



Decision Summary LA22005

This document summarizes my reasons for issuing Approval LA22005 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22005. 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 January 25, 2022, Groenenboom Holdings Inc. (Groenenboom) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on March 25, 2022. On April 5, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 2,000 to 4,000 beef finishers
- Constructing eight pens – 38 m x 61 m each
- Constructing three pens – 41 m x 61 m each
- Constructing two pens – 30 m x 61 m each
- Constructing a catch basin – 59.73 m x 50.7 m x 3.94 m deep

a. Location

The existing CFO is located at SW 29-10-22 W4M in Lethbridge County, roughly 5 miles north of Park Lake, Alberta. The immediate area of the site is flat. The closest common body of water is an irrigation canal, 300 m east of the CFO.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes Lethbridge County development permit 95-06, issued February 28, 1995. This deemed approval allows for the construction and operation of a 2,000 head beef CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix C, attached. The deemed facilities are listed in the appendix to the Approval LA22005.

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:

- the municipality where the CFO is located or is to be located

- 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 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 April 5, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 35 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 (AT), and the Lethbridge Northern Irrigation District (LNID).

The NRCB received a written response from Leah Olsen, development/planning technologist with AT; Jeff Gutsell, hydrogeologist with AEP; Mr. Michel Gervais, public health inspector with AHS; and Alan Harrold, general manager with the LNID.

Ms. Olsen stated in her response that a permit from her department is not required and that there are no concerns with this application.

Mr. Gutsell stated that there are no water licenses issued and no water wells reported for this land location. He also stated that the CFO is located within the LNID and requested that the owner submits proof of adequate water to the AEP prior to populating the new feedlot pens. A copy of the response was forwarded to Groenenboom for its information and action.

Mr. Gervais commented that the minimum distance separation (MDS) to all neighboring residences should be met. All residences within the MDS have signed a waiver. One neighbor established a residence within 60 m of the existing CFO. As was confirmed by the county, this residence was established after the CFO and was built and is located within the original MDS for the CFO's. Under section 3(8)(b) Standards and Administration Regulation AOPA, the MDS requirement does not apply to residences that were constructed after the CFO operator submitted an application to the respective authority before January 1, 2002.

Mr. Harrold stated that the increase in animal numbers would require an additional water conveyance agreement. He also pointed out that all permanent structures (including feedlot pens) require a 30 meter setback from all irrigation works and that land application of manure is not permitted within 30 meters of a canal/drain. He also reminded the applicant to not allow any manure contaminated runoff to enter the district works. A copy of the response was provided to Groenenboom.

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 three exceptions (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owners of these residences have signed a written waiver of the MDS requirement to their residence. The Peter residence was established after the CFO and the MDS requirements therefore does not apply.
- 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

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. The application's consistency with the Lethbridge County's municipal development plan is addressed in Appendix A, attached.

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

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 party

(See NRCB Operational Policy 2016-7: Approvals, part 6.2). Allan and Joanne Vanden Broek, Groenenboom Land & Cattle Company Ltd., M & A Van Dyk Inc., and Calvin Konynenbelt and Paula Konynenbelt provided MDS waivers and are therefore considered to be directly affected parties.

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.)

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater.

The assessment of the existing facilities (feedlot pens) using the ERST found that the feedlot pens pose a low potential risk to groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted.

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. Janzen also listed the setbacks required by Lethbridge County's land use bylaw (LUB) and noted that the application meets 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 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 LA22005 specifies the cumulative permitted livestock capacity as 4,000 beef finishers and permits the construction of the proposed feedlot pens and catch basin.

Approval LA22005 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 LA22005 includes conditions that generally address construction deadline(s), 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 municipal development permit #95-06 with Approval LA22005 (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 LA22005 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22005.

Groenenboom's deemed municipal development permit #95-06 is therefore superseded, and its content consolidated into this Approval LA22005, unless Approval LA22005 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed municipal development permit #95-06 will remain in effect.

May 12, 2022

(original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22005
- C. Determination of deemed permit status

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.)

Groenenboom’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 March 10, 2022, under Bylaw #22-001.

The relevant section in the MDP that governs CFOs is section 3 Intensive Livestock/Confined Feeding Operations. The policies relevant to this application are:

3.1 and 3.2 stipulate that establishment/development of new CFOs within the MDP CFO exclusion areas (Map 2 of the MDP), exclusion zones identified in an IDP, or identified residential growth center are not permitted.

This CFO is not a new CFO and is also not located within any of the exclusion areas. These policies (3.1 and 3.2) therefore do not apply.

3.3 states that the expansion of existing CFOs within the county’s CFO exclusion zones is permissible if an IDP exists which allows for such.

This CFO is not within any exclusion zones identified by an IDP or the county’s MDP.

3.4 elaborates on municipal plan consistencies of neighbouring municipalities and is therefore not a land use provision. I will therefore not further discuss this section.

3.5 states that “CFOs shall not be supported to establish or expand within the environmentally sensitive areas as shown in the *Cotton Wood Report: County of Lethbridge: Environmentally Sensitive Areas in the Oldman River Region (1988)*.”

