

Decision Summary LA24009

This document summarizes my reasons for issuing Registration LA24009 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24009. 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 a registration. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On February 26, 2024, Anchor X Cattle Ltd. (Anchor X) submitted a Part 1 application to the NRCB to construct a new sheep CFO.

In March 2023, the NRCB compliance division received a complaint about unauthorized construction of a sheep facility at this land location. The responsible inspector contacted the operator and advised to contact an approval officer to determine if a permit was needed. A compliance directive or other warnings were not issued. As mentioned above, a Part 1 was received on February 26, 2024.

The Part 2 application was submitted on March 18, 2024. On March 26, 2024, I deemed the application complete.

The proposed CFO involves:

- Increasing sheep numbers from 0 to 1,000 sheep (ewes with lambs)
- Increasing sheep numbers from 0 to 1,000 sheep feeders
- Receiving permission to use already constructed facilities:
 - Sheep barn with corrals – 63 m x 27 m (under roof) and 63 m x 17 m
 - Feeder sheep corrals – 145 m x 55 m
- Constructing a catch basin – 25 m x 25 m x 2.5 m

The applicant also described a cattle seasonal feeding and bedding site adjacent to the sheep feedlot. These three pens (as illustrated on the site photo in Technical Document LA24009), are located on the east side of the sheep feeder pens and are used for cow/calf pairs, also owned by Anchor X. The applicant is aware, that due to the adjacency of these seasonal feeding and bedding pens to the CFO and their permanent built facilities, no other livestock than cow/calf pairs are allowed in these pens.

a. Location

The proposed CFO is located at NE 20-10-21 W4M in Lethbridge County, roughly 2.2 km east of the hamlet of Shaugnassy. The terrain is flat in the immediate area of the CFO but drops sharply into the coulee system to the south that is part of the Oldman River Coulee system.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by a registration 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 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 ½ mile (805 m) from the CFO
- all persons who own or reside on land within the greater of ½ mile (805 m) or the minimum distance separation for the land on which the CFO is located

The land zoning on which the CFO is located would require a minimum distance separation of 254 metres. Therefore, the notification distance is 805 metres/ ½ a mile. (The NRCB refers to this distance as the “notification distance”.)

None of the CFO facilities are located within 100 m of a bank of a river, stream or canal and no other municipality or its borders is within the ½ mile notification distance.

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

The NRCB gave notice of the application by:

- public advertisement in Sunny South News newspaper in circulation in the community affected by the application on March 26, 2024,
- sending 12 notification letters to people identified by Lethbridge County as owning or residing on land within the notification distance, and
- posting it on the NRCB website.

The full application was also made available for viewing during regular business hours.

3. Notice to other persons or organizations

Under NRCB policy, 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 Environment and Protected Areas (EPA), Alberta Transportation and Economic Corridors (TEC), and the Lethbridge Northern Irrigation District.

I also sent a copy of the application to Tamarack Acquisition Corporation, and Atco Gas & Pipelines because they have right of ways on that land.

The NRCB received responses from Jeff Gutsell, a hydrogeologist with EPA; Miss Leah Olson, a planning technologist with TEC; and Alan Harrold, general manager of the LNID.

- Mr. Gutsell stated that there are no groundwater or surface water diversion authorizations issued for that land location. He continued to state that the CFO is within the LNID, and that there is potential that Anchor X obtains water from there. He

requested proof that Anchor X has a water conveyance agreement prior to approval. A copy of the current water conveyance agreement from the LNID is on file and will be updated once the conversion is finalized. The operator is reminded that they need to send a copy of it to EPA.

- Ms. Olson stated that a permit from TEC is not required.
- Mr. Harrold stated that Anchor X does not currently have any miscellaneous irrigation agreements registered with the LNID and an application for a Water Conveyance Agreement – Type 3 is necessary to use irrigation water for the proposed livestock. The applicant is in the process to convert the agreement. Mr. Harrold also reminded Anchor X to adhere to all applicable setbacks for facilities and manure storage areas to irrigation works. A copy of the response was sent to the applicant for his information and action.

No other responses were received.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 22(9) 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 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 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, 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 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 CFO is located within its boundaries.

Ms. Janzen, a manager of planning and development with Lethbridge County, provided a written response on behalf of Lethbridge County. Ms. Janzen stated that the application is consistent with the land use provisions of Lethbridge County’s municipal development plan. The application’s consistency with the land use provisions of Lethbridge County’s municipal development plan, are addressed in Appendix A, attached.

Ms. Janzen also listed the setbacks required by Lethbridge County’s land use bylaw (LUB) and requested that the application meets these setbacks. The facilities meet these setbacks.

No other responses were received.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. The information on this file supports the assumption that risks to groundwater and surface water are low.

