

Decision Summary LA21005

This document summarizes my reasons for issuing Approval LA21005 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21005. 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 February 5, 2021, Curtis Kreft (Kreft) submitted a Part 1 application to the NRCB to expand an existing beef CFO to a total of 1,999 beef feeders. Kreft has supplied a signed letter to the NRCB from the current owners of the land on which the CFO is located, authorizing him to make the application for an approval under the AOPA.

The Part 2 application was submitted on April 27, 2021. The Part 2 application is for the construction of six new feedlot pens (to a total area of 100 m x 150 m), and for a catch basin (21.3 m x 45.8 m x 3.5 m deep). On May 4, 2021, I deemed the application complete.

a. Location

The existing CFO is located at NW 29-9-20 W4M in Lethbridge County, roughly 5 km northwest of the Town of Coaldale, AB. The terrain is flat with irrigation canals being the nearest common bodies of water. A St. Mary River Irrigation District canal is located just over 30 m from the proposed feedlot expansion. One existing, grandfathered feedlot pen is located 14 m north of an irrigation ditch and 17 m west of an SMRID canal. Eight Mile Lake, which is a locally known wetland area, is located approximately 800 m north of the proposed expansion.

b. Existing permits

As the CFO existed on January 1, 2002 at above-AOPA thresholds, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes municipal permit #94-02, effective on February 22, 1994. This deemed approval allows for the construction and operation of a 400 beef cow and 1,100 feeder calf CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix E, attached. The deemed facilities are listed in the appendix to the Approval LA21005.

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

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 on May 4, 2021. The full application was also posted on the NRCB website for public viewing. As a courtesy, 39 letters were sent to people identified by Lethbridge County 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 St. Mary River Irrigation District (SMRID).

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 nearby residences, with two exceptions (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS). The owner of those residences has signed a written waiver of the MDS requirement to their

- residences
- 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 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. The above AOPA requirements are also discussed further in Technical Document LA21005.

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, a senior planner 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 meets all applicable setbacks. Ms. Janzen did note the close proximity of the proposed feedlot to existing residences on the west side of the road. Included in Technical Document LA21005, the owner of these residences provided written waivers. The application's consistency with 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." The NRCB received responses from 1 individual and 1 other party.

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). Friesland Farms Ltd. provided an MDS waiver and is therefore a directly affected party.

Mr. Cameron Bridgeman and Short Tail Ranch, who submitted responses, own or reside on land within the 1 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they each qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected parties raised concerns regarding:

- NRCB procedure and ownership of existing land parcel
- Proximity of CFO to 6 different families
- Odour, noise, dust, and flies
- Reduction in property values

- Potential for e-coli or other pathogens to leave the CFO and impact surrounding landowners and livestock
- Surface Water Quality Impacts including:
 - Risk of contamination of Eight Mile Lake and wildlife in the area including risk of wildlife moving pathogens on the landscape
 - Risk of contamination of Eight Mile Lake and impact on hunting or human recreational use of the area
 - Water quality and the potential for contamination of the irrigation ditch
 - Potential for future overland flooding of residence, livestock, or crops with CFO contaminated water
 - Ability to pump flood waters into SMRID canal in future if water quality declines
 - Potential for catch basin draining to contribute to canal overflows and flooding, inability to maintain catch basin capacity during rainfall events.

These concerns are addressed in Appendix C.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. In this case, all proposed facilities meet or exceed AOPA requirements.

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.)

The existing CFO is located in a relatively flat area with an SMRID canal located immediately to the east of the site and an irrigation ditch located to the south and west. As discussed further in Technical Document LA21005, the waterbodies are located either upslope of the CFO or on the other side of a large berm which already exists. Surface water can therefore not leave the CFO and enter any common body of water. Using the aforementioned ERST, I determined the existing feedlot pens and catch basin pose a low risk to groundwater and surface water.

Concerns raised by affected parties relating to surface water are also discussed further in Appendix C, attached.

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. Also see the discussion near the end of Appendix A for further detail.

Ms. Janzen also listed the setbacks required by Lethbridge County's land use bylaw (LUB) and noted that the application meets these setbacks.

I also 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. I carefully considered the responses from directly affected parties related to the environment, as detailed further in Appendix C. However, in my view, the 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. The directly affected parties' concerns relating to health, nuisances, and property values are addressed in Appendix C (attached).

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 LA21005 specifies the cumulative permitted livestock capacity as 1,999 beef feeders and permits the construction of the six feedlot pens and a catch basin.

Approval LA21005 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 LA21005 includes conditions that generally address construction deadline, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix D.