The CFO is not within any of the identified areas. Therefore this application is consistent with this policy.

3.6 states that all setbacks should be adhered to (e.g. property lines, road setbacks).

The new feedlot pens and catch basin all meet the applicable setbacks. Therefore, this application is consistent with this policy.

3.7 states that CFOs are only permitted in 'Rural Agriculture' land use districts and cannot be established on properties smaller than 80-acres.

The CFO is located within a 'rural agriculture' land use district. Therefore this application is consistent with this part of the policy. The second part of this provision is referring to what sites are acceptable to establish a CFO. Apart from the fact that this is not a new CFO, I cannot regard this provision as it appears to be 'a test or condition related to the site for a CFO' (section 20(1.1)).

Sections 3.8, 3.9, 3.10, and 3.11 are not considered land use provision because they either deal with conditions under which CFOs are allowed to continue to operate (section 3.8), manure application (section 3.9), reciprocal MDS (section 3.10), or county-NRCB interaction (section 3.11).

For these reasons, I conclude that the application is consistent with the land use provisions of Lethbridge County's MDP that I considered.

APPENDIX B: Explanation of conditions in Approval LA22005

Approval LA22005 includes several conditions, discussed below, and carries forward a number of conditions from development permit 95-06 (see sections 2 and 3 of this appendix). Construction conditions from historical development permit 95-06 are in the appendix to Approval LA22005.

1. New conditions in Approval LA22005

a. Construction above the water table

Sections 9(3) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the 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.”

As stated in the report (Technical Document LA22005), there is free water at a depth of 1.7 m (borehole 2) to 3.3 m below ground (boreholes 1 and 3). This is above the deepest point of the proposed catch basin (depth will be 3.94 m).

Based on this information, the proposed catch basin does not meet the one metre requirement of sections 9(3) for facilities with a natural occurring protective layer. However, because the height of the water table can vary over time, the lack of adequate depth to water table indicated in Groenenboom'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 Groenenboom to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Construction Deadline

Groenenboom proposes to complete construction of the proposed new feedlot pens and catch basin by within 2 months of receiving a permit. This time-frame is seems short for the proposed scope of work and is greatly dependent on the availability of contractors. I will therefore set the construction completion deadline to December 31, 2023 which will be included as a condition in Approval LA22005.

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 or expanded facilities are constructed according to the required design specifications. Accordingly, Approval LA22005 includes conditions requiring:

- a. Groenenboom to provide evidence or written confirmation from a qualified third party that the catch basin and feedlot pens have been constructed at the permitted location and with the dimensions specified in this permit. This report must be received by the NRCB prior to populating the new feedlot pens.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure (or manure contaminated runoff) are placed in the newly constructed facilities. Approval LA22005 includes a condition stating that Groenenboom shall not place livestock or manure (or manure contaminated runoff) in the manure storage or

collection portions of the new feedlot pens and catch basin until NRCB personnel have inspected the new feedlot pens and catch basin and confirmed in writing that they meet the approval requirements.

2. Conditions not carried forward from Development Permit 95-06

Approval LA22005 includes the terms and conditions in development permit 95-06, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #3 and #6 from development permit 95-06 should be deleted and therefore are not carried forward to Approval LA22005. My reasons for deleting these conditions:

Condition 3 states: "*All drainage from the operation is to be contained on the property in a properly designed catchment facility.*"

This condition is contained in the opening paragraph of this permit (Approval LA2205) that states that the permit holder shall adhere to AOPA and its regulations. The requirement for runoff control is stated in section 6 Standards and Administration Regulation. This condition is therefore redundant and will not be carried forward.

Condition 6 states: "*Deads are to be disposed of in a prompt and acceptable manner.*"

The disposal of dead animals is regulated by Alberta Agriculture, Forestry and Rural Economic Development (AFRED)'s Regulatory Services Branch under the *Animal Health Act*. Given AFRED's regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistency with AFRED's requirements. Therefore this condition will be deleted and not carried forward into the new approval.

APPENDIX C: Determination of deemed permit status

Groenenboom claims that its CFO 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.

The investigation was to determine the capacity of the CFO that was constructed pursuant to a municipal development permit before January 1, 2002.

The CFO was originally permitted by Lethbridge County on February 28, 1995 under development permit # 95-06. This permit allowed the construction and operation of a 2000 head cattle feedlot. 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 LA22005.

Under section 11 of the Administrative Procedures Regulation, notice of a deemed permit determination is not required if the CFO was constructed pursuant to a development permit issued before January 1, 2002. However, because it is not clear if the development permit is for finisher cattle or feeder cattle, I decided to include this aspect into the public notice for the proposed feedlot pens with catch basin application, in the Sunny South News on April 5, 2022.

I did not receive any responses in regard to this application or the grandfathering determination.

Using the Agdex 096-81 Calculator for determining livestock capacity of operations as they existed on January 1, 2002, I determined that the development permit was for 2000 head beef finisher cattle

Based on these findings, the CFO is considered to have a deemed approval with a deemed capacity of 2000 head beef finisher cattle.