

Decision Summary LA21018

This document summarizes my reasons for issuing Approval LA21018 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21018. 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 24, 2021, JBC Cattle Inc. (JBC Cattle) submitted a Part 1 application to the NRCB to construct a new beef CFO.

The Part 2 application was submitted on July 11, 2021. On July 22, 2021, I deemed the application complete.

The proposed CFO involves:

- Permitting 30,000 beef finishers
- Constructing pen area 1 (compacted soil liner) – 431 m x 80 m
- Constructing pen area 2A (naturally occurring layer) – 274 m x 416 m
- Constructing pen area 2B (naturally occurring layer) – 431 m x 336 m
- Constructing pen area 3 (compacted soil liner) – 705 m x 144 m
- Constructing five catch basins (compacted soil liner) – each 122 m x 24.5 m x 3.5 m deep

The application also includes construction of a fresh water reservoir, silage/feed storage, and handling areas. These facilities are an “ancillary structure,” under section 1(1)(a.1) of the *Agricultural Operations, Part 2 Matters Regulation*, because they will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, these structures do not need to be permitted under the act.

a. Location

The proposed CFO is located at SW 11-15-18 W4M in the Municipal District (M.D.) of Taber, roughly 7.5 km northeast of the Hamlet of Enchant, AB. The terrain slopes gradually to the south and southwest. The closest common body of water is an irrigation canal which runs in a south-northwest direction along the west side of the CFO. The distance from the closest part of the CFO to that irrigation canal is approximately 480 metres.

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

A copy of the application was sent to M.D. of Taber, which is the municipality where the CFO is to be located.

The NRCB gave notice of the application by public advertisement in the Vauxhall Advance on July 22, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, eighty five letters were sent to people identified by the M.D. 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 (AT), and the Bow River Irrigation District (BRID).

I received responses from AEP and AT. No response was received from AHS or BRID.

Mr. Jeff Gutsell, a hydrogeologist, provided a written response on behalf of AEP. Mr. Gutsell requested proof of water allocation, including any water 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 the BRID. It is the applicants’ responsibility to ensure that they have access to sufficient water prior to operating their CFO.

The NRCB received a written response from Leah Olson, a development/planning technologist with Alberta Transportation. In her response, she stated that a permit from her department is not required.

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 CFO is consistent with the land use provisions of the M.D. 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 CFO:

- 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'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 the 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 M.D. of Taber is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Mr. Merrill Harris, reeve with the M.D. of Taber, provided a written response on behalf of the M.D. of Taber. Mr. Harris stated that the application is consistent with the M.D. of Taber's land use provisions of the municipal development plan except the setbacks set out in section 5.1.14 (d) in the MDP. The applicant provided me with an updated drawing, demonstrating that they meet the required setbacks as seen on page 3 of Technical Document LA21018. The application's consistency with the M.D. of Taber's municipal development plan is addressed in Appendix A, attached.

The M.D. of Taber also raised concerns in regards to road use, dust from road use, water/drainage, and manure spreading which are discussed below.

Under NRCB policy, approval officers will not include conditions in permits requiring operators to enter into a road use agreement with the municipality. The reason for this policy is that roads are a “municipal responsibility and are not located on the CFO site.” (See NRCB Operational Policy 2016-7: Approvals part 8.9.) The condition of surrounding roads are not a requirement of AOPA and as such cannot be addressed further in this decision. However, I did forward a copy of the county’s response to JBC Cattle for their information and review.

Regarding water/drainage and manure spreading, the applicant has met the technical requirements under AOPA in terms of run-on and runoff controls for the CFO facilities. The closest waterbody is a canal, located approximately 480 metres west of the proposed CFO site. The application was sent to BRID for comments but no response was received. However, the applicant indicated to me that they have been in contact with BRID to obtain the appropriate water agreements and for the relocation of the BRID pipeline located on their property.

For manure spreading, the applicant is required to follow AOPA regulations which include manure spreading setbacks and nutrient loading limits. JBC Cattle has provided evidence to show that they have sufficient land base to support the land application of manure produced by their CFO for the first year. If concerns arise regarding the CFO not following AOPA and its regulations, a call can be made to the NRCB response line at 1-866-383-6722.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received 2 responses from 4 individuals.

The two parties (2 individuals per party) who submitted responses own or reside on land within the 4 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected parties raised concerns regarding:

- Nuisance impacts including odour, noise, dust, and flies
- Deterioration of roads, increased traffic, and road safety
- Water availability
- Land value decreasing

These concerns are addressed in Appendix C.

8. Environmental risk of CFO facilities

The underlying soil and slope varies throughout the site and therefore, as part of my review of this application, I assessed the risk to the environment posed by the CFO’s proposed manure storage facilities and manure collection areas using the worst case scenario. 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 proposed facilities pose a low potential risk to groundwater and surface water.

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. Harris also listed the setbacks required by the M.D. of Taber's land use bylaw (LUB) and noted that the application did not meet these setbacks. As mentioned above, the applicant has provided an updated drawings showing they meet the required setbacks as seen on page 3 of Technical Document LA21018.

I also considered the effects of the proposed CFO 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 CFO 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 LA21018 specifies the cumulative permitted livestock capacity as 30,000 beef finishers, and permits the construction of the feedlot pens and five catch basins.

Approval LA21018 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 LA21018 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix D.

11. Conclusion

Approval LA21018 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21018.

September 9, 2021

(Original signed)
Julie Wright
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 LA21018

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.)

JBC Cattle’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 JBC Cattle’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”. JBC Cattle’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. JBC Cattle’s proposed construction is not within any of these setbacks as seen on page 3 of Technical Document LA21018.

