



Decision Summary LA19013

This document summarizes my reasons for issuing Authorization LA19013 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA19013. 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 March 12, 2019, North American Lamb Company (North Lamb) submitted a Part 1 and Part 2 application to the NRCB to modify an existing sheep confined feeding operation (CFO). On March 14, 2019, I deemed the application complete.

The proposed modification involves:

- Constructing a pre-lambing barn (91 m x 24 m)
- Constructing a lambing barn (121 m x 18 m)
- Constructing two lactation barns
 - Barn 1 -(121 m x 18 m); and
 - Barn 2 (143 m x 18 m)

There is no proposed increase in livestock. However, the applicant also included a change of livestock within category (from 50,000 feeder lambs to 28,320 feeder lambs, 2285 ewes, and 7955 ewes/rams). This change does not require a permit or an amendment of Approval LA13010 under section 2(2) AOPA Part 2 Matters Regulation.

Under AOPA, this type of application requires an authorization.

a. Location

The existing CFO is located at SW 36-11-20 W4M in Lethbridge County, roughly 5.5 km northeast of Iron Springs, Alberta. The terrain is slightly sloping to the northeast and southeast corners of the site.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval LA13010. This approval allows the construction and operation of a 50,000 sheep feeder (feeder lambs) CFO. The CFO's existing permitted facilities are listed in the Appendix of Authorization LA19013.

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 modification is located within its boundaries.

On March 14, 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, EP, AHS, Alberta Transportation, and the LNID.

Ms. Hilary Janzen, a senior planner with Lethbridge County, provided a written response on behalf of the 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, 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 meets these setbacks.

The NRCB also received a response from Leah Olsen, a development/planning technologist with Alberta Transportation. Ms. Olsen stated that this development requires a permit and added that her department has no concerns with this operation. A copy of the letter has been forwarded to the applicant for his information and action. The applicant has since applied for a waiver of this setback which was granted.

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.

Gail Williamson, executive officer/public health inspector with AHS, stated that she has no objections or comments on this application.

4. Environmental risk screening of existing and proposed facilities

When reviewing a new authorization application for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This 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.) 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 done with a previous version of the risk screening tool and requires updating. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.13.)

In this case, the risks posed by North Lamb's existing CFO facilities were assessed in 2013. According to that assessment, the facilities posed a low risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

I also assessed the proposed new lambing barns, using the NRCB's risk screening tool, and determined that they all pose a low risk to groundwater and surface water.

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 barns are 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 barns:

- Meet the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meet the required AOPA setbacks from water wells, springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meet AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities

6. Terms and conditions

Authorization LA19013 permits the construction of four lambing barns (one pre-lambing barn, one lambing barn and two lactation barns).

Authorization LA19013 also contains terms that the NRCB generally includes in all AOPA authorization, 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](#), available on the NRCB website at www.nrcb.ca/about/documents

In addition to the terms described above, Authorization LA19013 includes conditions that:

- Set a deadline of August 31, 2019 for the approved construction to be completed
- Prohibit North Lamb from placing manure or livestock in the lambing barns 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 LA19013 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19013.

Authorization LA19013 should be read in conjunction with previously issued Approval LA13010, which remains in effect.

May 13, 2019



Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA19013

APPENDIX A: 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.”)

North Lambs’ 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.” North Lambs’ 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 North Lambs' 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". North Lambs' 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 lambing barns meet these setbacks.

For these reasons, the proposed construction of lambing barns 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, the construction of lambing barns 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 LA19013

a. Construction Deadline

North American Lamb Company proposes to complete construction of the proposed facilities by August 31, 2019. The deadline of August 31, 2019 is included as a condition in Authorization LA19013.

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 LA19013 includes a condition stating that North American Lamb Company shall not place livestock or manure in the manure storage portions of the new lambing barns until NRCB personnel have inspected the lambing barns and confirmed in writing that they meet the authorization requirements.