



Decision Summary LA19045A

This document summarizes my reasons for issuing Approval LA19045A under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA19045A. 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 and reason for the amendment

On June 25, 2020, Durango Livestock Ltd. (Durango) received Approval LA19045, permitting the use of constructed facilities and the construction of eight new feedlot pens together with an increase in beef finisher numbers to a total of 5,500 beef finishers. The construction completion deadline was set to be December 30, 2022.

Most of the approved feedlot pens – all except one row (4 pens furthest east of the CFO) – have been constructed. In June 2023, I emailed Durango to inquire about the state of the construction. Later, Durango stated that they still planned to finish the construction of the remaining four feedlot pens. On December 20, 2023, Durango Livestock Ltd. (Durango) submitted an Application for Amendment LA19045A to the NRCB to extend the construction completion deadline for the approved feedlot pens at the existing beef CFO. No other changes are proposed.

I note that Durango had not requested an extension to the construction deadline (of December 30, 2022) before the passing of the deadline. Under NRCB Operational Policy 2015-1: Construction Deadlines part 4, if an extension has not been requested by the deadline, an approval officer should use their authority under section 23 of AOPA to amend the permit to remove the unbuilt facilities and corresponding livestock numbers from the permit. In that case, Durango would then need to reapply for the 4 feedlot pens and livestock.

I am exercising my discretion to depart from the Construction Deadlines Policy because of the particular facts and circumstances as follows and it makes little practical sense to remove the unbuilt facilities and then immediately restore them. The specific circumstances are:

- The first policy reason for the Construction Deadlines Policy (part 1) is to support orderly development and avoid unfairness and uncertainty. In this case, there has been no new residential development since June 2020, and no changes to the county's MDP that apply.
- The second policy reason is to account for changes in construction standards. The feedlot pens have a naturally occurring protective layer and no changes in construction standards have occurred since.
- Under the Construction Deadlines Policy, if Durango had asked for an extension before December 30, 2022, I could have granted the extension on my own discretion and

without any notice. In this case, there is an application to amend an Approval, complete with notice to the public, neighbours, the municipality, and referral agencies. Notice, and the opportunity for comment, help compensate procedurally for the missed deadline.

This all said, however, it is important for Durango to understand that complying with a construction deadline is solely their responsibility, and the NRCB is not obliged to pursue active inquiries to check on an applicant's intention. This is set out clearly in the Construction Deadlines Policy.

On January 17, 2024, I deemed the application complete.

a. Location

The existing CFO is located at NE 10-8-25 W4M in the Municipal District (MD) of Willow Creek, roughly 11 km southeast of the Town of Fort MacLeod. The terrain is hilly, with a significant slope on the north side towards an unnamed creek that runs in a west-east direction along the north side of the CFO. The distance of the closest manure storage or collection to this creek is 160 m.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA19045. That permit allowed the construction and operation of a 5,500 beef finishers CFO. The CFO's existing permitted facilities, excluding the yet unconstructed four feedlot pens, are listed in the appendix to Approval LA19045A.

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. No other municipality is located within the notification distance.

A copy of the application was sent to the MD of Willow Creek, which is the municipality where the CFO is located. Also, a copy of the application was sent to the Blood Tribe because they are located within the specified distance.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the MacLeod Gazette which is the newspaper in circulation in the community affected by the application on January 10, 2024, and
- sending 27 notification letters to people identified by the MD of Willow Creek 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 that have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS), Alberta Environment and Protected Areas (EPA), and Alberta Transportation & Economic Corridors (TEC).

The NRCB received a written response from EPA, AHS, and TEC.

Mr. Jeff Gutsell, hydrogeologist with EPA stated in his response that there are no concerns with this application.

Mr. Wade Goin, public health inspector with AHS stated that all groundwater should be protected and that the water well adjacent to the feedlot pens should be monitored. This water well has been monitored until 2022 when it was decommissioned. Only minimal traces of contamination that could be traced back to manure were identified (see section 8 below).

