

Decision Summary LA21050

This document summarizes my reasons for issuing Approval LA21050 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21050. 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 October 18, 2021, Poelman Farms Ltd. (Poelman) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on December 23, 2022. On January 19, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers to a total of 2,000 beef finishers and 2,000 beef feeders
- Decreasing livestock numbers from 1,400 swine feeders down to 0 swine feeders
- Constructing feedlot pens – 213.4 m x 213.4 m
- Confirm actual constructed catch basin dimensions from Approval LA15002 – 62 m x 60 m x 2.7 m

a. Location

The existing CFO is located at SW 13-11-25 W4M in the Municipal District (MD) of Willow Creek, roughly 16 km northeast of Granum, Alberta. The topography slopes gently toward the north. There is an irrigation canal 135 m south of the CFO.

b. Existing permits

The CFO is currently permitted under NRCB Approval LA15002. This permit allowed the construction and operation of a 1,400 swine feeders and 2,000 beef finishers CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA21050.

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

A copy of the application was sent to MD of Willow Creek, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Claresholm Local Press on January 18, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 23 letters were sent to people identified by the MD of Willow Creek 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), Lethbridge Northern Irrigation District (LNID), and Alberta Transportation.

I also sent a copy of the application to Little Bow Gas Co-op.

Alberta Transportation responded that no permit is required as the site is well outside Alberta Transportation’s development control zone.

AEP did comment that the applicant must ensure they obtain adequate water licensing for the application. This response was provided to the applicant for follow up and action.

Mr. Alan Harrold, general manager with LNID, responded indicating that they were not opposed to the application. He provided comments that the applicant has a water conveyance agreement currently in place and that the applicant would be required to obtain additional water licencing for the proposed animal numbers. The applicant was copied in Mr. Harrold’s response, and is reminded that it is their responsibility to obtain access to sufficient licensed water for their CFO.

No other comments were received.

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 Willow Creek'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 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 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 Willow Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Cindy Chisholm, a development officer with the MD of Willow Creek, provided a written response on behalf of the MD of Willow Creek. Ms. Chisholm did not state whether or not the application was consistent with the MD of Willow Creek's land use provisions in their municipal development plan. Ms. Chisholm did state that if a permit is issued, the proposed construction must meet the minimum setback requirements in the Land Use Bylaw. The application's consistency with the MD of Willow Creek's municipal development plan is addressed in Appendix A, attached. The MD of Willow Creek raised concerns only relating to water use and licensing. The application was forwarded to AEP and LNID for their review and as the NRCB does not have jurisdiction over water licensing, I cannot address this concern any further. The applicant is reminded that it is their responsibility to ensure that they have access to sufficient licensed water prior to the population of the CFO.

Ms. Chisholm forwarded the application to the Lethbridge County. Ms. Hilary Janzen, supervisor of planning and development for Lethbridge County, responded to the application. In her response, she stated that Lethbridge County does not have any concerns with the application and mentioned the proposed CFO expansion is not located within a CFO exclusion zone.

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

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. The proposed facilities meets all of the AOPA requirements, therefore the application is presumed to pose low potential risk to surface water and groundwater.

The risks posed by Poelman's existing CFO facilities were assessed in 2016. That assessment indicated that the potential risks to surface water and groundwater were low. Since the 2016 risk assessment, there has been no significant changes at the site. Therefore, this risk assessment is still valid.

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.

Ms. Chisholm also listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that the application must meet these setbacks. The submitted plans meet these setbacks.

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 on 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 LA21050 specifies the cumulative permitted livestock capacity as 2,000 beef feeders and 2,000 beef finishers and permits the construction of the proposed feedlot pens. It also clarifies the actual dimensions of the catch basin.

Approval LA21050 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 LA21050 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 Approval LA15002 with Approval LA21050 (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.

11. Conclusion

Approval LA21050 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21050.

Poelman's NRCB issued LA15002 is therefore superseded, and their content consolidated into this Approval LA21050, unless Approval LA21050 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA15002 will remain in effect.

April 1, 2022

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21050

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.)

Poelman’s CFO is located in the MD of Willow Creek and is therefore subject to that municipality’s MDP. The MD of Willow Creek adopted the latest revision to this plan on August 2019, under Bylaw #1841. The parts and policies of the MDP relevant to this application are discussed below.

Part 2 states that agriculture is a predominant land use in the MD though it also notes that it is important to balance other interests. One of the objectives in Section 2 states that one of the main objectives of the MDP is to mitigate the siting of a CFOs to minimize conflicts with adjacent land uses. Policy 2.3 states that the MD shall establish guidelines with regards to the NRCB for the regulation and approval of CFOs within the MD. These guidelines are found in section 9.

This part and policy likely aren’t a relevant “land use provisions”, rather, I consider this to be a source of insight for the interpretation of the remaining portions of the MDP.

Policy 9.2 of the MDP directs the NRCB to consider six matters. These are quoted below (*in italics*); each one is followed by my discussion of how the provision related to this application. The requested matters to consider are:

(a) The cumulative effect of a new approval on any area near other existing CFO’s/ILO’s

This policy is likely not a “land use provision,” as it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects.

