

Decision Summary LA24044

This document summarizes my reasons for issuing Authorization LA24044 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24044. 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 October 18, 2024, Richard Vander Veen (Henk Vander Veen Dairy Ltd.) submitted a Part 1 application to the NRCB to construct a manure storage facility (MSF) and manure collection area (MCA) at an existing dairy CFO.

The Part 2 application was submitted on October 21, 2024. On October 22, 2024, I deemed the application complete.

The proposed construction involves:

- Constructing four feedlot pens – 91 m x 104 m (300 ft. x 340 ft.) total dimensions
- Constructing a catch basin – 30 m x 45 m x 4 m deep

a. Location

The existing CFO is located at NW 6-11-21 W4M in Lethbridge County, roughly 3 km north of the village of Shaughnessy, Alberta. The terrain is generally flat with a gentle slope towards the Pyiami drain, approximately 50 m east of the CFO.

b. Existing permits

The CFO is permitted under Approval LA17071B. This approval allows the operation of a 375 dairy cow (plus associated dries and replacements) and 500 beef feeders CFO.

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 one mile (1600 m) from 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), and the Lethbridge North Irrigation District (LNID).

I also sent a copy of the application to Fortis Alberta Inc., ATCO Gas and Pipelines, and Lethbridge North County Potable Water Co-op Ltd, who are right of way holders at this land location.

In their response, an EPA water administration technologist stated that there are no groundwater, surface water, or agricultural registrations to the land location of the operation and requested that conveyance agreements be provided to EPA. This was passed on to the applicant for their information and action.

In their response, A TEC development/planning technologist stated that a permit will not be required for the proposed development.

The LNID stated that it does not oppose the application and confirmed that the applicant has conveyance agreements that provide sufficient water for the permitted animal numbers. They also stated that they do not permit manure storage or application on land within 30 metres of any canal or drain. The application meets the setbacks from the Piyami drain.

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 construction:

- 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 groundwater protection requirements for the design of floors and protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 8 and in Appendix B, the application meets all relevant AOPA requirements.

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 facilities are located within its boundaries.

Ms. Hilary Janzen, 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 and that the application is not within an Intermunicipal Development Plan or Area Structure Plan area. The application's consistency with Lethbridge County's municipal development plan is addressed in Appendix A, attached.

Ms. Janzen also stated that the application is consistent with the setbacks required in the Rural Agricultural district.

7. Environmental risk of facilities

New manure storage facilities (MSF) and manure collection areas (MCA) 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 Henk Vander Veen's existing CFO facilities were assessed in 2017 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 LA24044 permits the construction of the feedlot pens and catch basin.

Authorization LA24044 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 LA24044 includes conditions that generally address construction deadlines and construction inspections. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA24044 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24044.

Authorization LA24044 must be read in conjunction with previously issued NRCB permit LA17071B which remains in effect.

November 27, 2024

(Original signed)
Kailee Davis
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA24044

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.)

Henk Vander Veen Dairy Ltd. 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 policies pertaining to CFOs are in part 4, section 3 “Intensive Livestock/Confined Feeding Operations.”

Section 3.0 states that the county is supportive of CFOs in areas that are less prone to conflict and where municipal infrastructure can support such developments.

This is likely not a land use provision as it is subjective what can or cannot be supported by municipal infrastructure and that is not within NRCB’s discretion. Additionally, Lethbridge County did not raise concerns with the application.

Section 3.1 and 3.2 states that new CFOs are not permitted in the MDP CFO exclusion areas, IDP CFO exclusions areas, or in CFO exclusion zones of high density residential growth centres.

This application is not for a new CFO. Regardless Henk Vander Veen Dairy Ltd. is not within any exclusion areas identified in these policies and is therefore consistent with this policy.

Section 3.3 states that existing operations within an urban fringe district may be permitted to expand or make improvements with consideration to any IDP that allows for such.

Henk Vander Veen Dairy Ltd. is not within an urban fringe district and is therefore consistent with this policy.

Section 3.4 pertains to the consistency of CFO exclusion zones across the county’s planning documents.

This policy is procedural in nature and is not a land use provision. Therefore, it is not relevant to my MDP consistency determination.

Section 3.5 states that CFOs shall not be supported to expand within environmentally sensitive areas identified in the *Cotton Wood Report: County of Lethbridge: Environmentally Significant Areas in the Oldman River Region (1987)*.

The CFO is not located within any environmentally sensitive areas identified in that report and is therefore consistent with this policy.

Section 3.6 states that “no part of a CFO building, structure, corrals, compost area, or stockpile is to be located within the property line and public roadway setbacks, including provincial highways, as outlined in the municipal Land Use Bylaw.”

Setbacks are generally not a land use provision and thus not relevant to MDP consistency determinations, but the application does meet the setbacks referenced.

Section 3.7 states that CFOs are discretionary uses only permitted in areas zoned as Rural Agriculture with a minimum parcel size of 80 acres.

Henk Vander Veen Dairy Ltd. is within a land use district zoned as Rural Agriculture. As for the minimum parcel size stipulation, section 22(2.1) of AOPA states that approval officers shall not consider provisions respecting tests or conditions related to the site of a CFO. The application is consistent with the parts of this policy that I may consider.

Sections 3.8, 3.9, 3.10, and 3.11 discuss CFO operational practices with respect to AOPA, manure spreading, the use of a reciprocal MDS, and collaboration with the NRCB, respectively.

These policies are not land use provisions and therefore 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.

APPENDIX B: Explanation of conditions in Authorization LA24044

Authorization LA24044 includes several conditions, discussed below:

a. Construction Deadline

Henk Vander Veen Dairy proposes to complete construction of the proposed new feedlot pens and catch basin by January 2026. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of January 31, 2026 is included as a condition in Authorization LA24044.

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, Authorization LA24044 includes a condition requiring the permit holder provides written confirmation from a qualified third party confirming the final constructed dimensions.

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 LA24044 includes conditions stating that Henk Vander Veen Dairy Ltd. 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 catch basin until NRCB personnel have inspected the feedlot pens and catch basin and confirmed in writing that they meet the authorization requirements.