



Decision Summary LA19001

This document summarizes my reasons for issuing Authorization LA19001 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA19001. 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.

1. Background

On January 16, 2019, Tony & Mike Heins Farms Ltd. (Heins Farms Ltd.) submitted a Part 1 application to the NRCB to relocate existing feedlot pens at an existing confined feeding operation (CFO). The Part 2 application was submitted and deemed complete on March 12, 2019.

The proposed construction involves:

- Constructing two new pens (92 m x 40 m (each))

The purpose of the proposed relocation is to account for lost space by a recent transformation of pen C1 into a silage pit and to use pens B1 and A1 as additional sick/holding pens and temporary holding areas. These areas, pens A1, B1, and C1 will be decommissioned and no longer used as manure collection areas. Hence, the overall footprint of the livestock housing area of the feedlot will not change.

There is no proposed increase in livestock.

Under AOPA, this type of application requires an authorization.

a. Location

The existing CFO is located at NE 26-010-22 W4M in Lethbridge County, roughly 1.5 km west of Shaugnessy, Alberta. The terrain is undulating with an overall slope to the southeast. The closest common body of water is a drainage ditch that collects run on water from the surrounding crop land. The ditch runs along the south side, in close proximity of the feedlot pens, towards the east.

b. Existing permitted facilities

The CFO has a deemed permit and two Lethbridge County permits, Development Permit 93-06 and 97-159. Development Permit 93-06 allowed an expansion by 1,500 head of cattle, Development Permit 97-159 allowed a second expansion by 800 head. Neither of the two permits state a total number.

Because Application LA19001 is to relocate existing pens and did not request a capacity determination nor an expansion of animal numbers, I did not conduct a capacity determination for this operation. I determined that, the footprint of the existing facilities has not changed by comparing aerial photographs taken between 1999 and 2004 (Valtus and Google) with more recent aerial imagery and during my site inspection.

2. Notices to affected parties

Under section 21 of AOPA, notice of an authorization application must be provided to municipalities that are “affected” by the application. Section 5 of AOPA’s Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the existing CFO is located. Under section 21(2) of the act, all affected municipalities are automatically also “directly affected” parties. The NRCB interprets section 21(3) as allowing affected municipalities to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Lethbridge County is both an affected and directly affected party because the proposed expansion is located within its boundaries.

On March 12, 2019, the NRCB emailed referral letters and a copy of the application to Lethbridge County; Alberta Health Services (AHS); Alberta Environment and Parks (EP); Alberta Transportation; and the Lethbridge Northern Irrigation District (LNID).

3. Responses from the municipality and referral agencies

I received responses from Lethbridge County, Alberta Transportation, EP, and the LNID. No response was received from AHS.

Ms. Hilary Janzen, a senior planner with Lethbridge County, provided a written response on behalf of Lethbridge County. As noted in section 2, Lethbridge County is a directly affected party.

Ms. Janzen stated that the application is consistent with Lethbridge County’s municipal development plan (MDP). The applications’ consistency with Lethbridge County’s MDP, are 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 meets these setbacks.

The NRCB also received a response from Leah Olsen, development/planning technologist with Alberta Transportation. Ms. Olsen stated that a permit is not required and that her department has no concerns with this operation.

Mr. Alan Harrold, general manager of the LNID stated in his response that the LNID does not oppose this application and that the current water conveyance agreement is sufficient for the existing animal numbers. He also pointed out that no manure storage of application shall occur within 30 metres of any LNID district works.

Jeff Gutsell, hydrogeologist with EP stated that he has no concerns with this application.

4. Environmental risk screening of existing and proposed facilities

As part of my review of this application, I assessed the risk to surface water and groundwater posed by the CFO's existing and proposed manure storage facilities. I used the NRCB's environmental risk screening tool for this purpose (see NRCB Operational Policy 2016-7: *Approvals*, part 8.13). The tool 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.)

All of the CFO's existing and proposed facilities pose a low potential risk to groundwater and surface water. (The CFO's existing facilities are listed in the Appendix to LA19001.)

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.¹

In addition, the proposed construction (relocation of feedlot pens) is consistent with the land use provisions of Lethbridge County's municipal development plan and with Lethbridge County's land use bylaw. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, 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
- Has sufficient means to control surface runoff of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities

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.

6. Terms and conditions

Authorization LA19001 permits the construction of two new pens.

Authorization LA19001 also 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.

