

Decision Summary LA23002

This document summarizes my reasons for issuing Approval LA23002 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23002. 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 12, 2023, Poelman Farms Ltd. submitted a Part 1 application to the NRCB to expand an existing beef CFO by increasing the feedlot pen space by 40.2 m towards the west and 59.7 m to the north (the total footprint will be 253.2 m x 272.7 m) and increase animal numbers to a total of 2,500 beef feeders and 2,500 beef finishers.

The Part 2 application was submitted on January 12, 2023. On January 25, 2023, I deemed the application complete.

a. Location

The existing CFO is located at SW 13-11-25 W4M in the Municipal District (M.D.) of Willow Creek, roughly 16 km northeast of Granum, Alberta. The topography slopes gently toward the north. There is an irrigation canal 135 m south of the CFO.

b. Existing permits

The CFO is currently permitted under NRCB Approval LA21050. This permit allowed the construction and operation of a 2,000 head beef feeders and 2,000 head beef finishers CFO.

Approval LA21050 also corrected the dimensions of a catch basin from the permitted dimensions (61 m x 38 m x 1.7 m - see Approval LA15002) to the dimensions 'as constructed' (62 m x 61 m x 2.7 m). However, as confirmed through measurements on aerial pictures and a site visit, the catch basin was constructed as originally permitted in Approval LA15002. Therefore, the expansion of the catch basin to the final dimensions of 62 m x 61 m x 2.7 m, will have to be brought back into this approval, including the construction conditions, as 'new construction' to ensure the CFO's runoff control catch basin can meet the required runoff volume (see Technical Document LA23002). The CFO's existing permitted facilities are listed in the appendix to the Approval LA23002.

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 M.D. of Willow Creek, which is the municipality where the CFO is located, and to Lethbridge County which has a boundary within the affected party radius.

The NRCB gave notice of the application by public advertisement in two weekly newspapers in circulation in the community affected by the application. In this case, public advertisement was in the Claresholm Local Press and Macleod Gazette on January 25, 2023. The full application was made available for viewing during regular business hours, and was posted on the NRCB website for public viewing. As a courtesy, 23 letters were sent to people identified by the M.D. of Willow Creek and 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).

The NRCB received responses from:

- Evan Neilsen, a planning technologist with TRAN.
In his response, Mr. Neilsen stated that there are no comments or requirements with respect to this proposal.
- Jeff Gutsell, a hydrogeologist with EPA.
In his response, Mr. Gutsell stated that there are no surface or groundwater licences in place for that land location and continued to state that the CFO is within the LNID. He requested proof from the operator that all water needs have been met through water conveyance agreements with the LNID. This response was forwarded to the applicant for his information and action.
- Alan Harrold, general manager of the LNID.
In his response, Mr. Harrold stated that there is a conveyance agreement in place but needs to be increased to accommodate the increase in animal numbers. He also noted that no manure storage or application is allowed within 30 m of any canal/drain and that no effluent from this CFO must enter any District works. This response was forwarded to

the applicant for his information and action.

- Carol Britain, public health inspector with AHS. Ms. Britain stated in her response that there are no concerns or comments with this application at this time.

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 M.D. of Willow Creek's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.). It is also consistent with the Intermunicipal Development Plan between the M.D. of Willow Creek and Lethbridge County.

6. AOPA requirements

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

- 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'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 municipalities 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 M.D. of Willow Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Cindy Chisholm, a development officer with the M.D. of Willow Creek, provided a written response on behalf of the M.D. of Willow Creek. Ms. Chisholm stated that the application is consistent with the M.D. of Willow Creek's land use provisions of the municipal development plan. The application's consistency with the M.D. of Willow Creek's municipal development plan is addressed in Appendix A, attached.

Lethbridge County is also a directly affected party because the CFO is within the 1.5 mile radius of Lethbridge County. This area is subject to the IDP between those two counties.

Ms. Hilary Janzen, interim director of community services stated in her response that the IDP between the two counties applies to this CFO and that there are no concerns in regard to the proposed expansion.

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

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 Poelman 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.

The new proposed pen dimensions and the catch basin expansion meet all AOPA requirements and 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. Chisholm also listed the setbacks required by the M.D. of Willow Creek's land use bylaw (LUB) and requested for the application to meet these setbacks. All applicable setbacks have been met.

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 on 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 LA23002 specifies the cumulative permitted livestock capacity as 2,500 beef feeders and 2,500 beef finishers and permits the expansion of the feedlot pens and the catch basin.

Approval LA23002 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 LA23002 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 the following permit with Approval LA23002: Approval LA21050 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbors, 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 LA23002 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23002.

