

Decision Summary LA23045

This document summarizes my reasons for issuing Approval LA23045 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23045. 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 December 4, 2023, JTV Farms Ltd. (JTV Farms) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on March 12, 2024. On March 18, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 1,700 to 2,700 beef finishers
- Constructing new feedlot pens – 243.8 m x 45.7 m (800 ft. x 150 ft.)
- Expanding an existing catch basin (final dimensions: 46 m x 27.4 m x 4.5 m deep)

a. Location

The existing CFO is located at SW 21-10-21 W4M in Lethbridge County, roughly 3.5 km northeast of Diamond City, AB. The terrain is flat with a coulee system starting approximately 150 metres to the southeast of the CFO; the Oldman River runs 560 metres to the southeast of the CFO.

b. Existing permits

The CFO is currently permitted under Approval LA21014. This approval allows the construction and operation of a 1,700 beef finisher feedlot. The CFO's existing permitted facilities are listed in the appendix of Approval LA23045.

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 and no other municipality is within the notification distance.

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:

- public advertisement in Sunny South News newspaper in circulation in the community affected by the application on March 18, 2024, and
- sending 43 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 and was posted on the NRCB website for public viewing.

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 Lethbridge Northern Irrigation District (LNID).

I also sent a copy of the application to Fortis Alberta, Tamarack Acquisition Corporation, Lethbridge North County Potable Water Co-op Ltd., and Carbon Development Corporation who have easements on this land.

The NRCB received responses from Jeff Gutsell, a hydrogeologist with EPA; Ms. Leah Olson, a planning technologist with TEC; Ms. Tracy Davidson, a land coordinator with Fortis Alberta; and Katrina Holoboff, an administrative assistant with the LNID.

- Mr. Gutsell stated that there are no groundwater or surface water diversion authorizations issued for that land location. He continued to state that the CFO is within the LNID, and that there is potential that JTV Farms obtains water from there. He requested proof that JTV Farms has a water conveyance agreement prior to approval which was provided to EPA.
- Ms. Olson stated that a permit from TEC is not required.
- Ms. Davidson stated that Fortis has no concerns regarding this application.
- Ms. Holoboff stated that the LNID does not oppose this application but pointed out that an additional water conveyance agreement is needed to cover the increased need for water. A copy of the response was sent to the applicant for his information and action.

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, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owners of that residence have signed a written waiver of the MDS requirement to their residence
- 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
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

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 CFO expansion is located within its boundaries.

Ms. Hilary Janzen, 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 but pointed out that the CFO is located within the CFO exclusion area, which does not preclude its expansion, and very close to an environmentally sensitive area. The application's consistency with the land use provisions of Lethbridge County's municipal development plan is addressed in Appendix A, attached.

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

The person 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)

The directly affected party raised concerns regarding nuisance impacts from this CFO (increased odor, noise, air pollution, flies, surface water pollution, loss of property value and enjoyment of life). These concerns are addressed in Appendix B.

The NRCB considers persons who own a residence within the MDS of the CFO, and who waive the MDS requirements in writing to be automatically considered directly affected (See NRCB Operational Policy 2016-7: Approvals, part 7.2.1). Mr. Dave Haarman and Mr. Gerrit Haarman provided a joint MDS waiver and are therefore considered directly affected parties.

8. Environmental risk of CFO facilities

New CFO facilities 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 from the proposed new pens and expanded catch basin are low.

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 JTV Farms' existing CFO facilities were assessed in 2018 using the ERST. According to that assessment, the facilities pose 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 as their regulatory authority is limited.

I have considered the effects the proposed CFO 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* / section 109 of the *Water Act* in respect of the subject of this application. Furthermore, the application meets AOPA's technical requirements, and the applicant also provided the requested water conveyance agreements from the irrigation district (LNID).

I am not aware of any written decision of the Environmental Appeals Board of this location (<http://www.eab.gov.ab.ca/status.htm>, accessed April 12, 2024).

