

Decision Summary LA24025

This document summarizes my reasons for issuing Authorization LA24025 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24025. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On May 21, 2024, Heva Dairy Ltd. (Heva Dairy) submitted a Part 1 application to the NRCB to construct a new manure storage facility (MSF) at an existing multi species CFO.

The Part 2 application was submitted on July 11, 2024, and I deemed the application complete the same day.

The proposed construction involves:

- Constructing an earthen liquid manure storage (EMS) – 79.9 m x 33.5 m x 6.7 m deep (262 ft. x 110 ft. x 22 ft.)

The applicant also proposed to decommission the existing old EMS. A condition in this respect is included in the authorization.

a. Location

The proposed MSF is located at NE 6-11-21 W4M in Lethbridge County, roughly 4.5 km west of the town of Picture Butte. The terrain is flat at the immediate site with an overall slope to the south. The closest common body of water is the Piyami drain, 300 m to the west of the proposed EMS.

b. Permit history

I found that the CFO existed on January 1, 2002, and is considered to have triggered an AOPA permit based on the number of freestalls in the existing dairy barn. However, the final deemed capacity of animals at this CFO has not been determined under this application. Although the capacity of the existing facilities has not been determined, I analysed the footprint of the facilities to ensure that there have been no changes in the footprint since January 1, 2002 (see Technical Document LA24025, page 8) which I confirmed.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is located or is to be located
- 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 municipality entitled to divert water from that body within 10 miles downstream
- any other municipality whose boundary is within a notification distance. In this case, the notification distance is ½ mile (804 m) from the CFO

None of the CFO facilities are located within 100 m of a bank of a river, stream or canal and no other municipality is within the notification radius.

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

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 the Lethbridge Northern Irrigation District.

I also sent a copy of the application to Fortis Alberta Inc., and Atco Gas & Pipelines Ltd. who have Right of Ways on this land.

The NRCB received a response from:

- Ms. Leah Olson, a development/planning technologist with TEC. In her response, Ms. Olsen stated that a permit will not be required.
- Mr. Bradley Calder, a water administration technologist with EPA. In his response Mr. Calder stated that Heva Dairy is not within any irrigation district and that no diversion licenses have been issued for this land location. He added that Heva Dairy did not disclose the details of the agreement Heva Dairy has for its water supply. Water licencing is not under the jurisdiction of the NRCB and is directly regulated by EPA. Therefore, I will not discuss this topic in more detail but would like to add that Heva Dairy submitted a copy of their water conveyance agreement with the LNID.
- Ms. Janet Beck, administration and land manager with the LNID stated in her response that the current water conveyance agreement of Heva Dairy is sufficient to meet the CFO's water needs. She continued to state that all setbacks from any of the irrigation works must be met by the proposed construction.

No other responses were received.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction 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.)

5. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed construction:

- 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 groundwater protection requirements for the design of protective layers of manure storage facilities and manure collection areas.

6. Responses from municipality

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.

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 facility 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 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 appears to meet these setbacks.

7. Environmental risk of facilities

New MSF 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.

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.)

For the sake of efficiency, I first assessed the CFO’s existing EMS using the ERST and the feedlot pens. These facilities appear to be the CFO’s highest risk facilities because the EMS is the deepest and therefore closest to a potential groundwater resource, and the feedlot pens have the highest potential for runoff. The assessment found that the EMS and feedlot pens pose a low potential risk to groundwater and surface water. Because they are the CFO’s highest risk facilities, I presume that the CFO’s other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the

presumption is not rebutted. A further assessment of the risks posed by the other CFO facilities, using the ERST, is not necessary.

8. Terms and conditions

Authorization LA24025 permits the construction of the new EMS.

Authorization LA24025 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization LA24025 includes conditions that generally address a construction deadline, document submission, construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA24025 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24025.

September 4, 2024

(Original signed)

Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA24025

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization or amendment of an authorization 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 22(2.1) 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.)

Heva 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 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 21(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 the CFO exclusion area of Lethbridge County. 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 is not within an urban fringe district.

Section 3.4 talks about consistency of planning documents.

This is not a land use provision, and I therefore cannot 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 meets all of these setbacks and therefore meets this provision.

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 that 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) of AOPA that states that approval officers shall not consider any tests or conditions related to the site of a CFO. Therefore, I am not able to consider this provision.

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 21(1)(1.1) of 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 Authorization LA24025

a. Construction Deadline

Heva Dairy proposes to complete construction of the proposed new EMS by November 30, 2025. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2025, is included as a condition in Authorization LA24025.

b. Decommissioning of the old EMS

Heva Dairy proposed to decommission the old EMS. The decommissioning shall occur according to Technical Guideline Agdex 096-90 for manure storage facilities Type 1 posing a low risk to groundwater and surface water. The decommissioning shall occur within one year of the post construction inspection of the newly constructed EMS.

c. 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, Authorization LA24025 includes conditions requiring:

- a. Heva Dairy to provide evidence or written confirmation from a qualified third party that the EMS was constructed at the location and with the dimensions specified in this permit

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 LA24025 includes a condition stating that Heva Dairy shall not place manure into the new EMS until NRCB personnel have inspected the EMS and confirmed in writing that it meets the authorization requirements.