For clarity, and pursuant to NRCB policy, I consolidated the deemed permit (including municipal permit #94-02) with Approval LA21005 (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 D discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA21005 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21005.

Kreft's deemed approval, including municipal development permit 94-02, is therefore superseded, and its content consolidated into this Approval LA21005, unless Approval LA21005 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed permit will remain in effect.

August 11, 2021

(Original Signed)

Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Explanation of conditions in Approval LA21005
- E. Determination of deemed permit status and capacity

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for an approval only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

Kreft’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 on December 5, 2019, under Bylaw #19-043.

Section 6.6 Confined Feeding Operations lists several policies under subsection 6.6.3:

a) Urban Fringe: *“The County shall exclude the development of CFOs in the Urban Fringe land use districts.”*

The proposed CFO expansion is not within this zoning category as shown on Map 11B.

b) Impacts

This policy refers to lobbying for funding to counteract the impact of CFOs on county infrastructure. Municipal funding is not under the jurisdiction of the NRCB. Therefore, I will not include this policy in my MDP consistency determination.

c) Location

The three listed items under this policy section refer to a reciprocal MDS for residential development in the vicinity of CFOs. Development permits for residential development are under the jurisdiction of the respective municipality. Therefore, I will not discuss this policy any further.

d) NRCB

I) Given the County’s unique perspective regarding CFOs, the county will be proactive when discussing regulation amendments regarding CFOs with Alberta’s NRCB.

This policy is likely not a land use provision but rather a ‘mode of action’. I will therefore not discuss this policy in any more detail.

II) The NRCB in its approval review should also consider:

- *The cumulative effect of a new approval on any area near other existing confined feeding operations*
- *Environmentally sensitive areas as shown in the report, County of Lethbridge:*

Environmentally Sensitive areas in the Oldman River Region (see maps in Appendix C)

- *Giving notice to adjacent landowners even in the case of applications for registration or authorizations, and*
- *Applying MDS calculations to all county residential clusters whether or not designated in the land use bylaw.*

The first of these four considerations is likely not a land use provision because of its project-specific focus (viewed cumulatively with other existing CFOs), and its request for the NRCB to make a discretionary judgement about the degree of cumulative effects that are acceptable. Therefore, this consideration is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: *Approvals*, part 8.2.5.)

As for the second consideration, this provision is likely not a land use provision because of its referral to a specific site. However, I considered it in respect to the CFOs impact on the environment as discussed in sections four and five above. At any rate, the CFO is not located close to any of the environmentally significant areas noted in the county's report.

The third of these four considerations is likely not a land use provision, but a procedural direction. At any rate, section 19 of AOPA determines the required notification process. In this case, the application was for an approval which triggered public notification requirements.

The fourth consideration appears to refer to AOPA's "minimum distance separation" (MDS) requirements. Under NRCB policy, approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. (See also Operational Policy 2016-7: *Approvals*, part 8.2.5.) Therefore, this MDP consideration does not apply to Kreft's application.

III) The NRCB is requested to take into consideration the requirements and policies of the County Council when making decision on such applications.

This provision is likely not a land use provision because it requests the consideration of policies and requirements of the county's council. AOPA is very specific in what approval officers must consider when determining consistency with the MDP (section 20(1)) and only refers to the MDP document. The NRCB interprets this to include other statutory plans that are cross-referenced in the MDP, or a land use bylaw that the MDP clearly intends to incorporate. Lethbridge County did not mention other statutory plans, and I consider the land use bylaw below.

IV) CFOs "shall not be approved in the areas shown and designated on Figure 11B as exclusion areas".

Kreft's CFO is not located in any of the designated CFO exclusion areas, so the application is consistent with this provision.

V) CFOs "shall not be approved on parcels less than 64.7 hectares (160 acres) or an unsubdivided quarter section, having a minimum of 4.0 hectares (10 acres) of registered exceptions of rights-of-way"

This provision is likely not a land use provision because it refers to specifics in respect to a site of a CFO, rather than the use of a specific land. At any rate, the quarter section on which the CFO is located meets this requirement.

VI) The NRCB should consider the requirements and regulations as stipulated in the Lethbridge County Land Use Bylaw and Animal Control Bylaw, including the exclusion of confined feeding operations on parcels less than the specified sizes as specified in those bylaws.

In my view, this section provides a clear intent to adopt provisions from the land use bylaw (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I therefore also considered Lethbridge County's Land Use Bylaw #1404 (consolidated to Bylaw 19-044 and Bylaw 19-032 (maps)). Under those bylaws, the subject land is currently zoned Rural Agriculture. CFOs are a discretionary use under this zoning category.