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.).

At any rate, JBC Cattle’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 JBC Cattle’s proposed construction meets these requirements, this facility 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 published official notice of the application in the Vauxhall Advance, and sent courtesy letters to all landowners and residences within a four 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 and establishment of a new feedlot is consistent with the land use provisions of the Municipal District of Taber’s MDP. The Municipal District’s response supports my conclusion.

APPENDIX B: Determining directly affected party status

The following 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 (See NRCB Operational Policy 2016:7 – Approvals, part 6.2.) :

Josh and Jenna Wiest
SE 4-15-18 W4M

Jim and Vivian Ragan
NE 18-15-17 W4M

No other individuals submitted a response to this application.

APPENDIX C: Concerns raised by directly affected parties

Concerns from directly affected parties

The directly affected parties raised the following concerns:

- Nuisance impacts including odour, noise, dust, and flies
- Deterioration of roads, increased traffic, and road safety
- Water availability
- Land value decreasing

Nuisance impacts including 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 proposed CFO. As noted in Technical Document LA21018, the proposed CFO meets the minimum distance separation requirement under AOPA to all residences. AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. The required MDS for the proposed CFO is 1,316 m. The Ragan residence is located about 4 km northeast of the proposed CFO which is more than 3 times greater than the required MDS. The NRCB generally considers the MDS as the distance beyond which the odours and other nuisance effects of a CFO are considered to be acceptable under AOPA. That said, people residing beyond the MDS may still experience odours and other nuisance impacts from time to time.

In addition to odours from the CFO itself, odours and other nuisance impacts are also likely to occur when manure spreading takes place. However, the frequency of these exposures will likely be limited.

The manure spreading lands that were proposed to receive manure from JBC Cattle's new feedlot, as well as the land where the Ragans reside, are zoned agricultural. It is expected that odours related to normal agricultural practices will be experienced in this zoning area.

In order to limit the nuisance impact of manure application on direct seeded or tame forage land, section 24 of the Standards and Administration Regulation precludes manure spreading without incorporation within 150 m of residences. Manure that is spread on conventionally tilled land must be incorporated within 48 hours. Setbacks and incorporation can help to minimize normal odours from manure spreading.

Incidences of non-compliance or inappropriate disturbance can be reported to the NRCB's 24 hour a day response line (1-866-383-6722 or 310-0000 toll free line).

Deterioration of roads, increased traffic, and road safety

The concerns from both parties appeared to be around increased deterioration of roads, increase in traffic due to manure hauling, and traffic safety. The NRCB does not have direct responsibility for regulating road use. Section 18 of the *Municipal Government Act* gives counties "direction, control and management" of all roads within their borders. It is impractical and inefficient for the NRCB to attempt to manage road use through AOPA permits. (See Operational Policy 2016-7: *Approvals*, part 8.9. and Hutterian Brethren of Murray Lake, RFR 2020-09/LA20035).

Water availability/pressure

Alberta Environment and Parks (AEP) is responsible for licensing and monitoring the supply of groundwater in the province. The water licensing process includes an opportunity for neighbours to provide input. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form.

The application was also forwarded to AEP as seen in part 3 above. JBC Cattle included a signed declaration indicating that they requested that their *Water Act* license be processed separately from their AOPA permit. In that declaration, JBC Cattle acknowledged that they are aware that they will need a new water license, and that they understand the risk of constructing a CFO if the *Water Act* license is not issued. I understand that JBC Cattle has been in discussions with BRID to enter into a water conveyance agreement with the BRID.

Land value decreasing

In previous board decisions the NRCB's board members have 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". According to the board, impacts on property values are a land use issue, which is a "planning matter dealt with by municipalities in municipal plans and land use bylaws." It also said that these impacts are not relevant to its consideration when the development is consistent with the MDP's land use provisions (See Pigs R Us Inc., RFR2017-11/BA17002).

APPENDIX D: Explanation of conditions in Approval LA21018

Approval LA21018 includes several conditions, discussed below:

a. Construction above the water table

Section 9(3) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

Based on this information, some of the proposed catch basins may not meet the one metre requirement of sections 9(3). However, because the height of the water table can vary over time, the lack of adequate depth to water table indicated in JBC Cattle’s report does not mean that there will be an inadequate depth at the time of construction. To address this variability and ensure that the depth requirement is met at the time of construction, a condition is included, requiring JBC Cattle to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Construction deadline

JBC Cattle proposes to complete construction of the proposed new feedlot pens and five catch basins by the fall of 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 LA21018.

c. Post-construction inspection and review

The NRCB’s general practice is to include conditions in new or amended permits to ensure that the new facilities are constructed according to the required design specifications.

Accordingly, Approval LA21018 includes conditions requiring a written construction completion report for the compacted soil lined catch basins and the compacted soil lined feedlot pens. The report shall be stamped and signed by a “professional engineer,” as defined in the *Standards and Administration Regulation*, and shall:

- Certify that the catch basins and the feedlot pens were constructed at the location specified in the site plan provided with the application;
- Certify that the liner material used in the catch basins and the feedlot pens is the same material that was submitted for hydraulic conductivity testing;
- Provide the constructed catch basin and the feedlot pen dimensions, including elevations below and above grade, liner thickness (1.29 m for the feedlot pens and 2.58 m for the catch basins), berm height, and side slopes;
- Provide the in-situ density test results of the constructed catch basins and feedlot pen liners.

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 LA21018 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 and catch basins until NRCB personnel have inspected the feedlot pens and catch basins and confirmed in writing that they meet the approval requirements.