



Decision Summary LA18067A

This document summarizes my reasons for issuing Approval LA18067A under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA18067A. 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 amendment to an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On May 15, 2019, the NRCB issued Approval LA18067 to Nelson Family Ranches Ltd. (Nelsons) which allowed the construction of a new beef confined feeding operation (CFO). The approval permitted the construction of the following:

- Feedlot pens row #1 (450 m x 60 m)
- Feedlot pens row #2 (210 m x 55 m)
- Feedlot pens row #3 (270 m x 60 m)
- Feedlot pens row #4 (240 m x 40 m)
- Feedlot pens row #5 (250 m x 110 m, irregular shape)
- Catch Basin #1 (35 m x 25 m x 4 m deep)
- Catch Basin #3 (30 m x 75 m x 5 m deep)

Approval LA18067 also required the decommissioning of Catch Basin #2 and the construction of berms and drainage ditches to protect an unnamed creek to the north of the proposed CFO.

During the post construction inspection of the facilities on January 24, 2020, NRCB Inspector Denny Puszkas, and Approval Officer Joe Sonnenberg, noticed that Catch Basin #1 and Catch Basin #3 were not constructed to the permitted dimensions. Also, Catch Basin #1 and the two most eastern pens of Feedlot pens row #5 (pens 37 and 38) were constructed within 30 m of the unnamed creek. In addition, Catch Basin #2 was not decommissioned. The location of the catch basins and the pens had not changed.

In subsequent correspondence, Nelsons decided that they would backfill Catch Basin #1 to meet the 30 m setback from the unnamed creek, as well as widen it to accommodate for the backfilling. Additionally, Nelsons would move pens 37 and 38 of row #5 to be more than 30 m away from the unnamed creek, as those were the only pens of row #5 not in compliance with AOPA's setback requirements.

Nelsons contacted Approval Officer Cailyn Wilson on July 12, 2023, to obtain a post construction completion letter. Nelsons stated they had a verbal agreement with the previous Approval Officer that they had an extension to complete construction but did not receive anything in writing. Nelsons stated they completed construction of the facilities on April 27, 2022.

During a second post construction inspection of the facilities on August 15, 2023, NRCB Inspector Denny Puszkar, and Approval Officers Cailyn Wilson and myself, noticed that Catch Basin #1 was still within 30 m of the unnamed creek and constructed to an irregular shape, Catch Basin #2 had still not been decommissioned, and pens 37 and 38 were also still within 30 m of the unnamed creek. I determined that an amendment to Approval LA18067 was required due to the additional modifications required for Catch Basin #1 and pens 37 and 38, an additional construction deadline extension, and addressing the as built dimensions of Catch Basin #3.

On September 8, 2023, Compliance Directive CD 23-07 was issued to Nelsons by NRCB Inspector Morgan Schindel and an amendment to Compliance Directive CD 23-07 was made on September 20, 2023. Compliance Directive CD 23-07 directed Nelsons to complete the following:

- Decommission Catch Basin #2 (Approval LA18067)
- Modify Catch Basin #1 to 70 m x 33 m x 4 m deep, and backfilled to meet the 30 m setback from the unnamed creek
- Construct berms between Catch Basin #1 and the unnamed creek
- Reconstruct pens 37 and 38 to adhere to the setback requirements as outlined in AOPA (30 m)

On September 20, 2023, NRCB Inspector Morgan Schindel, and Approval Officer Cailyn Wilson and myself, attended the site to establish exactly where the fence for pens 37 and 38 would need to be to meet the 30 m setback from the unnamed creek. NRCB Inspector Morgan Schindel logged GPS coordinates for Nelsons as a reference point.

On September 28, 2023, NRCB Inspector Morgan Schindel and I attended the site to see the completed work for the reconstruction of Catch Basin #1 and the decommissioned Catch Basin #2, which was decommissioned to the satisfaction of the NRCB. Nelsons provided an engineer's report for the reconstruction of Catch Basin #1 during our site visit, and it indicated that the catch basin had a 2:1 slope. I told Nelsons that the slope of their catch basin did not meet AOPA's requirements of a 3:1 slope which would need to be addressed.

