



## Decision Summary LA20050

This document summarizes my reasons for issuing Authorization LA20050 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20050. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On December 15, 2020, MCF Feedyards a division of MCF Holdings Ltd. (MCF) submitted a Part 1 application to the NRCB to convert an existing borrow pit into a catch basin at an existing beef CFO. In 2016, the NRCB gave verbal permission to MCF to use this borrow pit as an emergency catch basin to store excess runoff.

The conversion will be described as ‘construction’ in this decision summary and in the authorization.

The Part 2 application was submitted on January 21, 2021. On January 22, 2021, I deemed the application complete.

The proposed construction involves:

- Constructing a catch basin (west catch basin) – 214 m x 217 m x 6.1 m deep

#### a. Location

The proposed catch basin is located at E½ 14-19-15 W4M and Sec 13-19-15 W4M in the County of Newell, roughly three km west of the City of Brooks. The terrain is flat. The closest common body of water is Cutting Lake, approximately 190 m to the north east.

#### b. Existing permits

MCF has two deemed permits, development permit # 1475 and 1672, issued February 7, 1996 and June 26, 1997 respectively. Development permit # 1475 allowed the expansion of an existing 40,000 head feedlot by 15,000 head. The second permit (development permit # 1672) allowed a second expansion by 20,000 head to a total of 75,000 head finisher cattle. MCF does not dispute this number.

## 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

A copy of the application was sent to the County of Newell, 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 Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and the Eastern Irrigation District.

The NRCB received a written response from Leah Olsen, a development/planning technologist with Alberta Transportation. In her response, Ms. Olsen stated that a permit from her department is not required and that her department has no concerns with this application.

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 the County of Newell'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 nearby residences, with an exemption under Section 3(5)(c) of the Standard and Administration Regulation (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The proposed catch basin is within the footprint of the existing CFO and there is no proposed increase to the annual amount of manure produced. The proposed catch basin is to be located further away than existing CFO (composting pad west of feedlot pens) relative to any residences in the vicinity
- 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 liners/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. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the act as "directly affected." The County of Newell is an affected party (and directly affected) because the proposed facility is located within its boundaries.

Ms. Maria Jackson, Supervisor of Planning and Development with the County of Newell, provided a written response on behalf of the County of Newell. Ms. Jackson stated that the application is consistent with the County of Newell's land use provisions of the municipal development plan. The application's consistency with the County of Newell's municipal development plan is addressed in Appendix A, attached.

Ms. Jackson also listed the setbacks required by the County of Newell's land use bylaw (LUB) and noted that the application does not meet these setbacks. This concern is addressed in Appendix A, attached.

## **7. Environmental risk of 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](http://www.nrcb.ca).)

The assessment found that the catch basins, feedlot pens, and composting pad pose a low potential risk to groundwater and surface water.

I also assessed the new catch basin (west) using the ERST and determined that it poses a low potential risk to groundwater and surface water.

## **8. Terms and conditions**

Authorization LA20050 permits the construction of a catch basin (catch basin west).

Authorization LA20050 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.

## **9. Conclusion**

Authorization LA20050 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20050.

Authorization LA20050 must be read in conjunction with MCF's deemed permits, including municipal development permits # 1475 and 1672, which remain in effect.

July 21, 2021

(Original signed)  
Carina Weisbach  
Approval Officer

## **Appendices:**

A. Consistency with the municipal development plan

## **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.

Conversely, “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 8.2.5.)

MCF’s CFO is located in the County of Newell and is therefore subject to that county’s MDP. The County of Newell adopted the latest revision to this plan on February 2013, under Bylaw # 1705-10, consolidated to Bylaw 1761-13.

The MDP policies relating to CFOs are in part 7. Section 7.1 states that the County “shall restrict the development of CFOs within the established urban fringe areas ...”

MCF’s CFO is not located in any of the urban fringe areas designated in the MDP, so the proposal is consistent with this policy.

Section 7.2 states that the NRCB “should also consider” the following:

- Proximity to water bodies to minimize negative impact on drinking water supplies;
- The “cumulative effect of a new approval” on any area new other CFOs;
- Environmentally sensitive areas as shown on the report “environmentally Significant Areas of the County of Newell (1991)”;
- Giving notice to adjacent landowners even in case of application for authorizations.

MCF’s CFO is 200 m away from Cutting Lake which is a common body of water.

The second of these four items does not apply because this permit is not for a new or an expansion of an existing operation and is therefore not a “new approval”. In addition, this provision is likely not a land use provision as it calls for site-specific discretionary judgements (viewed cumulatively with other existing CFOs), so it is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.)

As for the third item, the CFO is not located in an environmentally significant area as listed in the report and is therefore consistent with this policy.

As for the fourth item in section 7.2, this item is likely not a land use provision because of its focus on process and therefore does not need to be considered in my MDP consistency determination. As explained above, the NRCB did notify the County of Newell and several referral agencies (see also Operational Policy 2016-7: approvals, part 7.5) and the notification requirements under AOPA have been met.

Section 7.3 of the MDP states that the county “may use the MDS method to establish separation distances between proposed developments and CFOs.” This policy appears to refer to the “minimum distance separation” (MDS) requirements under AOPA. However, in several review decision, the NRCB’s board members have made it clear that approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. That said, the county may still rely on this policy to set appropriate setbacks from proposed residential or other developments that the county regulates, from MCF’s CFO.

Section 7.4 of the MDP states that the county “will impose a CFO exclusion zone” around the City of Brooks shown on the map in Appendix C. The applicant’s CFO is located within the designated CFO exclusion area. However, the MDP does not provide any explanation about permissible activities in the CFO exclusion zone. Because MCF is an existing CFO that has a deemed municipal development permit, I assume that the application is consistent with this part of the plan. This assumption is not rebutted by the county’s response.

Finally, section 7.5 of the MDP states that, as a “general guideline”. The county will use an 800 meter development setback from all reservoirs. However, this setback can be adjusted on a case-by-case basis depending on topography and other factors. As proposed, the proposed catch basin meets this suggested setback of 800 meter to a reservoir and is therefore consistent with this policy.

For this reason, I conclude that the application is consistent with the land use provisions of County of Newell’s MDP.

Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also consider the County of Newell’s Land Use Bylaw # 1892-17 (consolidated to bylaw #1943-19 – April 2019). Under that bylaw, the subject land is currently zoned Agriculture. Although the land use bylaw does not explicitly mention CFOs (or intensive livestock operations) I would categorize it under ‘Agricultural operation’ which is a permitted use of land under that land zoning.

In her response, Ms. Jackson pointed out the proposed catch basin does not meet the setback requirements to a property line. MCF has since purchased that piece of land and does therefore meet this requirement. A copy of the purchase agreement is on file.