

Decision Summary LA24029

This document summarizes my reasons for issuing Approval LA24029 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24029. 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 June 5, 2024, Delta Cattle Ltd. (Delta Cattle) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on October 3, 2024. On October 15, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing beef finisher numbers from 3,000 to 4,950

There is no construction proposed, nor alterations to existing facilities proposed with the application.

The expansion of livestock numbers increases the annual manure production and therefore, requires the applicant to apply for an Approval to expand their CFO.

The applicant also notified me that the south catch basin had been decommissioned, due to the decommissioning of the St. Mary River Irrigation District (SMRID) canal that was within 15 m of it. The runoff from the existing feedlot pens has been redirected to catch basins #1 and #2. Therefore, the south catch basin is being removed from the list of permitted facilities.

a. Location

The existing CFO is located at NE 36-9-20 W4M in Lethbridge County, roughly 5.5 km northeast of Coaldale, Alberta. The terrain is flat. The nearest common body of water is an unnamed lake located more than 3.5 km north of the CFO. The south catch that was located within 15 m of the SMRID canal has been decommissioned.

b. Existing permits

Authorization LA19031 was issued to expand catch basin #2, which has been renamed to catch basin #1, and constructing new feedlot pens, the 40 row and 50 row. The CFO was originally permitted by Lethbridge County and received municipal permit #91-15 in April 1991 authorizing the expansion of the feedlot by 600 head. The deemed capacity of the CFO was previously established by the NRCB in a letter issued on July 28, 2015, which stated the capacity of the CFO is 3,000 beef finishers.

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.

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 October 15, 2024, and
- sending 51 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 at the NRCB’s Lethbridge office.

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 St. Mary River Irrigation District (SMRID).

I also sent a copy of the application to Atco Gas & Pipelines Inc., Alpha Bow Energy, Alta Link Management, and County of Lethbridge Rural Water Users Association Ltd. as they are utility right-of-way (ROW) holders on the subject land.

I received responses from Leah Olsen, a development/planning technologist with TEC, Micaela Azzarello, a land administrator with SMRID, Bradley Calder, a water administration technologist with EPA, and Vicki Porter, a senior admin coordinator and engineering ops with Atco.

Leah Olsen stated that a permit from TEC will not be required for the proposed development.

Micaela Azzarello advised that the district (SMRID) has no objections to the application.

Bradley Calder (EPA) stated that Delta Cattle does not appear to have any open applications in the Digital Regulatory Assurance System (DRAS), there does not appear to be any surface water or groundwater diversions authorizations for NE 36-09-20 W4, and there are no records of groundwater wells within the subject land. Mr. Calder noted that Delta Cattle has specified as part of this application that additional water license is not required as the legal source of water for the feedlot is a water conveyance agreement from SMRID for 55 acre-feet. Mr. Calder calculated the proposed water use requirement for 4,950 beef finishers is about 66.59 acre-feet, which is greater than the allowable amount under the current SMRID conveyance agreement. Mr. Calder stated that Delta Cattle needs to provide the source of the additional water required for the expansion beyond the current SMRID conveyance agreement and Delta Cattle is required to provide the licence number(s) from any quarters that may supply water to NE 36-09-20 W4 for the additional water requirements. Mr. Calder also noted that options for obtaining a legal water source for the additional diversions can be discussed with EPA. The response from EPA was forwarded to the applicant for their information and action. The applicant indicated in an email they are currently working with SMRID to obtain additional water licensing.

In an email from December 10, 2024, the applicant indicated they had been corresponding with Mr. Calder regarding requirements for water licensing for their operation. The applicant indicated that in their discussions with Mr. Calder, they had established that Delta Cattle had sufficient water through an SMRID water conveyance agreement and do not need to obtain additional water licensing for the proposed expansion. The applicant said that Mr. Calder would be sending a revised letter to me to reflect their findings. I did not receive any correspondence from EPA or Mr. Calder at the time of issuing this decision.

Vicki Porter stated that Atco has no objections.

I did not receive responses from any other ROW holders.

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, using the expansion factor, with three exceptions (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS). The owners of those residences have signed a written waiver of the MDS requirement to their residences
- 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

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

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, is not within any Intermunicipal Development Plan or Area Structure Plan areas, is within the Rural Agricultural District, and lands within 1.5 miles of the proposed area are zoned Rural Agricultural. The application’s consistency with the land use provisions of Lethbridge County’s municipal development plan is addressed in Appendix A, attached.

In her response, Ms. Janzen also stated the application appears to meet the setbacks of the Rural Agricultural District with the exception of a stockpile located south of catch basin #2. In discussion with the applicant, the stockpile that is referenced in the response is a silage pile and the applicant was not aware that it is within the Lethbridge County road setback. The applicant indicated they would work with Lethbridge County to address the setback.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received a response from 1 individual.

The individual who submitted a response owns or resides on land within the 1.5 mile notification distance for affected persons. Because of their location within this distance, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1)

This directly affected individual raised concerns regarding increased nuisances from the CFO and the peaceful enjoyment of property and lifestyle being impacted by these nuisances. 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). Paul and Regula Pfiffner, and Houweling Farms Ltd. provided MDS waivers and are directly affected parties.

8. Environmental risk of CFO facilities

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.) 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 Delta Cattle's existing CFO facilities were assessed in 2020 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. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

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 requested no development to be permitted within the property line and county road right of way setbacks and the Minimum Distance Separation is adhered to, or the appropriate waivers be obtained from impacted landowners. No new construction is proposed with the application and all existing facilities meet the setbacks required by Lethbridge County's LUB and the minimum distance separation, with the exception of three residences which the owners have signed waivers for.