On October 2, 2023, Nelsons came to the NRCB Lethbridge office to start the permit amendment application process. Nelsons decided to widen Catch Basin #1 to meet the 3:1 slope requirement.

On October 11, 2023, Nelsons submitted an application to amend Approval LA18067 (LA18067A).

The application was deemed complete on October 20, 2023. The application involved:

- Modifying the dimensions of Catch Basin #1 (35 m x 25 m x 4 m deep) to the as built dimensions of 37 m x 80 m x 3.45 m deep.
- Modifying the dimensions of pens 37 and 38 of Row #5 to the as built dimensions of 34 m x 59 m (irregular shape), and 34 m x 49 m (irregular shape), respectively.
- Modifying the dimensions of Catch Basin #3 (30 m x 75 m x 5 m deep) to the as built dimensions of 21 m x 37 m x 4 m deep.

On December 8th, 2023, NRCB Inspector Morgan Schindel and I attended the site to verify the as built dimensions of pens 37 and 38.

No increase in livestock numbers or manure production is proposed.

Under AOPA, this type of application requires an amendment to an approval.

a. Location

The existing CFO is located at NW 4-6-19 W4 in the County of Warner No. 5 (County of Warner), roughly 5 km south of the Village of Stirling. The terrain is flat with surface water draining sometimes towards, and otherwise adjacent to, an unnamed creek to the north of the CFO site.

b. Existing permits

The CFO is permitted under NRCB Approval LA18067. This permit allows the construction and operation of an 8,000 beef finisher CFO. The CFO's existing permitted facilities are listed in Approval LA18067A.

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

The specified distance of this CFO is 2 miles. (The NRCB refers to this distance as the "notification distance".)

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

In this case, there is no river, stream or canal within 100 m of Nelsons' CFO.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in The Prairie Post, a newspaper in circulation in the community affected by the application on October 27, 2023, and in The Lethbridge Herald on October 21, 2023 (due to an administrative error that missed the October 20, 2023 Prairie Post issue), and
- sending 28 notification letters to people identified by the County of Warner as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing.

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 (TEC), and Raymond Irrigation District (RID).

I also sent a copy of the application to Triple W Natural Gas Co-op Ltd. and Alpha Bow Energy, as they are utility right of way holders on the subject land.

Mr. Jeff Gutsell, a hydrogeologist, provided a written response on behalf of EPA. Mr. Gutsell stated EPA has no concerns regarding this application.

Ms. Leah Olsen, a development/planning technologist, provided a written response on behalf of TEC. Ms. Olsen stated that a permit from TEC would not be required for this application.

Mr. Wade Goin, an executive officer/public health inspector, provided a written response on behalf of AHS. Mr. Goin stated in his response to refer to the previous comments made for Approval LA18067, in reference to concerns on protecting wells and water sources from contamination. These concerns are addressed in the decision summary of Approval LA18067, Appendix C.

No other responses from referral agencies were received.

4. Municipal Development Plan (MDP) consistency

I have determined that the change in dimensions to Catch Basin #1, Catch Basin #3, and pens 37 and 38 remain consistent with the land use provisions of the County of Warner's municipal development plan. (See Appendix A in Approval LA18067 for a more detailed discussion of the county's planning requirements.)

5. AOPA requirements

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

- 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 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

With the terms and conditions summarized in part 10 and Appendix A, the application meets all relevant AOPA requirements. The exemption that is required to address AOPA's 100 m setback requirements to water wells is discussed in Part 8 of this decision summary.

6. 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 Warner is an affected party (and directly affected) because the CFO amendment is located within its boundaries.