As stated in Part 2 (RA) section 3(3) in this bylaw, the minimum parcel size for CFOs is 64.7 hectares (160 acres). This provision is the same as section 6.6.3 (IV) in the MDP. Hence, I will look at it in a similar manner as the MDP provision.

The subsequent sections (Rural Agriculture) in this land use bylaw, require minimum setbacks (sections 4 to 7). These include setbacks to property lines, roadways, canals and distance to neighbouring residences (section 6(6)). Apart from the MDS requirement which has been discussed previously, these requirements could be defined as being 'siting' requirements and would subsequently be exempt from consideration by an approval officer. Nevertheless, I am of the opinion that they ensure proper development of the rural areas in respect to future development and hence dictate a land use or are related to safety issues and will therefore be considered as impact on the community. At any rate, the proposed facilities meet these setbacks.

e) Development Setbacks

This provision requires CFO developments to meet the setbacks to roadways and property lines as set out in the LUB.

The development meets all of these setbacks.

APPENDIX B: Determining directly affected party status

The following person qualifies for directly affected party status because he own residences within the minimum distance separation (MDS) and waived the MDS requirement in writing: Friesland Farms Ltd. See NRCB Operational Policy 2016:7 – Approvals, part 6.2

The following parties or individuals qualify for directly affected party status because they submitted a response to the application and they own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation: Short Tail Ranch Ltd. and Cameron Bridgeman. See NRCB Operational Policy 2016:7 – Approvals, part 6.2.

APPENDIX C: Concerns raised by directly affected parties

Concerns from directly affected parties

The directly affected parties raised the following concerns:

- NRCB procedure and ownership of existing land parcel
- Proximity of CFO to 6 different families
- Odour, noise, dust, and flies
- Reduction in property values
- Potential for e-coli or other pathogens to leave the CFO and impact surrounding landowners and livestock
- Surface Water Quality Impacts including:
 - Risk of contamination of Eight Mile Lake and wildlife in the area including risk of wildlife moving pathogens on the landscape
 - Risk of contamination of Eight Mile Lake and impact on hunting or human recreational use of the area
 - Water quality and the potential for contamination of the irrigation ditch
 - Potential for future overland flooding of residence, livestock, or crops with CFO contaminated water
 - Ability to pump flood waters into SMRID canal in future if water quality declines
 - Potential for catch basin draining to contribute to canal overflows and flooding, inability to maintain catch basin capacity during rainfall events.

NRCB procedure and ownership of existing land parcel

The NRCB is aware that the applicant, Mr. Curtis Kreft, is not the current owner of the subject land parcel. The owner of the parcel, Mr. Ben Knelson of Carben Farms provided written waivers allowing Mr. Kreft to apply for the subject permit on February 5, 2021 and again on April 26, 2021. I am satisfied that these waivers show the owner of the land is aware of the subject application. The owner of the land is also listed as a co-permit holder on Approval LA21005. I therefore determined this concern has been adequately addressed by the application.

Proximity of CFO to 6 different families Odour, noise, dust, and flies

I have grouped these concerns together as in my interpretation they relate to the potential for nuisance impacts to arise from the CFO expansion. As noted in Technical Document LA21005, the proposed CFO expansion meets the minimum distance separation requirement (MDS) under AOPA to all but two residences. The owner of these residences has provided a written waiver which accompanied the application. Therefore AOPA rules regarding setbacks to neighbours are met by the application.

The MDS requirement is a measure of acceptable impacts from noise, odour's, flies, dust, and other nuisance effects from CFOs. In the case of this application, there is also a condition requiring a fly control program in the deemed permit (municipal permit #94-02). As this condition is more stringent than current AOPA requirements, it will be carried forward into the new approval.

If, during any CFO's ongoing operation, the public has a concern related to a CFO creating unacceptable nuisance effects, they can contact the NRCB's response line at 1-866-383-6722 and an NRCB inspector will follow up on the concern. If a CFO is found to be creating an

inappropriate disturbance, the NRCB will consider requiring the CFO to implement further mitigation measures.

Reduction in property values

In past review decisions, the NRCB's board members have consistently stated that concerns regarding effects on land or property values are "not a subject for [the board's] review under AOPA or for approval officers' consideration of permit applications." According to the board, impacts on property values are a land use issue which is a "planning matter dealt with by municipalities in municipal development plans and land use bylaws." (See, e.g. *Zealand Farms*, RFR 2011-02, p. 5, *Hutterian Brethren of Summerland*, RFR 2018-05).