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

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, including runoff control and distance to surface water bodies. In addition, the CFO is on flat ground and over 150 m away from the outskirts of the Oldman River coulee system which is determined to be an environmentally significant area with unstable slopes. The distance to the coulee system to the north is about 460 m. I note that the rest of the quarter section is irrigated and listed as manure spreading lands. In my view, the presumption that the effects on the environment are acceptable is not rebutted.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, if the application is consistent with the MDP, then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with Lethbridge County's municipal development plan land use provisions (See NRCB Operational Policy 2016-7: Approvals, part 9.10.9). In my view, this presumption is not rebutted, and I note that Lethbridge County's response also states that the application is consistent with their MDP.

10. Terms and conditions

Approval LA23045 specifies the cumulative permitted livestock capacity as 2,700 beef finishers, permits the construction of the feedlot pens and the expansion of the existing catch basin.

Approval LA23045 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.

In addition to the terms described above, Approval LA23045 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA23045: Approval LA21014 (see NRCB Operational Policy 2016-7: Approvals, part 11.5). Permit consolidation helps the permit holder, municipality, neighbors 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. All conditions from Approval LA21014 are carried forward into the new approval.

11. Conclusion

Approval LA23045 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23045.

JTV Farms' NRCB-issued Approval LA21014 is therefore superseded, and its content consolidated into this Approval LA23045, unless Approval LA23045 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA21014 will remain in effect.

May 1, 2024

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns raised
- C. Explanation of conditions in Approval LA23045

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.)

JTV Farms’ 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 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.

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.

As stated in the MDP (This CFO is located within the CFO exclusion area of Lethbridge County; however, this application is to expand an existing CFO and is not for a new CFO. 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, although located within the CFO exclusion area, is not in proximity or within an urban fringe district.

Section 3.4 talks about consistency of planning documents.

This is not a land use provision, and I can therefore not 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 just outside an area identified as a provincially significant site (Map 1 Environmentally significant areas – Natural) and areas with unstable slope potential (Map 2 – Environmentally significant Areas – Hazards).

The immediate area of the CFO is flat. The Oldman River coulee system starts about 150 m to the southeast and 450 to the north. As noted above, the quarter section is listed as manure spreading lands. The operator is reminded to maintain all applicable distances to the coulee system which is considered to be part of the surface water body draining into the Oldman River.

Section 3.6 speaks on required setbacks of manure storage areas to property lines and roadways.

The CFO meets all of these setbacks.

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) AOPA that states that approval officers shall not consider any tests or conditions related to the site of a CFO.

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 20(1)(1.1) 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, and it imposes restrictions on residential development not CFOs, 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: Determining directly affected party status and concerns raised

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: Gerrit Haarman and Dave Haarman. (See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.)

The following individual qualifies for directly affected party status because she submitted a response to the application and owns or resides on land within the “notification distance,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation: Vicky Clark. (See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.)

Ms. Clark raised the following concerns:

1. Nuisance impacts (odor, flies, noise, air pollution)
2. Too close to coulee system and potential runoff entering the Oldman River
3. Cumulative effects – other big feedlots in area
4. Negative impact on property value and enjoyment of property and life
5. Water shortage

Nuisance impacts

The MDS setback is an important tool under AOPA for mitigating nuisance impacts of CFOs on neighbouring residences. The calculation of the setback distance to neighbouring residences is based on various factors including the number of animals and the zoning of the land on which a residence is located. Ms. Clark’s residence, located on land zoned agriculture, is approximately 900 m southeast of the CFO. The MDS of the CFO is calculated to be 547 m (section 3(2) and (3) Standards and Administration Regulation, Schedule 1) and therefore meets the required distance. The typical wind direction in this area is from the west-southwest. JTV Farms is located to the north of the residence and therefore not in the main wind direction. However, there are several other CFOs that are upwind and located directly west-southwest of this residence. It is therefore possible that the nuisance impacts Ms. Clark experiences are caused by other, surrounding CFOs.

