



## Decision Summary LA24001

This document summarizes my reasons for issuing Approval LA24001 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24001. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On January 2, 2024, Kody Traxel (Traxel) submitted a Part 1 application to the NRCB to construct a new beef CFO.

The Part 2 application was submitted on May 3, 2024. On May 14, 2024, I deemed the application complete.

The proposed CFO involves:

- Increasing livestock numbers from 0 to 1,000 beef feeders
- Constructing two feedlot pens – each 43 m x 50 m (2,150 m<sup>2</sup>)
- Constructing two feedlot pens –each 46 m x 50 m (2,300 m<sup>2</sup>)
- Constructing two irregular sized feedlot pens: 1 x 2,198 m<sup>2</sup> and 1 x 2,174 m<sup>2</sup>
- Constructing a catch basin (15.5 m x 82 m x 1.5 m deep)

#### a. Location

The proposed CFO is located on the northeast corner of NW 6-11-7 W4M in Cypress County, roughly 2.8 km northwest of the Hamlet of Seven Persons. The general slope of the terrain is to the southeast and southwest. The closest common body of water is a drain running approximately one km from the northwest of the CFO to the southeast, draining into Seven Persons Lake.

### 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 0.5 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 counties are within the notification distance or share an intermunicipal development plan with Cypress County covering this area.

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- advertisement in Cypress Courier newspaper in circulation in the community affected by the application on May 14, 2024, and
- sending 37 notification letters to people identified by Cypress County as owning or residing on land within the notification distance.

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

### **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 Environment and Protected Areas (EPA), Alberta Transportation & Economic Corridors (TEC), and the St. Mary River Irrigation District (SMRID).

I also sent a copy of the application to Alta Gas Utilities, South Rural Electrification Association Ltd., and Apex Utilities Inc. which are utility right of way holders at this land location.

The NRCB received a response from Ms. Leah Olson, development/planning technologist with TEC; Mr. George Roth, a water administrative technologist with EPA; and Ms. Micaela Azzarello, a land administrator with the SMRID:

- Ms. Olson stated that a permit from TEC is not required.
- Mr. Roth stated that there are no existing groundwater diversion authorizations for this land location, including one well that is logged for this land location. He continued to state that the land is within the SMRID and therefore has the potential to source water from the irrigation district. He requested the licence number or other proof of existing water conveyance agreements that cover the water needs for this application. I received a copy of the water conveyance agreement and forwarded it to EPA for its records.
- Ms. Azzarello stated that the applicant will need 6.5 acre-feet of an agricultural conveyance agreement which can be purchased from the SMRID. She also requested for the applicant to observe a 10 m setback from the SMRID pipeline. A copy of the response was forwarded to the applicant for his information and action. The setbacks to the SMRID pipeline have been met.

No other responses were received from any of the agencies that were contacted in respect to this application.

#### **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 Cypress County's municipal development plan. (See Appendix A and section 9 below 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." Cypress County is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Ms. Kaylene Brown, a planning supervisor with Cypress County, provided a written response on behalf of Cypress County. Ms. Brown stated that the application is consistent with Cypress County's land use provisions of the municipal development plan, provided the operator enters into a road use agreement with the County and the setbacks of the land use district are met. The application's consistency with the land use provisions of Cypress County's municipal development plan is addressed in section 9 and Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received one joint response from four individuals.

All of the four people who submitted the response own or reside on land within the 0.5 miles notification distance for affected persons. Because of their location within this distance, and because they submitted a response, they qualify for directly affected party status. (See NRCB

Operational Policy 2016-7: *Approvals*, part 7.2.1)

The directly affected parties raised concerns regarding chaff and debris from the feed processing area blowing into their dugout (drinking water supply). This concern is addressed in Appendix B.

## **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 (see Operational Policy 2016-7: *Approvals*, section 9.18).

## **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 as their regulatory authority is limited. In her response, Ms. Brown from Cypress County stated that the application for the new CFO is supported if the new CFO is in proximity to or can directly access primary transportation corridors and the operator enters into a road use agreement to help support operation and maintenance of the municipal road network. She concluded that the application is consistent with the MDP, provided that Traxel enters into a road use agreement with the county. As noted in the NRCB's Board Decision 2020-09 (LA20035) Hutterian Brethren of Murray Lake, page 4 3.c and 3.d., decisions on road use agreements are better left with the municipalities due to lack of requisite expertise by NRCB field staff to develop, mediate or enforce road use agreements/conditions. Municipalities on the other hand, own the roads within their jurisdiction, have the knowledge and expertise to determine what is required in road use agreements and have the jurisdiction to implement and enforce road use agreements.