1. For a summary of these requirements, please see the [2008 AOPA Reference Guide](http://www.nrcb.ca/about/documents), available on the NRCB website at www.nrcb.ca/about/documents

In addition to the terms described above, Authorization LA19001 includes conditions that:

- Set a deadline of August 31, 2019 for the approved construction to be completed.
- Prohibit Heins Farms from using pens A1, B1, and C1 as manure collection areas.
- Prohibit Heins Farms from placing manure or livestock in the new feedlot pens until the facilities have been inspected by the NRCB following their construction.

For an explanation of the reasons for these conditions, see Appendix B, attached.

7. Conclusion

Authorization LA19001 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19001.

Authorization LA19001 should be read in conjunction with Heins Farms' deemed permit and previously issued Development permits 93-06 and 97-159, which remain in effect.

April 24, 2019



Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA19001

APPENDIX B: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may approve an application for an authorization only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgments relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

Heins’ 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 August 2, 2018 under Bylaw 18-016.

The MDP provisions relating to CFOs are in part 6.6 of the plan.

As relevant here, section 6.6.3(a) states that the county “shall restrict the development of CFOs in the Urban Fringe land use districts.” Heins’ CFO is not in any of the rural urban fringe areas designated in the MDP, so the proposal is consistent with this provision.

Section 6.6.3(d)(II) states that the NRCB “should also consider” the following:

- The cumulative effect of a new approval on any area near other existing confined feeding operations
- Environmentally sensitive areas as shown in the report, *County of Lethbridge: Environmentally Significant Areas in the Oldman River Region*
- Giving notice to adjacent landowners even in the case of applications for registration or authorization, and
- Applying MDS calculations to all country residential clusters whether or not they are specifically designated in the land use bylaw

The first of these four considerations is likely not a land use provision because of its project-specific focus (viewed cumulatively with other existing CFOs), and its request for the NRCB to make a discretionary judgement about the degree of cumulative effects that are acceptable. Therefore, this consideration is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: *Approvals*, part 8.2.5.)

As for the second consideration, the CFO is not located close to any of the environmentally significant areas noted in the county’s report.

The third of these four considerations is likely not a land use provision because it requests notification to adjacent landowners about registration and authorization applications. Section 22 of AOPA determines the required notification process. In this case, the application was for an authorization which triggered the notification requirements set out in section 22.

The fourth consideration appears to refer to AOPA's "minimum distance separation" (MDS) requirements. Under NRCB policy, approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. (See also Operational Policy 2016-7: *Approvals*, part 8.2.5.) At any rate, the application is not for an expansion of animal numbers. In addition there are no country residential clusters in the immediate vicinity of the CFO, so this MDP consideration does not apply to Heins Farms Ltd. application.

Section 6.6.3(d)IV of the MDP states that a CFO "shall not be approved in the areas shown and designated on Figure 11B as exclusion areas". Heins Farms Ltd. CFO is not located in any of the designated CFO exclusion areas, so the application is consistent with this provision.

Finally, section 6.6.3(e) of the MDP requires the application of development setbacks as set out in the county's land use bylaw. As mentioned above, the proposed feedlot pens meet these setbacks.

For these reasons, the proposed relocation of feedlot pens is consistent with the relevant land use provisions of Lethbridge County's MDP. As stated above, the county agrees with this conclusion (and has no concerns with the application).

The CFO is also subject to Lethbridge County's Land Use Bylaw (LUB) #1404, which the MDP clearly intends to incorporate as stated in section 6.6.3. (e) *development setbacks: "council will require the application of development setbacks for confined feeding operations to meet the current setbacks applicable to public roadways and property lines as per the Lethbridge County Land Use Bylaw stipulations"*. Under that bylaw, the subject land is currently zoned Rural Agriculture. CFOs and CFO expansions are a discretionary use under this bylaw. Under NRCB policy, relocation of existing feedlot pens are considered to be consistent with a LUB's land use zoning provisions, if CFOs are listed as either a permitted or discretionary land use for the relevant land use district (See NRCB Operational Policy 2016-7: *Approvals*, part 8.3.).

APPENDIX B: Explanation of conditions in Authorization LA19001

a. Construction Deadline

Heins Farms Ltd. proposes to complete construction of the proposed new pens by August 31, 2019. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of August 31, 2019 is included as a condition in Authorization LA19001.

b. Post-construction inspection and review

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization LA19001 includes a condition stating that Heins Farms Ltd. shall not place livestock or manure in the new feedlot pens until NRCB personnel have inspected the feedlot pens and confirmed in writing that they meet the authorization requirements.