Potential for e-coli or other pathogens to leave the CFO and impact surrounding landowners

Alberta Health Services (AHS) is responsible for enforcing the *Public Health Act* in the province. This act deals with disease and disease mitigation as well as nuisance issues. I have not considered whether this application meets the regulations under the *Public Health Act*. The application was forwarded to AHS for their review and comment in early May. In July, I also forwarded to AHS the response containing health-related concerns. To date, I have received no feedback from AHS.

AOPA does provide rules and regulations which intend to protect groundwater and surface water quality. As discussed in Decision Summary LA21005 and Technical Document LA21005, this application does meet all AOPA requirements in terms of protection of these resources. I therefore have determined this concern has been adequately addressed as far as AOPA can address it.

Surface Water Quality Impacts:

Risk of contamination of Eight Mile Lake and wildlife in the area including risk of wildlife moving pathogens on the landscape

Risk of contamination of Eight Mile Lake and impact on hunting or human recreational use of the area

Eight Mile Lake is a locally significant wetland and hunting area. It is located approximately 800 m north of the proposed CFO expansion. Eight Mile Lake is located in an agricultural area and is surrounded by cultivated land including other CFO's and ranching areas. The proposed Kreft CFO expansion will not be a new operation, and considering the above will also not be a unique or unusual operation in the area.

The application meets AOPA regulatory requirements for surface water protection including an adequately sized catch basin, and contouring to ensure all run-on and run-off is controlled. Accordingly, there is a low risk to Eight Mile Lake. As there is a minimal chance of feedlot runoff entering the irrigation system and therefore Eight Mile Lake (see more discussion below) and 800 m distance between the CFO and the lake, direct contact with livestock or manure and wildlife will be extremely unlikely. I therefore have determined this concern has been adequately addressed.

Water quality and the potential for contamination of the irrigation canal

Potential for future overland flooding with CFO contaminated water

Ability to pump into SMRID canal in future if water quality declines

During a secondary July 23, 2021 site visit I undertook to investigate details relating to this concern, I found the site is well protected from run-on water and that run-off water is very unlikely to leave the CFO. I have included a photo in Technical Document LA21005 which shows the existing berm which separates the CFO from the irrigation ditch. Furthermore, I confirmed the ditch is upslope of the CFO pens located at the south end of the existing CFO and that the risk to surface water is low. I also confirmed the fields located to the north of the CFO (which could potentially receive water from the subject quarter section) are extremely flat. Channelized flow through this area (aside from that which is directed through the irrigation infrastructure which I already discussed above) is therefore extremely unlikely. Taking all of this into account, in my opinion all common bodies of water are more than adequately protected from surface water contamination.

Section 8 of the Standards and Administration Regulation under AOPA requires that manure storage facilities or collection areas be at least one meter above any 1:25 year flood, or if that is not known, the highest known flood level. No manure storage facilities or collection areas are proposed below this level. Historical air photos (one taken in 2008) do show significant flooding in adjacent fields but also show that the CFO is located outside of these areas.

As discussed above, the application meets all AOPA requirements for surface water protection including an adequately sized catch basin, and contouring to ensure all run-on and run-off is controlled. As the design of the site will prevent water from entering the canal, the risk of manure contaminated water leaving the CFO is minimal. Further details on the site plan and existing condition of the CFO is also provided in Technical Document LA21005. I have therefore determined these concerns have been adequately addressed.

Potential for catch basin draining to contribute to canal overflows and flooding, inability to maintain catch basin capacity during rainfall events.

AOPA and its regulations prohibits the release of manure contaminated, including the pumping of catch basin content or overflow into a common body of water such as an irrigation canal or ditch. It is therefore the responsibility of any CFO owner and operator to maintain surface water control measures – such as catch basins, to ensure full functionality of these facilities (ie regular maintenance, periodic removal of solids). As such, due to the proposed design of the CFO, and the fact operators are not allowed to pump CFO contaminated water into any common body of water, the application will likely have no impact on runoff volume or the quality of the water which may enter surrounding properties through the irrigation system. As such I determined this concern has been adequately addressed.

APPENDIX D: Explanation of conditions in Approval LA21005

Approval LA21005 includes several conditions, discussed below, and carries forward a number of conditions from municipal permit #94-02 (see sections 2 of this appendix). Construction conditions from historical municipal permit #94-02 that have been met are identified in the appendix to Approval LA21005.

