

Decision Summary LA21057

This document summarizes my reasons for issuing Approval LA21057 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21057. 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 July 14, 2021, an inspector with the NRCB identified unauthorized construction at this site and instructed the operator to depopulate these feedlot pens unless he acquires a permit for those unauthorized feedlot pens.

On November 25, 2021, Tateson Ranching Ltd. (Tateson) submitted a Part 1 application to the NRCB to construct a new 3,000 head beef finisher CFO that involves the construction of four rows of pens and a catch basin.

Tateson submitted an application that proposed the following:

- Increase beef finisher numbers from 0 to 3,000 head
- Construct 4 rows of feedlot pens (row 1-4: 280 m x 42 m; 267 m x 42 m; 267 m x 42 m; 225 m x 42 m) (the unauthorized pens are included in the dimensions of the proposed rows 1 and 2)
- Construct a catch basin (26 m x 68 m x 4 m deep)

The Part 2 application was submitted on May 30, 2022. On June 8, 2022, I deemed the application complete.

The application also shows that the existing row of corrals on the west side of the CFO (as labeled on the site picture included in Technical Document LA21057 (page 5) will be used for their cow/calf herd and is therefore considered a seasonal feeding and bedding site. The operator is aware that these corrals must not be populated during the grazing season from July 1 to September 15 and shall not house any other animals than cow/calf pairs at any time. To ensure that the cow/calf corrals are used as intended, the NRCB will conduct biannually inspections in January and July, starting in 2023.

The Standards and Administration Regulation states in section 4(1) that an owner or operator of a seasonal feeding and bedding site must locate the site 30 meters or more from a common body of water. The row of pens is between five to twelve meters away from and alongside an irrigation drain that empties into Scots Lake, which is approximately 135 m south of these cow/calf corrals. Subsection 1 does not apply if either a) an interceptor is constructed that diverts runoff away from the common body of water or b) all manure and bedding materials are

removed from this site to an appropriate manure storage facility before runoff occurs from the site. I will therefore include a condition that requires the operator to provide a plan on how runoff will be managed at this cow/calf site.

The operator is also reminded that no manure storage, including short term manure storage, is allowed within a certain minimum distance to a common body of water (depending on slope) as laid out in section 5(6) of the Standards and Administration Regulation, AOPA.

a. Location

The proposed CFO is located at W ½ 20-16-12 W4M in the County of Newell, 9.5 km south of the Hamlet of Tilley. The terrain is mainly flat with a slight slope to the south-south-east. The closest common body of water is an irrigation drain that runs along the west side of the already constructed pens at a distance of between 20 m – 23.5 m from the pens, and into Scots Lake which is approximately 43 m south of the new feedlot pens.

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 the County of Newell, which is the municipality where the CFO is to be located.

No other municipality than the County of Newell is within 10 miles downstream of this CFO. Therefore, no other municipality needed to be notified. The notification requirement to any person who is entitled to divert water within 10 miles downstream was met through the public notice given in the Brooks Bulletin as described below.

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 June 8, 2022. The full application was also posted on the NRCB website for public viewing. As a courtesy, 13 letters were sent to people identified by the County of Newell and 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 Eastern Irrigation District (EID).

I also sent a copy of the application to Tirol Gas Co-op (ROW) and Torken Energy Ltd. as they hold rights of way on this quarter.

The NRCB receive responses from Leah Olson, a planning technologist with AT. In her response, Ms. Olson stated that a permit from AT is not required.

The NRCB also received a response from Marvin Koochin, assistant general manger with the EID. The response was in response to an email I sent to ask for further clarification on the function of Scots Lake. In his email, Mr. Koochin stated that the EID is not aware of any waters flowing in or coming out of Scots lake to be used for drinking water. He also explained that Scots Lake functions as a balancing pond/irrigation reservoir that feeds water west and south through the Twelve Mile Coulee system for purposes of irrigating agriculture and livestock. The EID anticipates Scots Lake to continue to serve this function going forward.

No other responses 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 CFO 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 CFO:

- 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, and springs
- 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

The variance that is required to address the AOPA requirements around distance from a MSF/MCA to a water body is discussed in the following parts of this decision summary (section 9).

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 CFO is located within its boundaries.