Ms. Leah Olsen stated in her response that a permit from Transportation and Economic Corridors is not required.

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 construction remains consistent with the land use provisions of the MD of Willow Creek's Municipal Development Plan (Bylaw no. 1765, consolidated to Bylaw# 1841, August 2019). Therefore, the discussion in decision Summary LA19045 is still valid and a new discussion is not required. (See Appendix A of Approval LA19045 for a more detailed discussion of the county's planning requirements.)

6. AOPA requirements

Concerning the technical requirements set out in the regulations, the outstanding construction continues to meet all AOPA requirements, including the municipal distance separation, all liner requirements, and all other setbacks.

7. Responses from the municipality, the Blood Tribe, 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." The MD of Willow Creek is an affected party (and directly affected) because the CFO is located within its boundaries.

The NRCB did not receive a response from the MD of Willow Creek. The relevant sections of the MDP have not changed since Approval LA19045 was issued. Therefore, the consistency with the land use provisions of the MD's municipal development plan (MDP) has not changed since the last assessment was done and is still valid. The full assessment can be found in Appendix A of Approval LA19045.

A copy of the application was also provided to the Blood Tribe. In a phone conversation with Ms. Clo Ann Wells, a development officer with the Blood Tribe, Ms. Wells confirmed that she had received the application but did not express any concerns with the application.

Apart from municipalities, any member of the public may request to be considered "directly affected."

The NRCB did not receive responses from any individuals or other 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 Durango's existing CFO facilities were assessed in 2019 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been changes related to water wells since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities was required. It was confirmed that there is no water well located within 100 m of the CFO and that the one water well that was located to the east of the CFO and upslope has been decommissioned. The report for the monitoring results in 2020 and 2021, prior to the decommissioning of the well, indicates that the concentrations of common manure indicators, although present, are in very low concentrations. Some other parameters, including fluoride and total dissolved solids, exceed maximum acceptable concentrations. As mentioned before, since the last water samples were taken, Durango decommissioned this well. However, the applicant has not proposed to amend the monitoring conditions. Therefore, and according to NRCB policy: Operational Policy 2016-1, Amending Municipal Permit Conditions, the monitoring condition of the leak detection wells around the catch basin as well as the water well monitoring condition of water well ID 0208536 remain in place but are suspended (see LA19045A GWMS and LA19045A WWMS).

9. Other factors

The approval application remains consistent with the MDP's land use provisions as discussed in section 5 above and continues to meet all requirements of AOPA and its regulations including all other factors such as matters that would normally be considered if a development permit were being issued.

10. Terms and conditions

Approval LA19045A specifies the cumulative permitted livestock capacity as 5,500 beef finishers and extends the construction completion deadline of the remaining four feedlot pens to December 31, 2024.

Rather than issuing a separate amendment to be read in conjunction with Approval LA19045, I am consolidating it into this amended permit, Approval LA19045A (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. Approval LA19045A carries forward all existing terms and conditions from Approval LA19045, with the exception of the amendment noted above.

This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion and in accordance with NRCB Operational Policy 2016-7: Approvals, part 11.5.

11. Conclusion

Approval LA19045A is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19045A.

Durango's Approval LA19045 is therefore superseded, and its content consolidated into this Approval LA19045A, unless Approval LA19045A is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA19045 will remain in effect.

March 6, 2024

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

A. Explanation of conditions in Approval LA19045A

APPENDIX A: Explanation of conditions in Approval LA19045A

Approval LA19045A carries forward all conditions from Approval LA19045 with one modification which is the extension of the construction completion deadline.

1. Altered conditions in Approval LA19045A

a. Construction Deadline

Durango proposes to complete the construction of the outstanding four feedlot pens by the Summer of 2024. This timeline is somewhat vague. I therefore set the new construction completion deadline as December 31, 2024. This time frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2024, is included as a condition in Approval LA19045A.