Poelman Farms' NRCB-issued Approval LA21050 is therefore superseded, and its content consolidated into this Approval LA23002, unless Approval LA23002 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA21050 will remain in effect.

April 25, 2023

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA23002

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.)

Poelman’s CFO is located in the MD of Willow Creek and is therefore subject to that municipality’s MDP. The MD of Willow Creek adopted the latest revision to this plan on August 2019, under Bylaw #1841. The parts and policies of the MDP relevant to this application are discussed below.

Part 2 states that agriculture is a predominant land use in the MD though it also notes that it is important to balance other interests. One of the objectives in Section 2 states that one of the main objectives of the MDP is to mitigate the siting of a CFO to minimize conflicts with adjacent land uses. Policy 2.3 states that the MD shall establish guidelines with regards to the NRCB for the regulation and approval of CFOs within the MD. These guidelines are found in section 9.

Policy 9.1. states that the applicable setbacks from new development to roadways that are governed by the municipality can be found in the municipal Land Use Bylaw and need to be met. All other road setbacks are as required by Alberta Transportation.

The proposed development meets all of these setbacks.

Policy 9.2 of the MDP directs the NRCB to consider six matters. These are quoted below (*in italics*); each one is followed by my discussion of how the provision relates to this application. The requested matters to consider are:

(a) The cumulative effect of a new approval on any area near other existing CFO’s/ILO’s

This policy is likely not a “land use provision,” as it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects.

In a 2011 decision, the Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

For these reasons, I do not consider this MDP provision to be relevant to my MDP consistency determination.

(b) Environmentally significant areas contained in the Municipal District of Willow Creek: Environmentally Significant Areas in the Oldman River Region report [the report]

Poelman's CFO is not within any of the areas designated as of regional, provincial or national significance in the referenced report (Map 1 of the report). However, areas of local significance are not presented in the report.

The report also assessed the planning area for major physical constraints such as flood plains, unstable slope potential, and areas of artesian flow. The map shows that the CFO is not located in any of these areas. I am of the opinion that the application is consistent with this provision; I have not been privy to information which refutes this.

(c) Providing notice to adjacent landowners including applications for registration or authorization

This is likely not a "land use provision" because of its procedural focus and thus I do not consider it to be relevant to my MDP consistency determination. At any rate, as explained above, the NRCB sent out courtesy letters to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius of 1.5 miles, and gave public notice in the Claresholm Local Press. The application therefore met the notification requirements of AOPA. (See also Operational Policy 2016-7: *Approvals*, part 7.5).

(d) Applying minimum distance separation calculations to all country residential development

I interpret "minimum distance separation" as referring to the minimum distance separation (MDS) requirements in section 3 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no country residential development located within the category 2 MDS for Poelman's CFO and the application meets AOPA's MDS requirements.

(e) Restricting development in the flood plain, floodway, the flood way fringe and flood prone, or hazard lands within or adjacent to any watercourse within the MD; and

As discussed in Technical Document LA21050, Poelman's CFO meets the AOPA setbacks to common bodies of water and is not located within a known flood plain as identified on the Alberta Environment and Parks flood hazard website. Based on this information, the application is consistent with this aspect of the provision.

(f) Restricting development in any wetland or riparian area

The proposed CFO facilities are not located in a wetland or riparian area, it meets the AOPA setbacks to common bodies of water also. This provision is therefore met by the application.

For these reasons, I conclude that the application is consistent with the land use provisions of the MD of Willow Creek's MDP.

In my view, the Land Use Bylaw is clearly incorporated in the MDP in several sections throughout the MDP, especially in Policy 15.5 which states:

The Development Authority shall require the NRCB to take into consideration the policies adopted in this plan and the Land Use Bylaw, when issuing an approval.

Therefore, I also considered the application's consistency with this document. Under the MD of Willow Creek's Land Use Bylaw (#1826 consolidated to Bylaw No. 383/2020), the subject land is currently zoned as Rural General. CFOs are not listed as prohibited, permitted, or discretionary land use under this zoning. Ordinarily, a land use bylaw intends to preclude land uses that are not listed as permitted or discretionary (and that do not meet any other relevant criteria). However, the land use bylaw lists "intensive livestock operations" (ILOs), defined essentially as CFOs below AOPA's permit thresholds, as a discretionary use within areas zoned Rural General. Therefore, I interpret the omission of CFOs from the lists of permitted and discretionary land uses as simply the municipality's recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs above AOPA thresholds.

As for the lot size restriction in section 2(4) of the Rural General part of the bylaw, which states that the "parcel size shall remain the same size for which the development approval was originally issued." Since CFOs are not listed in the LUB, it is my interpretation that the lot restrictions are intended to apply to ILOs that are permitted by the municipality, and are not intended to apply to CFOs above AOPA's permit thresholds. Regardless, this application is for a new CFO and does not include a proposal to subdivide an existing land parcel.