The NRCB did receive a response from Ms. Marie Jackson, supervisor of planning and development at the County of Newell. The application's consistency with the County of Newell'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."

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. However, in this case, some of the pens applied for in Tateson's application have already been constructed (unauthorized). Hence, I assessed them to determine their risk to groundwater and surface water, using the NRCB's environmental risk screening tool (ERST) (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.)

I assessed the already constructed feedlot pens under the premise that a runoff control mechanism, as proposed in Tateson's application, is in place. The assessment found that, on that premise, the new feedlot pens will pose a low risk to surface water and a low potential risk to groundwater. Tateson also provided a plan showing the anticipated drainage of the feedlot pens. The anticipated flow is exclusively to the east. However, the risk to surface water, although categorized low under the ERST, is on the higher end of this category. Therefore, I will include a condition requiring Tateson to construct a berm on the south and west side of the feedlot pens to ensure that no runoff from these pens can enter Scots Lake. In addition, a post construction report shall be prepared by a qualified engineer, confirming positive drainage of the feedlot pens towards the catch basin.

9. Variances

Under section 17 of AOPA, the applicant applied for a variance of the requirement for a common body of water to be at least 30 m away from a manure storage facility/manure collection area. I determined that the feedlot pens, which were constructed without a permit, are located within the setback from a common body of water as required at section 7 of the Standards and Administration Regulation. Although Tateson, as explained above, provided a plan, showing that all runoff from the feedlot pens will drain east rather than west and towards the irrigation drain, I am not prepared to issue a variance to the 30 meter setback to a common body of water because the plan does not conclusively explain why the variance would provide the same or a greater degree of protection as being 30 m away from the water body. Therefore, a condition will be added, requiring Tateson to decommission the pen area (including fences and bunks) that is 30 m and closer to the irrigation drain.

10. 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.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. I received responses from AT and the EID and no responses from other departments or from the right of way holders. I was not made aware of any effects this development may have.

Finally, I considered the effects of the proposed CFO 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 (with the decommissioning of portions of pens that are within 30m of the irrigation drain meets all 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 because I do not have any information to show the development is not going to have an acceptable effect on the economy and community.

I also presumed that the proposed CFO is an appropriate use of land (see Appendix A for further discussion) (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

11. Terms and conditions

Approval LA21057 specifies the cumulative permitted livestock capacity as 3,000 beef finishers and permits the construction of four rows of feedlot pens (this includes the already constructed, unpermitted pens) and a catch basin.

Approval LA21057 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 LA21057 includes conditions that generally address construction deadline, document submission, decommissioning and a construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

12. Conclusion

Approval LA21057 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21057.

September 22, 2022

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21057

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.)

Tateson’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 ...”

Tateson’s CFO is not located in any of the urban fringe areas designated in the MDP, so the application 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 near other existing 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.

Tateson’s CFO is close to Scots Lake. Scots Lake is part of the EID irrigation works. The EID informed me that Scots Lake currently provides irrigation water to farms and acreages in the area. The feedlot pens – as proposed – do have runoff control that is capable to capture a 1 in 30 year rainfall event. However, to ensure that no runoff can potentially enter Scots Lake during major rainfall events, a condition will be added requiring the construction of a berm on the west and south side of the feedlot pens (see Appendix B).

For the second of these four items: Tateson’s CFO is a new CFO. However, there are no other CFOs in this area. Although this application would meet this provision, I am of the opinion that 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 located in an environmentally significant area of regional significance (Kininvie) as listed in the 1991 report and is therefore inconsistent with this policy at first glance. The Kininvie area is located on townships 16-17 and ranges 11-12 W4M. It is recognized as a locally significant area consisting of productive wetlands and native grasslands that provide important habitat for several threatened species. As confirmed during a site visit and looking at aerial pictures, the area where the feedlot is to be located, is not native grassland and has been cropped since at least since 2006 (Google earth picture). I think it is fair to assume that this area, being under private ownership, will not be reversed back into grassland. Nevertheless, consistent manure application on surrounding lands might have a significant impact on these natural grasslands and areas that are classified as 'sensitive amphibian range' (AEP-FWIMP). Phosphorous influx into water bodies is known to contribute to a sharp decline in water quality and possible eutrophication, negatively affecting amphibians. For this reason, I will include a condition that requires Tateson to also test for phosphates on manure spreading lands. Further explanation of this condition can be found in Appendix B. As a conclusion, although there is an apparent inconsistency with this policy, I considered, as requested in the heading of this section of the policy, the impact this development would have on an environmentally significant area and determined that with the conditions in this permit, the CFO's overall negative impact would not significantly increase.

