



Decision Summary LA21017

This document summarizes my reasons for issuing Approval LA21017 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21017. 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 19, 2021, James Larson submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on May 25, 2021. On June 3, 2021, I deemed the application complete.

The proposed expansion involves:

- Changing livestock type from beef feeders to beef finishers, and increasing livestock numbers to a total of 7,000 beef finishers
- Constructing a new pen area (south) – 344 m x 136 m
- Constructing a new southwest (SW) pen – 168 m x 44 m
- Constructing a new catch basin #3 – 127 m x 28 m x 3 m deep

The application also included an amendment to Approval LA10032M (explained in Appendix B) to remove a manure spreading operating condition #2 that reads:

2. Spreading of manure shall be performed no more than two (2) times per year.

a. Location

The existing CFO is located at SW 18-15-17 W4M in the Municipal District (MD) of Taber, roughly 11 km northeast of the Hamlet of Enchant, Alberta. The terrain is relatively flat. The closest common body of water is an irrigation canal which is located approximately 1.6 km west of the CFO.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes the MD of Taber Development Permits 54-96 and 63-98, issued August 7, 1996 and September 18, 1998. This deemed approval allows for the construction and operation of a 6,300 head beef feedlot. To date, the NRCB has issued Approval LA06030A and Approval LA10032M, both of which amended Development Permit 63-98. The CFO's deemed permit status under section 18.1 of AOPA is explained in Decision Summary Approval LA10032M which cancelled previously issued Development Permit 63-98. To clean up and consolidate this file into one permit, I'm

cancelling/re-cancelling the deemed permit, including municipal permits and NRCB issued permits. The deemed facilities are listed in the appendix to the Approval LA21017.

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 two miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to the MD of Taber, which is the municipality where the CFO is located. A copy was not sent to other municipalities as the CFO is not located within 0.5 miles of another municipality and it is not located within 100 m of the bank of a river, stream or canal.

The NRCB gave notice of the application by public advertisement in the Vauxhall Advance on June 3, 2021. The full application was made available for viewing during regular business hours, and was posted on the NRCB website for public viewing. As a courtesy, twenty eight letters were sent to people identified by the MD of Taber as owning or residing on land within the affected party radius.

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 Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and the Bow River Irrigation District (BRID).

Mr. Danny Lo, an executive officer / public health inspector, provided a written response on behalf of AHS. Mr. Lo raised no concerns with the application.

Mr. Chris Poirier, a development/ planning technologist, provided a written response on behalf of Alberta Transportation. Mr. Poirier raised no concerns with the application and stated that a permit from their department is not required.

Mr. Jeff Gutsell, a hydrogeologist, provided a written response on behalf of AEP. Mr. Gutsell requested proof of water allocation, including any licence numbers and water conveyance agreements for the CFO. This email was forwarded to the applicant for their information to which the applicant responded saying they have been in contact with BRID.

Mr. Richard Phillips, with BRID, verbally said that the BRID had no comments in regards to this application.

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 the MD of Taber'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 and from 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

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." The MD of Taber is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Brian Peers, director of lands, planning & development, provided a written response on behalf of the MD of Taber. Mr. Peers stated that the application is consistent with the MD of Taber's land use provisions of the municipal development plan (MDP) and that there are no other area structure plans or intermunicipal development plans which apply to the application. The application's consistency with the MD of Taber's MDP is addressed in Appendix A,

attached.

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

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (See NRCB Operational Policy 2016-7: Approvals, part 6.2). 1500688 Alberta Ltd, 1500706 Alberta Ltd, and 1509417 Alberta Ltd provided an MDS waiver and are therefore considered to be directly affected parties.

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within 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.)

All of the CFO's existing and proposed facilities pose a low potential risk to groundwater and surface water (the CFO's existing facilities are listed in the appendix to Approval LA21017).

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.

Mr. Peers also listed the setbacks required by the MD of Taber's land use bylaw (LUB) and noted that the application meets these setbacks.

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 policy (Approvals Policy 8.7.3), I presumed that the effects in 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 policy (Approvals Policy 8.7.3), 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 the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA21017 specifies the cumulative permitted livestock capacity as 7,000 beef finishers and permits the construction of the new pen area (south), new SW pen, and new catch basin #3.

Approval LA21017 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 LA21017 includes conditions that generally address construction deadlines, monitoring, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA21017: Development Permit #54-96 and #63-98 and NRCB Approval LA06030A and LA10032M (see NRCB Operational Policy 2016-7: Approvals, part 10.5). 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. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval. The application also included an amendment to Approval LA10032M (explained in Appendix B) to remove a manure spreading operating condition #2.

11. Conclusion

Approval LA21017 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21017.

James Larson's deemed approval, including municipal development permits 54-96 and 63-98, and NRCB-issued Approval LA06030A and LA10032M are therefore cancelled, and their content consolidated into this Approval LA21017, unless Approval LA21017 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the previous permits will remain in effect.

July 19, 2021

(original signed)
Julie Wright
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21017

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.

Conversely, “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 8.2.5.)

James Larson’s CFO is located in the Municipal District (MD) of Taber and is therefore subject to that county’s MDP. The MD of Taber adopted the latest revision to this plan on August 13, 2019 under Bylaw #1951.

