

Decision Summary LA24038

This document summarizes my reasons for issuing Authorization LA24038 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24038. 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 August 30, 2024, Vanden Dool Farms Ltd. (Vanden Dool) submitted a Part 1 application to the NRCB to expand a manure storage facility (MSF) at an existing dairy CFO.

The Part 2 application was submitted on September 9, 2024 and I deemed the application complete the same day.

The proposed expansion involves:

- Expanding an existing catch basin from 37 m x 32 m x 3.6 m deep to 40 m x 40 m x 3.6 m deep (final dimensions)

a. Location

The proposed expanded MSF is located at NW 10-11-21 W4M in Lethbridge County, roughly 1.2 km northwest of the Town of Picture Butte. The terrain is flat. The closest common body of water is a canal 46 m to the southwest that drains into the Picture Butte Lake Reservoir. The reservoir is approximately 1.4 km southeast of the CFO.

b. Existing permits

The CFO is already permitted under Approval LA17027 and Authorization LA18029.

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 1.5 miles (2414 m) from the CFO.

The existing pens located in the southwest of the CFO are located within the 100 m of a canal.

Lethbridge County and the LNID (canal owner) were both made aware of the application. A copy of the application was sent to Lethbridge County, which is the municipality where the CFO is located and the Town of Picture Butte which is located within the notification radius.

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), and Lethbridge Northern Irrigation District.

I also sent a copy of the application to Atco Gas & Pipelines and Fortis Alberta Ltd. because they are right of way holders on this land.

The NRCB has received a written response from:

- Leah Olsen, planning technologist with TEC. In her response, Ms. Olsen stated that a permit from her department is not required.
- George Roth, water administration technologist. In his response Mr. Roth stated that it seems that no additional water is required for the proposed project and that there are no concerns.
- Ms. Janet Beck, administration and land manager with the LNID stated that the current water conveyance agreement is large enough to cover the water needs for this CFO and reminded the operator that no manure storage or application is permitted within 30 m of the LNID irrigation works.

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 all nearby residences (AOPA setbacks, 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 groundwater protection requirements for the design of protective layers of manure storage facilities and manure collection areas

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 expansion 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 Lethbridge County’s land use provisions of the 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 noted that the application meets these setbacks.

The Town of Picture Butte is also a directly affected party because the town borders are within the notification radius.

Mr. Keith Davis, CAO of the Town of Picture Butte stated in his response that he has no concern with this application.

7. Environmental risk of facilities

New or expanded MSF 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 are low.

When reviewing a new authorization 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 Vanden Dool’s existing CFO facilities were assessed in 2018 using the ERST. According to that assessment, the facilities posed a low potential 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.

8. Terms and conditions

Authorization LA24038 permits the expansion of the existing catch basin.

Authorization LA24038 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 LA24038 includes conditions that generally address the construction deadline and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA24038 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24038.

Authorization LA24038 must be read in conjunction with Vanden Dool's Approval LA17027 and Authorization LA18029 which remain in effect.

November 13, 2024

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA24038

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.)

Vanden Dool’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 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. Additionally, approval officers shall not consider any tests or conditions related to the site of a CFO (section 22(1)(2.1) AOPA).

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.

This CFO is not located within the CFO exclusion area of Lethbridge County. 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 is not within an urban fringe district.

Section 3.4 talks about consistency of planning documents.

This is not a land use provision, and I therefore cannot 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 not located within any areas identified in that report, and therefore meets this provision.

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

The CFO meets all of these setbacks and therefore meets this provision.

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 the this is not a new CFO, the stipulation of a minimum parcel size to establish a new CFO would appear to fall under section 22(1)(2.1) of AOPA that states that approval officers shall not consider any tests or conditions related to the site of a CFO. Therefore, I am not able to consider this provision.

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 22(1)(2.1) of 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, 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: Explanation of conditions in Authorization LA24038

a. Construction Deadline

Vanden Dool proposes to complete construction of the proposed catch basin expansion by December 2025. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2025, is included as a condition in Authorization LA24038.

b. Post-construction inspection and review

The NRCB routinely inspects newly constructed facilities and expanded 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 LA24025 includes a condition stating that Vanden Dool shall not allow manure contaminated runoff to enter the expanded catch basin until NRCB personnel have inspected the catch basin and confirmed in writing that it meets the authorization requirements.