land use provisions of the 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.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received one response from one individual.

The person who submitted a response owns or resides on land within the 4 mile notification distance for affected persons. Because of his location within this distance, and because he submitted a response, he qualifies for directly affected party status. (See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1)

The directly affected party raised concerns regarding contamination of groundwater and the wells in the area and lack of research on that topic. These concerns are addressed in Appendix B.

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). Groenenboom Farms Ltd. provided an MDS waiver and is a directly affected party.

8. Environmental risk of CFO facilities

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 9.17). 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 the feedlot pens and the catch basin 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 listed the setbacks required by Lethbridge County's land use bylaw (LUB) and

stated that these setbacks have to be met. However, since no construction is proposed, this provision is not relevant to this application.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concerns submitted under section 73 of the *Environmental Protection and Enhancement Act* or under section 109 of the *Water Act* in respect of the subject of this application. I also did not receive any responses from any utility right-of-way holders.

I am not aware of a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed July 12, 2024.

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, responses from Lethbridge County, and my own observations from site visits.

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, having considered the relevant information, 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 from the information I have.

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 addition, the land where the CFO is located is zoned Rural Agricultural and there were no concerns in respect to the county's land use bylaw. In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA24026 specifies the cumulative permitted livestock capacity as 37,500 beef finishers.

Approval LA24026 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.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA24026: deemed permit including municipal development permit 97-41 (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. Appendix C discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA24026 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24026.

Barrhill's deemed municipal development permit 97-41, is therefore superseded, and its content consolidated into this Approval LA24026, unless Approval LA24026 is held invalid following a review and decision by the NRCB's Board members or by a court, in which case municipal development permit 97-41 will remain in effect.

August 8, 2024

(Original signed)

Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns raised
- C. Explanation of conditions in Approval LA24026

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.)

Barrhill’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.

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 application is for the expansion of an existing CFO, not for a new one. Regardless, 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 existing 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 allows 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 updating the MDP to reflect changes in an IDP.

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 and therefore meets this provision.

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.

The stipulation of a minimum parcel size 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. Minimum parcel size refers to specifics with respect to siting of a CFO, rather than use of specific lands.

Section 3.8 states that the county supports existing CFOs located within the MDP area that operate under acceptable operating practices and within AOPA's requirements.

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 that governs CFOs, 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: Determining directly affected party status and concerns raised

The following party qualifies for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing: Groenenboom Farms Ltd. See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.

The following individual qualifies for directly affected party status because he submitted a response to the application and he owns or resides on land within the “notification distance,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation: Alan Fraser (NW 3-12-22 W4M). See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.

Mr. Fraser raised the following concern:

Potential impact on groundwater through overapplication of manure and lack of information about safe limits of manure application.

Approval officer’s analysis:

AOPA and the Standards and Administration Regulation set clear limits for nutrient loading through manure application (Schedule 3 – Nutrient management and determination of land base) and requires soil testing to ensure nitrate levels and soil salinity levels are not exceeded (section 25, Standards and Administration Regulation).

Barrhill has access to a land base in excess of what is required by the regulations to spread manure accumulated at this CFO. Together with regular soil testing, these measures are presumed to avoid nitrate-nitrogen overloading. The Standards and Administration Regulation requires a person who controls land where manure is applied to keep records for five years (section 28). However, soil test results are typically not submitted to the NRCB except as a result of a complaint which means that, under normal circumstances, the NRCB has no insight in the actual nutrient loading of the lands used for manure spreading. To address Mr. Fraser’s concern, I will add a condition to this approval, requiring Barrhill to submit soil test results from manure spreading lands as required under AOPA (Schedule 3 Standards and Administration Regulation) to the NRCB on an annual basis for the subsequent five years, starting the year this permit is issued.

APPENDIX C: Explanation of conditions in Approval LA24026

Approval LA24026 includes one condition, discussed below, and carries forward one condition from municipal development permit 97-41. Three conditions will not be carried forward as discussed below (section 2 of this appendix). Construction conditions from historical municipal development permit 97-41 that have been met are identified in the appendix to Approval LA24026.

1. New condition in Approval LA24026

The permit holder shall submit soil test results from manure spreading lands as required under AOPA (Schedule 3 Standards and Administration Regulation) to the NRCB on an annual basis for the subsequent five years, starting the year this permit is issued, or otherwise directed by the NRCB in writing (see Discussion in Appendix B).

2. Conditions not carried forward from municipal development permit 97-41

Approval LA24026 includes the terms and conditions in municipal development permit 97-41, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #1, 2, and 5 from Municipal Development Permit 97-41 should be deleted and therefore are not carried forward to Approval LA24026. My reasons for deleting these conditions are as follows:

Condition 1 states: “all waste material from this operation is to be disposed of on lands owned by the owner/operator.”

The manure spreading land base required for the proposed expansion is larger than required for the permitted number of cattle under Municipal Development Permit 97-41. This condition would therefore not apply to the additional land base required for the expansion. To avoid confusion and potential nutrient over loading on lands owned by Barrhill, the manure spreading agreements provided with this application are acceptable and required to meet the necessary availability of manure spreading lands. For this reason, I determined that this condition is redundant and will not be carried over into the new approval.

Condition 2 states: “Any irrigation works, natural drainage ways shall be protected from contamination.”

The LNID established setbacks for manure spreading to its irrigation works and does not allow manure storage or manure spreading within 30 m of any canal or drain that is part of the irrigation district. In addition, AOPA and its regulation also has setbacks for manure spreading from surface water bodies and water wells (section 24 Manure application limits, Standards and Administration Regulation). These setbacks are more precise and easier to implement than the more generic requirements to protect irrigation works or natural drainage ways from contamination. In addition, all runoff from the feedlot pens drains to and is collected in the catch basin. For this reason, this condition will not be carried forward and is replaced by the requirements stated in the first paragraph of this permit requiring the permit holder/operator to adhere to AOPA and its regulations.

Condition 5 states:” Deads are to be removed within 48 hours.”

The disposal of dead animals is directly regulated under the *Animal Health Act*, which is administered by Alberta Agriculture and Irrigation (AGI). Given AGI’s regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistency with AGI’s requirements. For this reason, I determined that this condition will not be carried forward into the new approval.