Section 3 of the Rural General part of the bylaw lists several setbacks. The facilities meet the 22.9 m road and 6.1 m other adjacent property line setback requirements.

For these reasons, I conclude that the proposed facilities are consistent with the land use bylaw.

Because the CFO is located within the intermunicipal planning area of the MD of Willow Creek and Lethbridge County, the Intermunicipal Development Plan (Lethbridge County Bylaw 19-014, MD of Will Creek Bylaw 1831, May 2019) of these two counties also applies.

Sections 3.2.4 of the planning document apply to CFOs:

Section 3.2.4 states that existing CFOs will be allowed to continue to operate under acceptable operating practices and within the requirement of AOPA.

This CFO has several NRCB issued permits and is compliance with AOPA and its regulations. Hence this section has been met.

Section 3.2.5 states that if either the County or MD are in receipt of a notice of application form the NRCB for new or expanded CFOs, they will forward a copy of the notification to the other municipality.

Although this section is not a land use provision and regulates the notification process between the two counties, both counties were given notice of this application.

Section 3.2.6 states that both municipalities recognize the importance of the CFO exclusion/restricted areas identified within the Plan area. New CFOs will be prohibited or restricted in accordance with the respective municipality's MDP policies.

This CFO is not in an area identified as exclusion or restricted areas and is therefore consistent with this section.

Section 3.2.7 states that if either municipality proposed an amendment to the CFO exclusion/restricted area with the plan area or proposes additional CFO exclusion/restricted area with the Plan area, the proposal will be circulated to the other municipality for comment in accordance with section 4.3 of the Plan.

This section is not a land use provision and speaks on the corporation between the two counties. This section does therefore not apply to my MDP/IDP consistency determination.

Section 3.2.8 states that prior to issuing comment on a notice of application to the NRCB for a new or expanded CFO within the Plan Area, the municipalities will consult with one another regarding the applicant's proposed haul routes to and from the CFO.

This section is not a land use provision and speaks on the corporation between the two counties. This section does therefore not apply to my MDP/IDP consistency determination.

For these reasons, I conclude that the proposed facilities are consistent with the IDP between Lethbridge County and the MD of Willow Creek.

APPENDIX B: Explanation of conditions in Approval LA23002

Approval LA23002 includes several conditions, discussed below, and carries forward all conditions from Approval LA21050 other than operating condition 5 and those pertaining the catch basin. Construction conditions from Approval LA21050 that have been met are identified in the appendix to Approval LA23002.

1. New conditions in Approval LA23002

a. Construction Deadline

Poelman proposes to complete construction of the proposed new feedlot pens by November 30, 2025. This time-frame is considered reasonable for the proposed scope of work. The deadline of November 30, 2025 is therefore included as a condition in Approval LA23002.

b. Catch basin expansion and Construction completion reports

As discussed in section 1.b above, the expansion of the catch basin will need to occur in order to provide the required catch basin volume for the feedlot pen area at this CFO. I will therefore bring the permission to construct the catch basin expansion (to the final dimensions of 62 m x 61 m x 2.7 m deep), including the construction conditions as laid out in Approval LA15002, forward for the expansion of the catch basin.

c. Post-construction inspection and review

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. Approval LA23002 includes a condition stating that Poelman shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens or allow manure contaminated runoff to enter the catch basin extension until NRCB personnel have inspected the feedlot pens and the catch basin and confirmed in writing that they meet the approval requirements.

2. Conditions not carried forward or modified from Approval LA21050

Condition 3 states: "Before livestock can be housed in any of the former swine facilities, the facilities must be converted to handle manure as a solid and this conversion must be confirmed by a site inspection and documented in writing by NRCB personnel."

This condition is no longer applicable. During my site visit on April 6, 2023, I confirmed that all in-barn pits in the old swine barn had been filled in.

The old swine barn is currently used as a calf barn for Poelman Farms' cow calf herd and therefore has become part of his cow calf operation. Hence it is no longer considered to be part of the CFO. A condition to decommission this barn is not required but the above stated condition to fill in the in-barn pits, as it has been met, will be removed and not carried forward. I would like to remind the operator that this barn cannot be used as part of his feedlot operation.

In addition, two of the four bio-shelters as listed in the appendix have been removed and the remaining two shelters are used as sheds for farm machinery. These two former bio-shelters have been decommissioned and cannot be used to house livestock anymore. A separate condition to decommission these barns is therefore not required. However, the operator is reminded that these shelters cannot be used to house livestock.