As for the fourth item in section 7.2, this item is likely not a land use provision because of its focus on procedure 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 hold right of ways on the subject 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 Tateson'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 of the MDP. 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 the county will review required minimum distance separations for CFOs around reservoirs, taking into consideration the likelihood of runoff reaching the reservoirs. The county is contemplating to use a 800 meter development setback from all reservoirs. As proposed, the proposed catch basin and already constructed feedlot pens do not meet this suggested setback of 800 meter to a reservoir. Having said that, it appears that this provision attempts to override the AOPA setback to surface water. Subsequently I determined that this provision is not part of my MDP consistency analysis.

For these reasons, I conclude that the application is consistent with the land use provisions of County of Newell's MDP. This conclusion is supported by the response from the County of Newell.

APPENDIX B: Explanation of conditions in Approval LA21057

Approval LA21057 includes several conditions, discussed below:

a. Construction Deadline

Tateson proposes to complete construction of the proposed four rows of feedlot pens and catch basin by December 30, 2024. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 30, 2024, is included as a condition in Approval LA21057.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new permits to ensure that the new facilities are constructed according to the required design specifications. Accordingly, Approval LA21057 includes conditions requiring:

As discussed above (Appendix A) in order to prevent any runoff from entering Scots Lake, Tateson shall construct a berm on the south and west side of the feedlot pens, and construct the feedlot pens so that they drain towards the catch basin. Confirmation to have met these requirements shall be included in a post construction report prepared by a professional engineer. In addition, the report should also include that the catch basin has been constructed at the location and with the dimensions stated in this permit to ensure that the AOPA requirements in respect to volume have been met.

The submitted drilling report shows several sand lenses within the area of the catch basin. These lenses must be removed and refilled with compacted clay in order to meet AOPA liner requirements. A condition will be added that states that any sand lenses seen on the sides or bottom of the catch basin shall be removed and refilled with compacted clay under the supervision of a qualified professional. Confirmation shall be included in the final construction report mentioned above.

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 Tateson shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens, and shall not allow manure contaminated runoff to enter the new catch basin, until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

c. Decommissioning

As explained in section 9 above, a variance of the 30 m setback has not been granted. Therefore all parts of the constructed feedlot pens (including fence, bunk, watering etc.) that are closer than 30 m to a common body of water (irrigation drain or Scots Lake) shall be decommissioned. This shall occur prior to the post construction inspection as referenced above and included in the post construction report.

d. Manure spreading lands and soil testing requirements

Because the CFO is located within an identified environmentally sensitive area which is also identified as an 'amphibian sensitive area' on the Fish and Wildlife Map (FWIMP), additional soil testing will be required to prevent influx of nutrients into the lake through manure contaminated runoff, or onto the surrounding native grasslands through wind erosion and subsequent deposition of soils. I will therefore include two conditions that require Tateson:

- a) to include Phosphorus into the standard soil testing for manure spreading lands as required under section 24 and 25 of the Standards and Administration Regulations of AOPA. The maximum levels of soil test P (modified Kelowna extractable Phosphorus) must not exceed 120 kg/ha in the top 0.15 m of the soil profile. This level is recommended to be the upper limit in the publication prepared by Alberta Agriculture, Forestry, and Rural Economic Development (AFRED) as part of the Alberta Soils Phosphorus Limits Project in 2006.
- b) to apply manure only on cultivated land with incorporation of manure within 24 hours.

e. Runoff control plan for the cow/calf site

In order to prevent any manure contaminated runoff to enter the irrigation drain flowing into Scots Lake, Tateson will be required to submit a detailed plan showing how manure contaminated runoff will be prevented from leaving the facility and how manure from this site will be managed. This plan shall be submitted before December 31, 2022 and shall be implemented after written approval by the NRCB and prior to livestock being allowed in the newly approved pens.