

Decision Summary LA22011

This document summarizes my reasons for issuing Authorization LA22011 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22011. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On February 7, 2022, Hemsing Farms Ltd. (Hemsing) submitted a Part 1 application to the NRCB to construct two catch basins, replace wooden feedbunks with concrete bunks, and permit two already constructed pens at an existing beef CFO.

Hemsing received Enforcement Order 22-01 on December 16, 2021 for the unpermitted construction of two feedlot pens that are part of this application.

The Part 2 application was submitted on May 9, 2022 and I deemed the application complete the same day.

The proposed construction involves:

- Constructing two catch basins (50 m x 30 m x 3.5 m deep and 15 m x 20 m x 3.5 m deep)

Hemsing also applied for permission to use the two already constructed feedlot pens as mentioned above. The shape of these pens is irregular and resembles a rhombus with the following dimensions: 77 m x 94 m x 74 m x 99 m.

The replacement of existing wooden feed bunks with concrete bunks does not require a permit.

a. Location

The proposed CFO is located at NW 11-15-14 W4M in the County of Newell, roughly 4 km northwest of the Village of Rolling Hills, AB. The terrain is flat. There is an ephemeral drain running in a distance of 18 m along the north site of the CFO.

b. Existing permits

The CFO received a letter from the NRCB, issued March 31, 2009, grandfathering the footprint of this CFO and stating that it is grandfathered at 2200 feeder cattle (letter included in Technical Document LA22011).

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization 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
- 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 municipality entitled to divert water from that body within 10 miles downstream

A copy of the application was sent to the County of Newell, which is the municipality where the CFO is located.

The CFO is not located within 100 m of a bank of a river, stream or canal.

3. Notice to other persons or organizations

Under NRCB policy, 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 Eastern Irrigation District.

I also sent a copy of the application to Tirol Gas Co-op Ltd. and Torxen Energy Ltd.

The NRCB received a response from Leah Olson, a development/planning technologist with Alberta Transportation. In her response, Ms. Olson stated that a development permit from her department is not required but continued to state that the subject property is within the control lines and would benefit from a development permit. This response was forwarded to Hemsing for his information and action. No other responses were received.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of the County of Newell’s municipal development plan. (See Appendix A for a more detailed discussion of the county’s planning requirements.)

5. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed construction:

- 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 groundwater protection requirements for the design of protective layers of manure storage facilities and manure collection areas

6. Responses from municipality

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 County of Newell is an affected party (and directly affected) because the proposed facilities are located within its boundaries.

Ms. Maria Jackson, a development officer with the County of Newell, provided a written response on behalf of the County of Newell. Ms. Jackson stated that the application is consistent with the land use provisions of the County of Newell's municipal development plan. The application's consistency with the County of Newell's municipal development plan is addressed in Appendix A, attached.

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

7. Environmental risk of 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.)

The assessment found that the existing feedlot pens pose a low potential risk to groundwater and surface water. This is also valid for the already constructed, by not yet permitted, feedlot pens and the two proposed catch basins.

8. Terms and conditions

Authorization LA22011 permits the construction of the two catch basins and the use of the two already constructed but not yet permitted feedlot pens.

Authorization LA22011 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization LA22011 includes conditions that generally address the construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA22011 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22011.

Authorization LA22011 must be read in conjunction with Hemsing's deemed approval.

June 2, 2022

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA22011

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization or amendment of an authorization 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 22(2.1) 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.)

Hemsing’s CFO is located in the County of Newell and is therefore subject to that county’s MDP. The County of Newell adopted the latest revision to this plan in February 2013, under Bylaw # 1705-10, consolidated to Bylaw 1761-13.

The MDP policies relating to CFOs are in part 7.

Section 7.1 states that the County “shall restrict the development of CFOs within the established urban fringe areas ...”

Hemsing’s CFO is not located in any of the urban fringe areas designated in the MDP, so the proposal is consistent with this policy.

Section 7.2 states that the NRCB “should also consider” the following:

- Proximity to water bodies to minimize negative impact on drinking water supplies;
- The “cumulative effect of a new approval” on any area new other CFOs;
- Environmentally sensitive areas as shown on the report “environmentally Significant Areas of the County of Newell (1991)”;
- Giving notice to adjacent landowners even in case of application for authorizations.

Hemsing’s CFO is not close to a common body of water.

The second of these four items does not apply because this permit is to add two pens and two catch basins at an existing CFO with no increase in livestock numbers. It is therefore not a “new approval”. In addition, this provision is likely not a land use provision as it calls for site-specific discretionary judgements (viewed cumulatively with other existing CFOs), so it is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.)

As for the third item, the CFO is not located in an environmentally significant area as listed in the report and is therefore consistent with this policy.

As for the fourth item in section 7.2, this item is likely not a land use provision because of its focus on process and therefore does not need to be considered in my MDP consistency determination. As explained above, the NRCB did notify the County of Newell, and several referral agencies, as well as two companies that own right of ways on this quarter section. The notification requirements under AOPA have been met.

Section 7.3 of the MDP states that the county “may use the MDS method to establish separation distances between proposed developments and CFOs.” This policy appears to refer to the “minimum distance separation” (MDS) requirements under AOPA. However, in several review decisions, the NRCB’s board members have made it clear that approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. That said, the county may still rely on this policy to set appropriate setbacks from proposed residential or other developments that the county regulates, from Hemsing’s CFO.

Section 7.4 of the MDP states that the county “will impose a CFO exclusion zone” around the City of Brooks shown on the map in Appendix C. The applicant’s CFO is not located in the designated CFO exclusion area, so the application is consistent with this part of the plan.

Finally, section 7.5 of the MDP states that, as a “general guideline”. The county will use an 800 meter development setback from all reservoirs. However, this setback can be adjusted on a case-by-case basis depending on topography and other factors. The proposed catch basin and already constructed feedlot pens meet this suggested setback of 800 meters to a reservoir and are therefore consistent with this policy.

For this reason, I conclude that the application is consistent with the land use provisions of County of Newell’s MDP.

Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also considered the County of Newell’s Land Use Bylaw # 1892-17 (consolidated to bylaw #1943-19 – April 2019). Under that bylaw, the subject land is currently zoned Agriculture. Although the land use bylaw does not explicitly mention CFOs (or intensive livestock operations) I would categorize it under ‘Agricultural operation’ which is a permitted use of land under that land zoning.

APPENDIX B: Explanation of conditions in Authorization LA22011

a. Construction Deadline

Hemsing did not propose a date to complete construction of the proposed new catch basins. For this scope of work, typically two construction seasons should be sufficient. I therefore include the deadline of December 31, 2023, as a condition in Authorization LA22011.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Authorization LA22011 includes conditions requiring:

- a. Hemsing to provide documentation, prepared by a qualified third party, to confirm that the dimensions, including the depth of the two catch basins, are as stipulated in this permit

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 are placed in the newly constructed facilities. Authorization LA22011 includes a condition stating that Hemsing shall not allow manure or manure contaminated runoff to enter the new catch basins until NRCB personnel have inspected the catch basins and confirmed in writing that they meet the authorization requirements.

c. No change in livestock numbers

As noted in part 1 above, Hemsing proposed to enlarge their feedlot pen area. This could enable Hemsing to increase their current livestock numbers above their permitted capacity of 2200 feeder cattle of livestock. However, Hemsing has not requested to increase that permitted capacity. To ensure that Hemsing does not exceed the current permitted capacity, a condition is included in Authorization LA22011 stating that Hemsing must keep a monthly record of the number and type of livestock on site and provide that record to the NRCB upon request. All records must be kept for a period of two years.