1. New conditions in Approval LA21005

a. Construction Deadline

Kreft proposes to complete construction of the proposed new feedlot pens and catch basin 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 LA21005.

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.

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 LA21005 includes a condition stating that Kreft 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 approval requirements.

2. Conditions not carried forward from municipal permit #94-02

Approval LA21005 includes the terms and conditions 5, 7, and 8 in municipal permit #94-02. Approval LA21005 does not carry forward the conditions noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #1-4 and #6 from municipal permit #94-02 should be deleted and therefore are not carried forward to Approval LA21005. My reasons for deleting these conditions are as follows:

- 1) Surface runoff from pen areas are not the enter canal or road borrow area
- 2) Direct access to canal by livestock is not to be permitted

These conditions are redundant due to the plans contained in application for Approval LA21005. The applicant proposes to construct an AOPA compliant catch basin and has committed controlling all run-on and run-off water at the site. As such, no manure contaminated water will be able to enter the canal (see Appendix C above for further discussion about surface water). In addition, no new CFO facilities have been permitted within the AOPA 30 m setback from a common body of water. As such, livestock from the CFO will not have access to the canal. Due to these factors I have removed these conditions.

- 3) Deads are to be disposed of in a prompt and acceptable manner

The disposal of dead animals is directly regulated by Alberta Agriculture and Forestry by way of the Disposal of Dead Animals Regulation under the *Animal Health Act*. Concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead of inconsistent approaches. This condition is worded vaguely, and has none of the prescribed regulatory distance setbacks, terms, or definitions, as laid out in the *Animal Health Act*. Therefore, I would interpret this condition as less stringent than existing regulations. For these reasons, and pursuant to the NRCB policies, this condition will not be carried forward. (See Operational Policy 2016-7: Approvals, section 10.1 and Operational Policy 2016-1: *Amending Municipal Permit Conditions*, section 2.2.4).

- 4) Manure from pens and small calving/ feeding areas to be removed on a regular basis and landspread

Rules relating to the storage of manure are contained in the *Standards and Administration Regulation* under AOPA. The application process under AOPA addresses manure storage and management. In this application, the pens and catch basin are manure collection areas that require a permit and that must adhere to AOPA's regulations.

Beyond permitted areas, rules relating to short-term storage of manure are contained in Section 5 of the *Standards and Administration Regulation* sets out but is not limited to the following requirements: manure must not be stored more than an accumulated total of 7 months over a 3 year period at the same site, manure must not be stored less than 150 metres from the nearest residence not owned or under the control of the owner or operator of the manure storage area, and sets out required setbacks to water bodies. As such, the condition from the municipal development permit is duplicative, arguably less stringent than AOPA and would be difficult to enforce as written. The condition will therefore not be carried forward and is effectively replaced by the general terms and conditions stated in the opening paragraph of all permits issued under AOPA that requires the operator to adhere to AOPA and its regulations, and to the designs contained in the application.

- 6) The maximum allowable animals for this development is to be 400 beef cows and 1,100 feeder calves

As Approval LA21005 permits the CFO to a capacity of 1999 beef feeders this condition is no longer applicable and has been removed.

APPENDIX E: Determination of deemed permit status and capacity

Kreft claims that its CFO/MSF is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status. Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO/MSF.

The CFO was originally permitted by Lethbridge County on February 22, 1994 under development permit # 94-02. This permit allowed the construction and operation of a beef CFO with the capacity for 400 beef cows and 1200 feeder calves. The equivalent number of beef feeders to this capacity would be approximately 1200 beef feeders. The applicant has claimed a capacity of 750 beef feeders as part of this application.

The applicant is not claiming a livestock capacity greater than that authorized by the municipal development permit, and under section 11(1)(b) of the Administrative Procedure Regulation, public notice of the grandfathering determination is not required. Though I considered this, I also determined there is a limited record of what was proposed versus what was constructed in terms of livestock capacity at the CFO. I determined that in consideration of transparency with the public, notice would still be appropriate in the case of this specific application.

Public notice requiring the grandfathering of the existing CFO was posted in the Sunny South News on May 4, 2021. No feedback was received regarding the grandfathered status of the operation.

Having viewed historical aerial photographs and discussed the matter with the applicant, I am satisfied that the feedlot and shelter did exist on January 1, 2002, above AOPA thresholds. I am also satisfied that the operation was being used as a CFO on January 1, 2002 and that no unauthorized construction has occurred since this time.

This development permit is a deemed (i.e. grandfathered) approval under section 18.1(1)(b) of AOPA. The CFO’s deemed facilities are listed in the Appendix of Approval LA21005.