Sections 5.1.13 – 5.1.15 of the MDP provide policies “related to confined feeding operations.” The stated purposes of these policies include providing the NRCB with “requirements that the council of the M.D. of Taber wish to have considered when applications for CFOs are evaluated for approval....”

The text in sections 5.1.13-5.1.15 is not clear as to whether these policies were intended to apply to applications for both new CFOs and for expansions of existing CFOs. However, a broad reading of these provisions suggests that they were meant to cover new CFOs as well as CFO expansions. Therefore, I presume these sections apply to Larson’s proposed construction.

Each of the applicable sections are discussed below.

Section 5.1.13

This section states that CFOs should be discouraged in the areas shown in Map 2 as “restricted”. Larson’s CFO is not within any of the “restricted” areas in Map 2.

Sections 5.1.14(a)-(d)

These sections list setbacks for CFOs from roads and property lines. Larson’s proposed construction is not within any of these setbacks.

Section 5.1.15

Under this section, the Municipal District requests that the NRCB consider the four following items:

- (a) the proximity of the operation to open bodies of water and the topography of the surrounding lands in order to minimize any negative impacts to drinking water supplies;

- (b) the cumulative effect of a new approval on any area near other existing confined feeding operations;
- (c) environmentally sensitive areas shown in the report, Municipal District of Taber Environmentally Sensitive Areas in the Oldman River Region;
- (d) give[ing] notice to adjacent landowners even in the case of applications for registration or authorization.

Neither (a) or (b) are likely “land use provisions,” as they call for site-specific judgements about the acceptability of an individual operation in light of certain criteria (“proximity,” magnitude and nature of cumulative effect, effect on environmentally sensitive areas). As such, these two MDP policies are not relevant to my MDP consistency determination. (See Operational Policy 2016-7: *Approvals*, part 8.2.5.). Even if (a) and (c) are relevant, Larson’s proposed construction is consistent with them, as discussed below.

Larson’s proposed construction meets requirements related to item (a), which refers to the impact of the operation on drinking water supplies. Several of the requirements under AOPA and its regulations are designed to prevent or minimize leakage from CFO facilities and thus to prevent manure from reaching and contaminating surface water and groundwater. Because Larson’s proposed construction meets these requirements, these facilities will not pose a material risk to surface water or groundwater (and therefore potential drinking water supplies).

The CFO is not located in an environmentally sensitive area as indicated in item 5.1.15(c) above.

Policy 5.1.15(d) is a procedural requirement so it is likely not a “land use provision.” Therefore it is not relevant to my MDP consistency determination. At any rate, as explained above, in addition to notifying the Municipal District of Taber and several referral agencies, the NRCB also sent courtesy letters to all landowners and residences within a two mile radius as identified by the MD of Taber (see also Operational Policy 2016-7: *Approvals*, part 7.4). The notification requirements under AOPA have been met.

For these reasons, I conclude that the proposed construction is consistent with the land use provisions of the MD of Taber’s MDP. The MD’s response supports my conclusion.

APPENDIX B: Explanation of conditions in Approval LA21017

Approval LA21017 includes several conditions, discussed below, and carries forward some conditions from NRCB Approval LA10032M. Conditions set out in previous municipal permits were previously consolidated and updated in Approval LA10032M and therefore are not being reconsolidated into this approval. Conditions not carried forward are discussed in section 2 of this appendix. Construction conditions from historical permits that have been met are identified in the appendix to Approval LA21017. The application also included an amendment to Approval LA10032M (explained in section 2) to remove a manure spreading operating condition.

1. New conditions in Approval LA21017

a. Construction Deadline

The applicant proposes to complete construction of the proposed new south pen area, SW pen and catch basin #3 by November 30, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2024 is included as a condition in Approval LA21017.

b. Post-construction inspection and review

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA21017 includes a condition stating that the co-permit holders shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens or catch basin until NRCB personnel have inspected the facilities and confirmed, in writing, that they meet the approval requirements.

2. Conditions not carried forward from Approval LA10032M

Approval LA21017 includes the terms and conditions in Approval LA10032M, except those noted below.

2. Spreading of manure shall be performed no more than two (2) times per year.

The applicant requested in their application to remove condition #2 (see page 2 of Technical Document LA21017). Their reasoning to remove this condition is as followed: "stockpiling of manure to accommodate manure spreading twice per year is unfeasible due to the volume of livestock on site. The applicant proposes following the manure procedures outline in [AOPA]". The applicant also submitted a manure management plan (see page 18 of Technical Document LA21017) which includes that the two existing catch basins and the proposed catch basins will all be connect via culvert and have a pump out site which directly ties to an existing pivot.

Considering my assessment together with the proposed manure management plan, intercropping manure spreading, and the manure spreading requirements set out in AOPA, I determined it's reasonable to remove this condition and be replaced with the terms of AOPA and to follow the manure management plan that was submitted with this application.

6. The owner/operator must comply with the manure application and record keeping requirements in the Standards and Administration Regulation.

As a part of this application, the applicant must provide adequate manure spreading lands per Section 24 of the Standards and Administration Regulation. It also sets nutrient limits that shall not be exceeded. For this reason, this condition is not being carried forward as written, rather, this condition is being rewritten as a general statement that is included in all AOPA permits: *the co-permit holders shall comply with the requirements of the Agricultural Operation Practices Act (AOPA) and the regulations pursuant to the act.*