

Decision Summary LA22013

This document summarizes my reasons for issuing Approval LA22013 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22013. 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 9, 2022, Gouw Quality Onions Ltd. (Gouw) submitted a Part 1 application to the NRCB to expand an existing beef CFO by increasing animal numbers from 5,800 beef feeders to 8,600 beef finishers and constructing additional feedlot pens (149 m x 195 m).

The Part 2 application was submitted on February 17, 2022. On March 2, 2022, I deemed the application complete.

a. Location

The existing CFO is located at N½ 34-11-16 W4M and NE 33-11-16 W4M in the Municipal District (M.D.) of Taber, roughly 17 km north of Taber. The terrain is gently undulating with the Oldman River located approximately 750 m to the north.

b. Existing permits

The CFO is permitted by Approval LA19011 and Authorization LA20011 which allows a beef CFO with permitted capacity for 5,800 beef feeders. The CFO's permitted facilities are feedlot pens (335 m x 292 m total area) and a catch basin (70 m x 50 m x 3.5 m deep), feedlot pens (243.9 m x 71.6 m), a manure storage pad (104.9 m x 53.3 m) and a catch basin (64.3 m x 53.3 m x 4.6 m).

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are "affected" by an approval application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

- In the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a person or municipality entitled to divert water from that body within 10 miles downstream
- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified distance is two miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to M.D. of Taber, 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 Taber Times on March 2, 2022. The full application was made available for viewing on the NRCB website. As a courtesy, 10 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, and the Taber Irrigation District (TID).

I received responses from AEP, Alberta Transportation, and the TID. No concerns were raised with the application.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document’s Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of the 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 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 M.D. of Taber is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Brian Peers, director of lands with the Planning Department, provided a written response on behalf of the M.D. of Taber. Mr. Peers stated that the application is consistent with the M.D. of Taber’s land use provisions of the municipal development plan. The application’s consistency with the M.D. of Taber’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 no other responses to the application notice.

8. Environmental risk of CFO facilities

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO’s existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB’s environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, which can fall within either 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.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In this case, the risks posed by Gouw’s existing CFO facilities were assessed in 2019 and 2020 using the ERST. According to those assessments, the facilities posed a low potential risk to surface water and groundwater. All proposed facilities meet AOPA requirements and are automatically presumed to pose a low risk to surface water and groundwater as well.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and

road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Mr. Peers also listed the setbacks required by the M.D. of Taber'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. 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 LA22013 specifies the cumulative permitted livestock capacity as 8,600 beef finishers, and permits the construction of the feedlot pens.

Approval LA22013 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 LA22013 includes conditions that generally address construction deadlines, 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 LA19011 and Authorization LA20011 with Approval LA22013 (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. All conditions from the previous permits have been carried forward into the new approval.

11. Conclusion

Approval LA22013 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22013.

Gouw's NRCB-issued Approval LA19011 and Authorization LA20011 are therefore superseded, and their content consolidated into this Approval LA22013, unless Approval LA22013 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the previous permits will remain in effect.

April 13, 2022

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22013

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.)

Gouw’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 September 28, 2021 under Bylaw #1980.

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 the application.

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”. This exclusion zone is a land use provision. Gouw’s CFO is not located within the “CFO restricted area” and the application is therefore consistent with this provision.

Sections 5.1.14(a)-(d)

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

Section 5.1.15

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

- 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;
- the cumulative effect of a new approval on any area near other existing confined feeding operations;
- environmentally sensitive areas shown in the report, Municipal District of Taber Environmentally Sensitive Areas in the Oldman River Region;
- 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, Gouw’s CFO 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 the application meets these requirements, this expansion would not pose a material risk to surface water or groundwater (and therefore potential drinking water supplies).

Subsection (b) refers to cumulative effects of CFOs. AOPA does not expressly require approval officers to consider the cumulative effects of proposed developments together with those of other existing CFOs or other activities in the area. Further, the NRCB’s Board members have directed approval officers not to consider cumulative effects in their permitting decisions. 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.)

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 Taber Times, and sent courtesy letters to landowners and residents within a 2.0 mile radius as identified by the MD of Taber (see also Operational Policy 2016-7: Approvals, part 7.4). The notification requirements under AOPA have been met.

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

APPENDIX B: Explanation of conditions in Approval LA22013

Approval LA22013 includes several conditions, discussed below. Construction conditions from historical Approval LA19011 and Authorization LA20011 that have been met are identified in the appendix to Approval LA22013.

1. Conditions in Approval LA22013

a. Construction Deadline

Gouw proposes to complete construction of the proposed new feedlot pens by December 30, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 30, 2024 is included as a condition in Approval LA22013.

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 LA22013 includes a condition stating that Gouw 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 they meet the approval requirements.