Mr. Tyler Nelson, a development officer with the County of Warner, provided a written response on behalf of the County of Warner. Mr. Nelson stated that the application is consistent with the County of Warner's municipal development plan land use provisions and is unaffected by any intermunicipal development plans. He stated that the land where the CFO is located and all lands within a 2 mile radius are zoned as extensive agriculture. He also stated that the application meets all applicable setbacks. The application's consistency with the land use provisions of the County of Warner's municipal development plan was addressed in Appendix A of Approval LA18067. The MDP and the analysis remain the same.

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.

7. Environmental risk of CFO facilities

When reviewing an approval amendment 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.) 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 9.17.

In this case, the risks posed by Nelsons' proposed CFO facilities were assessed in 2019. The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2019 risk assessment, Nelsons have been issued a Compliance Directive (CD 23-07) because pens 37 and 38 of Row # 5 and Catch Basin #1 were constructed within 30 m of an unnamed creek. CD 23-07 required Nelsons to reconstruct Catch Basin #1 and pens 37 and 38 to meet the 30 m setback from the unnamed creek, and to construct a berm between Catch Basin #1 and the unnamed creek. In addition, Catch Basin #3 had been constructed differently from what was permitted in Approval LA18067. For these reasons, I reassessed the risks posed by the reconstructed Catch Basin #1, the modified pens 37 and 38, and the as built Catch Basin #3. My reassessment found that these facilities pose a low potential risk to groundwater and surface water. Though the risks posed by the reconstructed facilities were deemed low by the ERST, due to the vicinity of the unnamed creek to the CFO and surface water drainage

patterns, I am carrying forward conditions from the previous permit requiring the ongoing maintenance of surface water control facilities (see Approval LA18067A).

8. Exemption

An exemption to the 100 m water well setback was issued in Approval LA18067 due to feedlot pens row #5 being located 50 m from a water well. The overall CFO footprint has not changed, and no new facilities have been added. Therefore, the exemption that was issued as part of Approval LA18067 is still valid. For reasons why the exemption was issued, see decision summary including Appendix D of Approval LA18067, and Water Well Monitoring Requirements of Approval LA18067A.

9. Other factors

The previous decision summary for Approval LA18067 (e.g. part 6) discussed other factors to be considered, including MDP consistency, ALSA plan consistency, South Saskatchewan Regional Plan consistency, the environment, economy, the community, and the appropriate use of land. I have determined the change in dimensions to Catch Basin #1, Catch Basin #3, and pens 37 and 38 has no impact on these determinations.

10. Terms and conditions

Approval LA18067A specifies the cumulative permitted livestock capacity as 8,000 beef finishers and permits the as built dimensions of Catch Basin #1, Catch Basin #3, and pens 37 and 38.

Approval LA18067A 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.

Approval LA18067A also amends the permit to have two permit holders (the “co-permit holders”) instead of one, due to the CFO being operated by Nelson Family Ranches Ltd. and the land the CFO is located on being owned by Nelson Family Farms Inc. (see NRCB Operational Policy 2016-7: Approvals, part 6).

Rather than issuing a separate amendment to be read in conjunction with Approval LA18067, I am consolidating it into this amended permit, Approval LA18067A (see NRCB Operational Policy 2016-7: Approvals, part 11.5). 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. Approval LA18067A carries forward all existing terms and conditions from Approval LA18067, with the amendments noted above.

11. Conclusion

Approval LA18067A is issued for the reasons provided above and in Technical Document LA18067A.

Nelson's NRCB-issued Approval LA18067 is therefore superseded, and its content consolidated into this Approval LA18067A, unless Approval LA18067A is held invalid following a review and decision by the NRCB's Board members or by a court, in which case Approval LA18067 will remain in effect.

January 9, 2024

(Original signed)
Kelsey Peddle
Approval Officer

Appendices:

A. Explanation of conditions in Approval LA18067A

APPENDIX A: Explanation of conditions in Approval LA18067A

Conditions carried forward and modified from LA18067

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that all conditions from LA18067 should be carried forward and re-worded to reflect the presence of an additional permit holder for the amended permit, with all construction conditions being met. Condition #8 is amended to match the current Water Well Monitoring Statement for Approval LA18067A.