



Decision Summary LA22001

This document summarizes my reasons for issuing Approval LA22001 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22001. 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 5, 2022, Scholten Farms Ltd. (Scholten Farms) submitted a Part 1 application to the NRCB to expand an existing beef CFO. On January 11, 2022, an updated Part 1 was received.

The Part 2 application was submitted on November 15, 2022. On November 22, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 1,800 to 4,800 beef feeders
- Constructing feedlot pens – north row (135 m x 75 m) and two south rows (225 m x 132 m total)
- Constructing two catch basins (labeled catch basin 1 and 3 in Technical Document LA22001 – 50 m x 20 m x 2.5 m depth, and 60 m x 20 m x 2.5 m depth) and a canal/transition between catch basin 1 and 3: 60 m x 7 m x 2.5 m depth (catch basin 2)

a. Location

The existing CFO is located at NE 1-11-22 W4M in Lethbridge County, roughly six kilometres west of the town of Picture Butte, Alberta. The terrain is undulating. The closest body of water is the “Piyami drain” which runs from the northwest to the southwest towards the Oldman River, between the existing and the new feedlot area. The surrounding areas slope towards this drain.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA16056. That permit allowed the construction and operation of a 1,800 head beef feeder CFO. The CFO’s existing permitted facilities are listed in the appendix to Approval LA22001.

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 Lethbridge County, which is the municipality where the CFO is located.

Although the CFO is located within 100 m of Piyami drain, the drain is part of the LNID’s return-flow system and no water is withdrawn within 10 miles downstream of this CFO.

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 Sunny South News on November 22, 2022. The full application was also posted on the NRCB website for public viewing. As a courtesy, 49 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 Protected Areas (EPA), Alberta Transportation & Economic Corridors (TRAN), and the Lethbridge Northern Irrigation District (LNID).

I also sent a copy of the application to Canadian Western Natural Gas (Atco Gas).

The NRCB received a written response from Leah Olsen, development/planning technologist with TRAN; Jeff Gutsell, hydrogeologist with EPA; Alan Harrold, general manager with the LNID; and Nat Barker with ATCO Gas.

Ms. Olsen stated in her response that an exemption from the permit requirements has been granted for this CFO.

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 EPA prior to populating the new feedlot pens. A copy of the response was forwarded to Scholten Farms for its information and action.

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 Scholten Farms.

Mr. Nat Barker, Supervisor Land with ATCO stated in his response that two pressure lines go through this area and requested that locates are conducted prior to construction and that there is the possibility that a crossing agreement needs to be reached to ensure safe work practices.

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). One was constructed after the CFO was constructed and within its MDS and is exempt under the Standards and Administration Regulations 3(8). The owners of the two other 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." 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 in their municipal development plan. The application's consistency with Lethbridge County'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.

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). Edward, Richard, Jane, and Steven VanDerVeen, and Wilhelmina-Susanne and Hendrik VanDerVeen provided MDS waivers and are therefore considered directly affected parties.

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 Scholten Farms’ existing CFO facilities were assessed in 2016 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO’s existing facilities is not required.

Because the proposed facilities all meet AOPA requirements, they are presumed to pose a low risk to groundwater and surface water.

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 have considered the effects the proposed CFO may have on natural resources administered by provincial departments. The representative of EPA did not point out any concerns in respect to this CFO other than water supply. A copy of this response was forwarded to Scholten for their information and action.

I am not aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* or written decisions of the Environmental Appeals Board / the Director under the *Water Act* in respect of the subject of this application (<http://www.eab.gov.ab.ca/status.htm>, accessed January 20, 2023).

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.

10. Terms and conditions

Approval LA22001 specifies the cumulative permitted livestock capacity as 4,800 beef feeders and permits the construction of the feedlot pens and catch basins.

Approval LA22001 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 LA22001 includes conditions that generally address construction deadlines, 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 the following permit with Approval LA22001: Approval LA16056 (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 of Approval LA16056 have been carried forward into the new approval.

11. Conclusion

Approval LA22001 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22001.

Scholten Farms NRCB-issued Approval LA16056 is therefore superseded, and its content consolidated into this Approval LA22001, unless Approval LA22001 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA16056 will remain in effect.

January 25, 2023

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22001

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.)

Scholten’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 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 LA22001

Approval LA22001 includes several conditions, discussed below, and carries forward all conditions from Approval LA16056. All construction conditions from Approval LA1656 that have been met are identified in the appendix to Approval LA22001.

1. New conditions in Approval LA22001

a. Construction Deadline

Scholten Farms proposes to complete construction of the proposed new feedlot pens and catch basins by December 31, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2025 is included as a condition in Approval LA22001.

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 LA22001 includes conditions requiring:

- a. Provide results from a survey, conducted by a qualified professional, confirming that the new feedlot pens meet the required 660 ft (201 m) setback from the eastern quarter line of NW 6-11-21 W4 and 1320 ft (402 m) from the southern border of section NE 1-11-22 W4 as stated in the waiver (as attached to Technical Document LA22001).
- b. Scholten Farms to provide evidence or written confirmation from a qualified third party that the two catch basins and the transition (catch basin 2) between catch basins 1 and 3 have been constructed at the location and with the dimensions approved in this permit.
- c. That the feedlot pens shall not be populated prior to completion of the construction of all three catch basins.

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 LA22001 includes a condition stating that Scholten Farms shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens or to allow manure contaminated water to enter the catch basins until NRCB personnel have inspected the feedlot pens and catch basins and confirmed in writing that it meets the approval requirements.