9. Terms and conditions

Registration LA24009 specifies the cumulative permitted livestock capacity as 1,000 sheep (ewes with lambs), and 1,000 sheep feeders, permits the use of the already constructed sheep barn with corrals, and feeder sheep corrals, and the construction of a new catch basin.

Registration LA24009 contains terms that the NRCB generally includes in all AOPA registrations, 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, Registration LA24009 includes conditions that generally address construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

10. Conclusion

Registration LA24009 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24009.

May 7, 2024

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration LA24009

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for a registration or amendment of a registration 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.

“Land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 22(2.1) 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 9.2.7.)

Anchor X Cattle’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 in March 2022, under Bylaw #22-001.

The relevant sections in the MDP can be found in section 3 – Intensive livestock/confined feeding operations.

Section 3.0 states that the county is supportive of CFOs that are in areas less prone to conflict and where the municipal infrastructure can support such development.

I do not consider this section as a land use provision because it is rather subjective in respect of what can be supported by municipal infrastructure in addition to the fact that such an assessment is not under the jurisdiction of the NRCB. Additionally, approval officers shall not consider any tests or conditions related to the site of a CFO (section 22(2.1) AOPA).

Section 3.1 and 3.2: These sections state that new CFOs are not permitted in areas zoned as CFO exclusion areas (as illustrated on Map 2 (2A & 2B), in particular areas with higher density residential growth centers, or within areas designated as CFO exclusion areas in any of the intermunicipal development plans.

This CFO is not located within the CFO exclusion area of Lethbridge County. Therefore, this section does not apply.

Section 3.3 continues to state that established CFOs located within an urban fringe district may be permitted to expand or make improvements to the operations in consideration of any IDP policy that allow for such.

This section does not apply because the CFO is not in proximity or within an urban fringe district.

Section 3.4 talks about consistency of planning documents.

This is not a land use provision, and I can therefore not consider it.

Section 3.5 states that CFOs shall not be supported to establish or expand within environmentally sensitive areas as shown in the *Cotton Wood Report: County of Lethbridge: Environmentally Significant Areas in the Oldman River Region (1987)*.

The CFO is just outside an area identified as a provincially significant site (Map 1 Environmentally significant areas – Natural) and areas with unstable slope potential (Map 2 – Environmentally significant Areas – Hazards).

The immediate area of the CFO is flat and drains towards the northeast. The Oldman River coulee system starts about 40 m to the south. The operator is reminded to maintain all applicable distances of any short term manure stockpiles, seasonal feeding and bedding areas, and manure spreading areas to the coulee system which is considered to be part of the surface water body connected to the Oldman River.

Section 3.6 speaks on required setbacks of manure storage areas to property lines and roadways.

The CFO meets all of these setbacks.

Section 3.7 discusses the land zoning, stating that CFOs are only allowed in areas zoned Rural Agriculture in which they are a discretionary use. The minimum parcel size for CFOs is 80 acres.

It seems that the new CFO could meet the 80 acres minimum parcel size. However, because the stipulation of a minimum parcel size to establish a new CFO would appear to fall under section 22(2.1) AOPA that states that approval officers shall not consider any tests or conditions related to the site of a CFO, I did not pursue this topic any further.

Section 3.8 states that the county supports existing CFOs located within the MDP area.

Because this is not a land use provision, I will not discuss this topic any further.

Section 3.9 expresses the county's expectation in respect to manure spreading within the CFO exclusion zones and that manure spreading occurs according to AOPA and its regulations.

Because this is not a land use provision, I will not discuss this topic any further. In addition, section 22(2.1) AOPA applies, stating that approval officers are not to consider any provision respecting the application of manure.

Section 3.10 discusses the application of a reciprocal MDS.

Because this is not a land use provision, I will not discuss this topic any further.

Section 3.11 states that the county will continue to consult with the NRCB on CFO matters.

Because this is not a land use provision, I will not discuss this topic any further.

For the reasons provided above, I conclude that the application is consistent with the land use provisions of Lethbridge County's MDP that I may consider.

APPENDIX B: Explanation of conditions in Registration LA24009

a. Construction Deadline

Anchor X Cattle proposes to complete construction of the proposed new catch basin by December 31, 2025. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2025, is included as a condition in Registration LA24009.

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, Registration LA24009 includes a condition requiring:

- i. Anchor X to provide evidence or written confirmation from a qualified third party that the catch basin was constructed with the dimensions stated in this permit and that it meets the 6.1 m setback from the property line.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Registration LA24009 includes a condition stating that Anchor X shall not allow manure contaminated runoff to enter the new catch basin until NRCB personnel have inspected the catch basin and confirmed in writing that it meets the registration requirements.