



Decision Summary LA24004

This document summarizes my reasons for issuing Authorization LA24004 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24004. 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 January 30, 2024, John Liefting submitted a Part 1 application to the NRCB to construct a new earthen liquid manure storage and a runoff control catch basin at a multi species CFO.

The Part 2 application was submitted on January 31, 2024. On January 31, 2024, I deemed the application complete.

The proposed construction involves:

- Constructing an earthen liquid manure storage (EMS) – 45 m x 40 m x 5 m deep
- Constructing a runoff control catch basin – 40 m x 25 m x 5 m deep

a. Location

The CFO is located at NW 7-11-20 W4M in Lethbridge County, roughly 3 km northeast of Picture Butte, Alberta. The terrain is flat.

b. Existing permits

On March 14, 2013, the owner of this CFO received a letter from the NRCB, confirming that this CFO has a capacity of 85 dairy cows (plus associated dries and replacements). On July 5, 2022, the current owner, John Liefting, requested an additional grandfather determination for the feedlot portion of this CFO. Subsequently, Grandfathered Permit Determination PL21005 was issued, determining the livestock housing capacity of this CFO to include 400 beef finishers in addition to the 85 milking cows (plus dries and replacements).

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 0.5 miles (0.8 km) from the CFO

None of the CFO facilities are located within 100 m of a bank of a river, stream or canal. There are also no municipal boundaries within 0.5 miles of the CFO.

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), Alberta Health Services (AHS), and the Lethbridge Northern Irrigation District (LNID).

I also sent a copy of the application to Atco Gas, and Lethbridge North County Potable Water Users.

The NRCB received responses from TEC, AEP, and the LNID:

- Ms. Leah Olson, development/Planning technologist with TEC stated that a permit from her department is not required.
- Ms. Jeff Gutsell, hydrogeologist with EPA stated that EPA has no questions or concerns regarding this application.
- Ms. Katrina Holoboff, administrative assistant with the LNID stated that they have no objections.

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 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 protective layers of manure storage facilities and manure collection areas

MDS requirements do not apply in this case because there is no increase in manure production and the proposed facilities are located further away from the neighbouring residence (See Technical Document LA24004).

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 the land use provisions in Lethbridge County's 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 requested that the application meets these setbacks. The application meets all applicable setbacks.

7. Environmental risk of 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.)

For the sake of efficiency, I first assessed the CFO's existing earthen liquid manure storage using the ERST. This appears to be the CFO's highest risk facility due to the type of manure stored and it being the deepest facility with an unknown liner. The assessment found that this facility poses a low potential risk to groundwater and surface water. Because this is the CFO's highest risk facility, 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 these other facilities, using the ERST, is not necessary.

8. Terms and conditions

Authorization LA24004 permits the construction of the earthen liquid manure storage and runoff control catch basin.

Authorization LA24004 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 LA24004 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA24004 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24004.

Authorization LA24004 must be read in conjunction with John Liefing's deemed, unwritten permit.

March 26, 2024

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA24004

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.)

John Liefing’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 section in the MDP that governs CFOs is section 3 Intensive Livestock/Confined Feeding Operations. The policies relevant to this application are set out below:

3.0 states that the county is supportive of the livestock industry establishing and expanding into areas where there is less potential for conflicts and where municipal infrastructure can adequately serve and support such developments.

As stated in section 20(1.1) under consideration on approvals, an approval officer shall not consider any provisions respecting tests or conditions related to the site for a CFO. I interpret section 3.0 of the MDP as a condition related to the site of a CFO. Therefore, I cannot consider this section in my consistency determination.

3.1 and 3.2 stipulate that establishment/development of new CFOs within the MDP CFO exclusion areas (Map 2 of the MDP), exclusion zones identified in an IDP, or identified residential growth center are not permitted.

This CFO is not within any of the identified areas and no IDPs apply to this area.

3.4 elaborates on municipal plan consistencies with neighbouring municipalities.

Because I do not consider this section as a land use provision, I will not include this section in my consistency determination.

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 Sensitive Areas in the Oldman River Region (1988).

This CFO is not within any of the identified areas.

3.6 states that all setbacks should be adhered to (e.g. property lines, road setbacks)

The proposed construction meets all applicable setbacks.

3.7 states that CFOs are only permitted in 'Rural Agriculture' land use districts and cannot be established on properties smaller than 80 acres.

This CFO is not a new CFO and is located within the 'Rural Agriculture' land use district. The property is larger than 80 acres. This section is therefore met.

Sections 3.8-3.11 are not considered land use provisions because they either deal with conditions under which CFOs are allowed to continue to operate (section 3.8), manure application (section 3.9, which is a test or condition), reciprocal MDS (section 3.10), or county NRCB interactions (section 3.11, which is procedural).

For these reasons, I conclude that the application is consistent with the land use provisions of Lethbridge County's MDP. This conclusion is supported by the county's response.

APPENDIX B: Explanation of conditions in Authorization LA24004

a. Construction deadline

John Liefting proposes to complete construction of the proposed new earthen manure storage lagoon and catch basin by June 30, 2024. This timeframe seems short considering the proposed scope of work. I will, therefore, extend the deadline by an additional construction season. The deadline of November 30, 2025, is included as a condition in Authorization LA24004.

b. Construction above the water table

Sections 9 (3) of the Standards and Administration Regulation under the *Agricultural Operation Practices Act* (AOPA) prohibit construction of a manure storage facility if its bottom is less than one metre above the water table at the site “at the time of construction.”

Based on this information, the proposed catch basin meets the one metre requirement of sections 9 (3). However, because the height of the water table can vary over time, a condition is included requiring applicant to cease construction and notify the NRCB immediately if the water table is encountered during construction.

c. Post-construction inspection

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 LA24004 includes conditions requiring:

- a. John Liefting to provide evidence or written confirmation from a qualified third party that the runoff control catch basin and the earthen liquid manure storage are constructed according to 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 LA24004 includes a condition stating that John Liefting shall not place livestock or manure in the manure storage or collection portions of the new earthen liquid manure storage and catch basin until NRCB personnel have inspected the earthen liquid manure storage and catch basin and confirmed in writing that they meet the authorization requirements.