In a 2011 decision, the Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

For these reasons, I do not consider this MDP provision to be relevant to my MDP consistency determination.

(b) Environmentally significant areas contained in the Municipal District of Willow Creek: Environmentally Significant Areas in the Oldman River Region report [the report]

Poelman's CFO is not within any of the areas designated as of regional, provincial or national significance in the referenced report (Map 1 of the report). However, areas of local significance are not presented in the report.

The report also assessed the planning area for major physical constraints such as flood plains, unstable slope potential, and areas of artesian flow. The map shows that the CFO is not located in any of these areas. I am of the opinion that the application is consistent with this provision; I have not been privy to information which refutes this.

(c) Providing notice to adjacent landowners including applications for registration or authorization

This is likely not a "land use provision" because of its procedural focus and thus I do not consider it to be relevant to my MDP consistency determination. At any rate, as explained above, the NRCB sent out courtesy letters to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius of 1.5 miles, and gave public notice in the Claresholm Local Press. The application therefore met the notification requirements of AOPA. (See also Operational Policy 2016-7: *Approvals*, part 7.5).

(d) Applying minimum distance separation calculations to all country residential development

I interpret "minimum distance separation" as referring to the minimum distance separation (MDS) requirements in section 3 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no country residential development located within the category 2 MDS for Poelman's CFO and the application meets AOPA's MDS requirements.

(e) Restricting development in the flood plain, floodway, the flood way fringe and flood prone, or hazard lands within or adjacent to any watercourse within the MD; and

As discussed in Technical Document LA21050, Poelman's CFO meets the AOPA setbacks to common bodies of water and is not located within a known flood plain as identified on the Alberta Environment and Parks flood hazard website. Based on this information, the application is consistent with this aspect of the provision.

(f) Restricting development in any wetland or riparian area

The proposed CFO facilities are not located in a wetland or riparian area, it meets the AOPA setbacks to common bodies of water also. This provision is therefore met by the application.

For these reasons, I conclude that the application is consistent with the land use provisions of the MD of Willow Creek's MDP.

In my view, the Land Use Bylaw is clearly incorporated in the MDP in several sections throughout the MDP, especially in Policy 15.5 which states:

The Development Authority shall require the NRCB to take into consideration the policies adopted in this plan and the Land Use Bylaw, when issuing an approval.

Therefore, I also considered the application's consistency with this document. Under the MD of Willow Creek's Land Use Bylaw (#1826 consolidated to Bylaw No. 383/2020), the subject land is currently zoned as Rural General. CFOs are not listed as prohibited, permitted, or discretionary land use under this zoning. Ordinarily, a land use bylaw intends to preclude land uses that are not listed as permitted or discretionary (and that do not meet any other relevant criteria). However, the land use bylaw lists "intensive livestock operations" (ILOs), defined essentially as CFOs below AOPA's permit thresholds, as a discretionary use within areas zoned Rural General. Therefore, I interpret the omission of CFOs from the lists of permitted and discretionary land uses as simply the municipality's recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs above AOPA thresholds.

As for the lot size restriction in section 2(4) of the Rural General part of the bylaw, which states that the "parcel size shall remain the same size for which the development approval was originally issued." Since CFOs are not listed in the LUB, it is my interpretation that the lot restrictions are intended to apply to ILOs that are permitted by the municipality, and are not intended to apply to CFOs above AOPA's permit thresholds. Regardless, this application is for a new CFO and does not include a proposal to subdivide an existing land parcel.

Section 3 of the Rural General part of the bylaw lists several setbacks. The facilities meet the 22.9 m road and 6.1 m other adjacent property line setback requirements.

For these reasons, I conclude that the proposed facilities are consistent with the land use bylaw.

APPENDIX B: Explanation of conditions in Approval LA21050

Approval LA21050 includes several conditions, discussed below, and carries forward a number of conditions as written from Approval LA15002 (see sections 2 of this appendix). Construction conditions from historical Approval LA15002 that have been met are identified in the appendix to Approval LA21050.

1. New conditions in Approval LA21050

a. Construction Deadline

Poelman proposes to complete construction of the proposed new feedlot pens 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 LA21050.

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 LA21050 includes a condition stating that Poelman shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens until NRCB personnel have inspected the feedlot pens and confirmed in writing that it meets the approval requirements.

2. Conditions amended or not carried forward from Approval LA15002

1. The permit holder shall not land apply any liquid manure generated from the hog facilities located on SW 13-11-25 W4M.

As there are no longer swine on the CFO's permit and therefore no liquid manure production, this condition will not be carried forward.

2. Before livestock can be housed in the existing farrow to finish swine facilities, the facilities must be converted to handle manure as a solid and this conversion must be confirmed by a site inspection and documented in writing by NRCB personnel.

As there are no longer any swine permitted at the CFO, this condition has been amended as follows to reflect the current status of the CFO:

“Before livestock can be housed in any of the former swine facilities, the facilities must be converted to handle manure as a solid and this conversion must be confirmed by a site inspection and documented in writing by NRCB personnel.”

Mortality Disposal

3. A specific livestock mortality storage site that has easy truck access, good drainage, protection from predators and is not easily seen by the general public must be developed and maintained.

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).