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 am not aware of a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed January 23, 2025.

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, a response from Lethbridge County, a submission from a directly affected individual, and my own observation 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, this presumption is not rebutted and the directly affected parties' concerns have been addressed.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, if the application is consistent with the MDP then the proposed expansion is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted and the directly affected individual's concerns about peaceful enjoyment of property have been addressed.

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, as the land the CFO is located on is zoned Rural Agricultural District, and the lands within 1.5 miles of the CFO are zoned Rural Agricultural (See NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA24029 specifies the cumulative permitted livestock capacity as 4,950 beef finishers.

Approval LA24029 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 permits with Approval LA24029: LA19031 and the deemed approval (including Development Permit 91-15) (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.

11. Conclusion

Approval LA24029 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24029.

Delta Cattle's deemed approval (including Development Permit 91-15) and NRCB-issued Authorization LA19031 are therefore superseded, and their content consolidated into this Approval LA24029, unless Approval LA24029 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed approval and Authorization LA19031 will remain in effect.

January 30, 2025

(Original signed)
Kelsey Peddle
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns raised by a directly affected party

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.)

Delta Cattle’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 10, 2022, under Bylaw 22-001.

The MDP provisions relating to CFOs are in Part 4: Plan Policies, Section 3 Intensive Livestock/Confined Feeding Operations.

Section 3.1 and 3.2 state that establishment/development of new CFOs within the MDP CFO exclusion areas (as identified in Maps 2A and 2B of the MDP), exclusion zones identified in an IDP, or identified residential growth center are not permitted. Delta Cattle’s application is not for a new CFO. Regardless, the existing CFO is not located within any of these exclusion areas. Therefore, the application is consistent with these policies.

Section 3.3 states that the expansion of existing CFOs within the county’s CFO urban fringe districts may be permissible “in consideration of any IDP policy that allows for such”. Delta Cattle’s CFO is not within any urban fringe district as identified by the county’s MDP and does not fall within an IDP boundary.

Section 3.4 commits the County to update CFO policies in the MDP to reflect any exclusion area changes in an IDP. This is not a land use provision and is not directed at the NRCB, and therefore, is not relevant to my consistency determination.

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)*”. Delta Cattle’s CFO is not located within any of the identified areas. Therefore, the application is consistent with this policy.

Section 3.6 states that all land use bylaw setbacks should be adhered to (e.g. property lines and road setbacks). Delta Cattle’s application is for an increase in animal numbers only, and no construction is proposed.

Section 3.7 states that CFOs are only permitted in “Rural Agriculture” land use districts and cannot be established on properties smaller than 80-acres. Delta Cattle’s existing CFO is located within a “Rural Agriculture” land use district. The second part of this provision refers to what size parcels of land are acceptable to establish a CFO. This is not a land use provision because it refers to specifics with respect to the site of a CFO, rather than the use of specified lands. I also consider it to be a test or condition which AOPA directs me not to consider. I have therefore not taken this second part into consideration in my MDP consistency determination.

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 (“acceptable operating practices” and within AOPA; Section 3.8), manure application (Section 3.9), reciprocal MDS (Section 3.10), or county and NRCB interaction (Section 3.11). Therefore, they are not relevant to my MDP consistency determination.

For these reasons, 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 by a directly affected party

The following individuals qualify for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing:

- Paul and Regula Pfiffner – SE 01-10-20 W4
- Houweling Farms Ltd – NW 31-09-19 W4 & SE 36-09-20 W4

See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.

The following individual qualifies for directly affected party status because they submitted a response to the application and they own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

- Keith Duncan – E ½ of SW 36-09-20 W4

See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.

In his response, Keith Duncan raised concerns regarding increased nuisances from the CFO and the peaceful enjoyment of property and lifestyle being impacted by these nuisances.

Increased nuisances from CFO, peaceful enjoyment of property and lifestyle

In his response, Keith Duncan stated that since the last expansion of Delta Cattle, they have seen a substantial increase in the amount of noise from vehicles and equipment and more activity from manure removal and storage. He said that they have seen increased lighting that brightens their yard due to Delta Cattle installing flood lights on their feed mill. He also said they have seen a large increase in flies, and they have had to take measures to deal with this problem. He stated that further expansion will impact the peaceful enjoyment of their property and will have a direct effect on their lifestyle.

Approval officer’s conclusions

AOPA’s MDS requirements are a proxy for minimizing odours, flies, noise, and other nuisance effects from CFOs. Delta Cattle is not proposing to build facilities as part of the proposed expansion, though the operation had to meet MDS anew with an increase in livestock numbers and manure production. The existing facilities meets the MDS to neighbouring residences, with the exception of three residences which the owners have signed MDS waivers. Some parties outside the MDS may experience nuisance impacts and these impacts may not be trivial to those parties, however, the frequency of these exposures will likely be limited and of short duration. Further, as stated in Lethbridge County’s response, all lands within the 1.5 mile notification radius are zoned Rural Agricultural.

Often, any issues that arise relating to the operation of a CFO can be resolved through good communication between neighbours and the CFO operator. However, if a member of the public has concerns regarding a CFO, they may contact the NRCB through its 24-hour reporting line (1-866-383-6722). A NRCB inspector will follow up on the concern.