

## Decision Summary LA22010

This document summarizes my reasons for issuing Approval LA22010 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22010. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On February 7, 2022, Tracy and Michele Hemsing (Hemsing) submitted a Part 1 application to the NRCB to expand an existing beef CFO by increasing beef feeder numbers from 1,200 to 1,500 beef feeders and to expand an existing catch basin (final dimensions: 120 m x 10 m x 4 m deep).

The Part 2 application was submitted on May 10, 2022. On May 18, 2022, I deemed the application complete.

#### a. Location

The existing CFO is located at NE 11-15-14 W4M in the County of Newell, roughly three km northwest of Rolling Hills, Alberta. The site slopes slightly to the west.

#### b. Existing permits

To date, the CFO has a deemed permit, allowing a 1,200 beef feeder operation. A subsequent NRCB issued Approval LA08003 and its amendment Approval LA08003A have since been cancelled. The CFO's existing permitted facilities are listed in the appendix to the Approval LA22010.

### 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 one mile. (The NRCB refers to this distance as the “affected party radius.”)

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 any of a bank of a river, stream or canal and no other municipality is located within the one mile notification radius.

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 Brooks Bulletin on May 18, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 22 letters were sent to people identified by the County of Newell 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 Eastern Irrigation District.

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

The NRCB only received a response from Mr. Chris Poirier, a planning technologist with AT who stated that a permit from his department is not required for this 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 County of Newell’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 two exceptions (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS). The

owners of those residences have signed a written waiver of the MDS requirement to their residence

- 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." The County of Newell is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

The county of Newell did not provide a response. The application's consistency with the County of Newell'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 (See NRCB Operational Policy 2016-7: Approvals, part 6.2). George Dickson and Lonnie Heitrich each provided an MDS waiver and are a directly affected party.

## **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, 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](http://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 Hemsing's existing CFO facilities were assessed in 2008. The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2008 risk assessment, a new, updated version of the ERST tool was developed. For these reasons, I reassessed the risks posed by the CFO's existing facilities and the catch basin expansion. My reassessment found that the potential risks to surface water and groundwater are low.

## 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. No additional matters were raised by the county.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments and am not aware of any concerns from referral agencies that had been notified of this application. I am also not aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application or the written decision of the Environmental Appeals Board / the Director under the *Water Act* in respect of the subject of this application.

Finally, 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 because.

## 10. Terms and conditions

Approval LA22010 specifies the cumulative permitted livestock capacity as 1,500 beef feeders and permits the expansion of the catch basin.

Approval LA22010 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 LA22010 includes conditions that generally address construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

## **11. Conclusion**

Approval LA22010 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22010.

Hemsing's deemed approval is therefore superseded, unless Approval LA22010 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed permit will remain in effect.

July 15, 2022

(Original signed)  
Carina Weisbach  
Approval Officer

### **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22010

## **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.)

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 an expansion of an existing operation and 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 decision, 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 meter 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 Approval LA22010**

### **a. Construction Deadline**

Hemsing did not propose a date to complete construction of the proposed new catch basin. For this scope of work, typically two years should be sufficient. I therefore include the deadline of December 31, 2023, as a condition in Approval LA22010.

### **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, Approval LA22010 includes a condition requiring:

- a. Hemsing to provide documentation, prepared by a qualified third party, to confirm that the dimensions, including the depth of the catch basin, are as outlined 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 manure contaminated runoff is allowed into the newly expanded catch basin. Approval LA22010 includes a condition stating that Hemsing shall not allow manure contaminated runoff to enter the newly expanded catch basin until NRCB personnel have inspected the catch basin and confirmed in writing that it meets the approval requirements.