It is true that there will be odors resulting from the land application of manure; these odors are normally of short duration and typically occur once or twice per year. In order to limit the nuisance impact of manure application, manure must be incorporated on conventionally tilled land within 48 hours. Incidences of non-compliance can be reported to the NRCB’s 24 hour a day reporting line (1-866-383-6722 or 310-000 toll free line.)

The respondent also voiced concerns with respect to flies. Incidences of un-reasonable fly infestations can be reported to the NRCB’s 24 hour a day reporting line (1-866-383-6722 or 310-000 toll free line.)

Too close to coulee system and potential runoff entering the Oldman River

The total volume of the catch basins meet the storage capacity calculated to accommodate at least a one-day rainfall that has a one in 30 year probability (section 19(2) Standards and Administration Regulation). The feedlot area, using the catch basin calculator with rain fall data from Lethbridge, requires a runoff storage volume of at least 1,789 m³. The three catch basins together have a combined runoff storage volume of 2,061 m³. This is in excess to the required

1,789 m3 and will help to alleviate the possibility of an overflow and potentially runoff to reach the outskirts of the coulee system.

It is noted that manure spreading lands, intended to receive manure from this CFO, are close to the coulee system. The operator is reminded to maintain all applicable distances (depending on slope) to the coulee system as laid out in section 24(9) and 24(10) Standards and Administration Regulation.

Cumulative effects – other big feedlots in area

I understand, the concern is that the proposed development will exacerbate the current nuisance impacts experienced by the respondent from existing CFOs in this area. In addition to JTV Farms, there are several other CFOs in the area: two dairies to the west that were established prior to the construction of the residence, one hog operation to the southwest, also established prior to the construction of the residence, and one larger feedlot to the southeast. It is difficult to assess the degree to which the proposed expansion would increase nuisance impacts from what they are now. There is also no objective threshold to determine the level of acceptable nuisance impacts arising from multiple (but separate) CFOs. Although I don't want to under-value this concern, it is impossible to quantify the additional effect the expansion might have.

Negative impact on property value and enjoyment of property

The NRCB's board has consistently stated that concerns regarding effects on property values *"are not a subject for [the Board's] review under AOPA or for approval officers' consideration of permit applications."* According to the Board, impacts on property values are a land use issue which is "a planning matter dealt with by municipalities in municipal development plans..." (Zealand Farms, RFR 2011-02, p. 5; see also, e.g. Pigs R Us Inc., RFR 2017-11, p.6 (stating that effects on land values are "not relevant Board consideration when the development is consistent with the MDP's land use provisions.")).

Water shortage

Water supply for new and expanding CFOs is not under the NRCB's jurisdiction. However, the applicant signed a water declaration (Technical Document LA23045, page 6 and 7) with the understanding that it is their obligation to ensure adequate water is available for the increased water needs. As mentioned above (section 3), JTV Farms has a water conveyance agreement with the LNID and is aware that an additional agreement is required to meet the increase in water needs with this expansion and that it is their responsibility to obtain this additional agreement. It is solely at the discretion of the LNID to enter into such agreements based on available water quantities and demand. A copy of EPA's and the LNID's responses were provided to JTV Farms for their information and action.

APPENDIX C: Explanation of conditions in Approval LA23045

Approval LA23045 includes several conditions, discussed below, and carries forward all conditions from Approval LA21014. Construction conditions that have been met are identified in the appendix to Approval LA23045.

1. New conditions in Approval LA23045

a. Construction Deadline

JTV Farms proposes to complete construction of the proposed new feedlot pens by September 2024. This timeframe seems somewhat short for the proposed scope of work. To account for unforeseeable circumstances such as difficulties finding contractors, I will allow for an additional construction season. The deadline of December 31, 2025, is included as a condition in Approval LA23045.

b. 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, Approval LA23045 includes a condition requiring:

- a. JTV Farms to provide evidence or written confirmation from a qualified third party that the final dimensions of the expanded catch basin are as laid out 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. Approval LA23045 includes a condition stating that JTV Farms shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens or allow manure contaminated runoff to enter the expanded catch basin until NRCB personnel have inspected the new feedlot pens and the catch basin extension and confirmed in writing that they meet the approval requirements.