

Decision Summary LA24016

This document summarizes my reasons for issuing Approval LA24016 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24016. 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 March 27, 2024, W J Feeders Ltd. (W J Feeders) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on April 5, 2024. On April 16, 2024, I deemed the application complete.

The proposed expansion involves:

- Converting and increasing 7,000 beef feeders to 6,500 beef finishers

There is no construction proposed, nor alterations to existing facilities proposed with the application.

The change in livestock type increases the annual manure production and therefore, requires the applicant to apply for an Approval to expand their CFO.

a. Location

The existing CFO is located at NE and NW 22-9-19 W4M in Lethbridge County, roughly 6.4 km east of the town of Coaldale, Alberta. The topography is flat.

b. Existing permits

The CFO is currently permitted under NRCB Approval LA17065. This approval allows the construction and operation of a 7,000 beef feeder CFO. The CFO's existing permitted facilities are listed in the appendix of Approval LA24016.

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 2 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.

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 the Sunny South News newspaper in circulation in the community affected by the application on April 16, 2024, and
- sending 62 notification letters to people identified by Lethbridge County as owning or residing on land within the notification distance.
- posting it on the NRCB website

The full application was made available for viewing during regular business hours at the NRCB’s Lethbridge office 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 St. Mary River Irrigation District (SMRID).

I also sent a copy of the application to Alpha Bow Energy Ltd., Montana Alberta Tie Ltd., Cenovus Energy Inc., and Fortis Alberta Inc. as they are utility right of way holders on the subject land.

I received responses from Leah Olsen, a development/planning technologist with TEC, Jeff Gutsell, a hydrogeologist with EPA, and Micaela Azzarello, a land administrator with SMRID.

Leah Olsen stated that a permit from TEC would not be required for the proposed development.

Jeff Gutsell stated that there are no groundwater or surface water diversion authorizations for this land location. He also stated there is one water well log on this land location, which appears to be an oil and gas geologic test hole. He further stated the CFO is located within the SMRID and requested that W J Feeders submit proof of water conveyance agreements. Mr. Gutsell later stated that he had received copies of water conveyance agreements between W J Feeders and SMRID, and that these agreements appeared sufficient for the proposed expansion but reminded it is the responsibility of W J Feeders to ensure they have adequate water volume for their entire operation’s requirements.

Micaela Azzarello stated that there are no concerns from the SMRID district with the application.

I did not receive responses from any utility right of way holders.

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 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's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

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 expansion is located within its boundaries.

Ms. Hilary Janzen, the manager 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, is not within any Intermunicipal Development Plan or Area Structure Plan areas, is within the Rural Agricultural District and appears to meet the setbacks of the Rural Agricultural District.

Additionally, the response stated the lands within 2.0 miles of the proposed area are zoned Grouped Country Residential (to the east and southeast), Rural General Industrial (to the east) and Urban Fringe (to the east) and the lands also contain the Hamlet of Chin and surrounding area which includes lands zoned Hamlet residential. 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."

No responses were received from any other person, organization, or member of the public.

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 W J Feeders' existing CFO facilities were assessed in 2015 using the ERST. According to that assessment, the facilities posed 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 though as their regulatory authority is limited.

Ms. Janzen listed the setbacks required by Lethbridge County's land use bylaw (LUB) and requested no development to be permitted within the property line and county road right of way setbacks and the Minimum Distance Separation is adhered to, or the appropriate waivers obtained from impacted landowners. No new construction is proposed with the application and all existing facilities meet the setbacks required by Lethbridge County's LUB and the minimum distance separation.

I have considered the effects the proposed 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* or under section 109 of the *Water Act* in respect of the subject of this application.

I am not aware of a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed May 14, 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. In my view, this presumption is not rebutted.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, if the application is consistent with the MDP land use provisions, then the proposed expansion 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 the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA24016 specifies the cumulative permitted livestock capacity as 6,500 beef finishers. There are no new conditions associated with the expansion of livestock for this Approval.

Approval LA24016 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.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA24016: LA17065 (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.

11. Conclusion

Approval LA24016 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24016.

W J Feeders' NRCB-issued Approval LA17065 is therefore superseded, and its content consolidated into this Approval LA24016, unless Approval LA24016 is held invalid following a review and decision by the NRCB's Board members or by a court, in which case Approval LA17065 will remain in effect.

May 28, 2024

(Original signed)
Kelsey Peddle
Approval Officer

Appendices:

A. Consistency with the municipal development plan

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.)

W J Feeders’ 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 MDP provisions relating to CFOs are in Part 4: Plan Policies, Section 3 Intensive Livestock/Confined Feeding Operations.

Section 3.1 and 3.2 state that establishment/development of new CFOs within the MDP CFO exclusion areas (as identified in Maps 2A and 2B of the MDP), exclusion zones identified in an IDP, or identified residential growth center are not permitted. W J Feeders’ CFO is not located within any of these exclusion areas. Therefore, the application is consistent with these policies.

Section 3.3 states that the expansion of existing CFOs within the county’s CFO urban fringe districts may be permissible “in consideration of any IDP policy that allows for such”. W J Feeders’ CFO is not within any urban fringe district as identified by the county’s MDP.

Section 3.4 commits the County to update CFO policies in the MDP to reflect any exclusion area changes in an IDP. This is not a land use provision and is not directed at the NRCB, and therefore, is not relevant to my consistency determination.

Section 3.5 states that “CFOs shall not be supported to establish or expand within the environmentally sensitive areas as shown in the *Cotton Wood Report: County of Lethbridge: Environmentally Sensitive Areas in the Oldman River Region (1988)*”. W J Feeders’ CFO is not located within any of the identified areas. Therefore, the application is consistent with this policy.

Section 3.6 states that all land use bylaw setbacks should be adhered to (e.g. property lines and road setbacks). W J Feeders’ application is for a change in animal type and number only, and no construction is proposed. Therefore, this policy is irrelevant to my MDP consistency determination.

Section 3.7 states that CFOs are only permitted in “Rural Agriculture” land use districts and cannot be established on properties smaller than 80-acres. W J Feeders’ existing CFO is

located within a “Rural Agriculture” land use district. The second part of this provision refers to what size parcels of land are acceptable to establish a CFO. This is not a land use provision because it refers to specifics with respect to the site of a CFO, rather than the use of specified lands. I also consider it to be a test or condition which AOPA directs me not to consider. I have therefore not taken this second part into consideration in my MDP consistency determination.

Sections 3.8, 3.9, 3.10, and 3.11 are not considered land use provisions because they either deal with conditions under which CFOs are allowed to continue to operate (“acceptable operating practices” and within AOPA; Section 3.8), manure application (Section 3.9), reciprocal MDS (Section 3.10), or county and NRCB interaction (Section 3.11). Therefore, they are not relevant to my MDP consistency determination.

For these reasons, I conclude that the application is consistent with the land use provisions of Lethbridge County’s MDP that I may consider.