Ms. Brown also listed the setbacks required by Cypress County's land use bylaw (LUB) and stated that the size of the parcel is conducive to supporting the operation to comply with all applicable setbacks. She did not comment on if these setbacks have been met by the application or not. However, all applicable setbacks have been met.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. EPA has not made me aware of any statement of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* or under section 109 of the *Water Act* in respect of the subject of this application. Furthermore, the application meets AOPA's technical requirements.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed June 10, 2024)

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 Operational Policy 2016-7: *Approvals*, part 9.10.9, I presumed that the

effects on the environment are acceptable because the application meets all of AOPA's technical requirements. I have not received any evidence to the contrary and, in my view, this presumption is not rebutted.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, if the application is consistent with the MDP land use provisions then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted. The directly parties' concern is addressed in Appendix B.

I also presumed that the proposed CFO 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 9.10.9). In addition, this land location and the land around it is zoned Agricultural District 2 under the county's land use bylaw where agricultural operations are a permitted land use. In my view, this presumption is not rebutted and is supported by the response from Cypress County.

## 10. Terms and conditions

Approval LA24001 specifies the cumulative permitted livestock capacity as 1,000 beef feeders; and permits the construction of two feedlot pens (each 43 m x 50 m (2,175 m<sup>2</sup>)); two pens (each 46 m x 50 m (2,310 m<sup>2</sup>)); two irregular sized pens (2,198 m<sup>2</sup>; and 2,174 m<sup>2</sup>); and a catch basin (15.5 m x 82 m x 1.5 m deep).

Approval LA24001 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 LA24001 includes conditions that generally address construction deadlines, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

## 11. Conclusion

Approval LA24001 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24001.

July 8, 2024

(Original signed)  
Carina Weisbach  
Approval Officer

## Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns raised
- C. Explanation of conditions in Approval LA24001

## **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.

“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 9.2.7.)

Kody Traxel’s CFO is located in Cypress County and is therefore subject to that county’s MDP. Cypress County adopted the latest revision to this plan under Bylaw #2023/15.

The relevant sections to this application in Cypress County’s MDP are sections 4.1.14 to 4.1.19 – Locating New CFOs:

Section 4.1.14 states the county will support CFOs if the site is not located within 1.6 km of the boundary of a hamlet identified in Map 7, the size of the parcel is conducive to support the development, and property line and roadway setbacks as laid out in the land use bylaw can be met.

The new CFO is not within 1.6 km of the boundary of a hamlet. This provision is therefore met. The second part of the provision refers to the size of the parcel for a new CFO. This provision falls partly under section 20(1.1) AOPA, that states that approval officers shall not consider any provisions respecting a site for a CFO because it stipulates the requirements for the location of a new CFO. I will therefore not consider this part of the provision. The third part of the provision refers to setbacks. The proposed construction meets all setbacks as laid out in the land use bylaw.

Section 4.1.15 states that the county shall direct new CFOs to areas that are in proximity to or can directly access primary transportation corridors that are suitable for the intensity for the operation.

The stipulation to have new CFOs within proximity of suitable infrastructure is likely not a land use provision and falls under section 20(1.1) AOPA, that states that approval officers shall not consider any provisions respecting a site for a CFO. Apart from that, access to transportation corridors “suitable for the intensity of the operation” is difficult to assess based on uncertainty on traffic volume created by a CFO and is therefore a rather subjective parameter.

Section 4.1.16 states the county will require that the CFO pays for the expansion and/or upgrade of the municipal road network to support the operation. The county shall require the

CFO operator to enter into a road use agreement to help support the operation and maintenance of the municipal road network.

I do not consider this a land use provision, and it is not aimed at the NRCB. Road use agreements are strictly between the county and the CFO. The NRCB Board determined in Board Decision on LA20043 Hutterian Brethren of Murray Lake (RFR 2020-09) that decisions on road use agreements are better left with the municipalities due to lack of requisite expertise by NRCB field staff to develop, mediate or enforce road use agreements/conditions. Municipalities on the other hand own the roads within their jurisdiction, have the knowledge and expertise to determine what is required in road use agreements and have the jurisdiction to implement and enforce road use agreements.

Section 4.1.17 states that the county will not support land uses incompatible with a CFO when proposed within the MDS of the CFO, as defined by the NRCB MDS regulations.

This provision refers to matters regulated directly by the county. The NRCB has no jurisdiction over any other developments within a county other than CFOs. This section does therefore not apply.

Section 4.1.18 states that the county shall not support CFOs to locate within the Tri-Area Intermunicipal Development Plan boundary.

The CFO is not located within this area.

Section 4.1.19 states the county shall review the CFO's compatibility with the surrounding area and will provide its recommendation to the NRCB.

Compatibility of land uses is typically achieved through proper land use planning and zoning as laid out in the land use bylaws and the MDP.

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

## **APPENDIX B: Determining directly affected party status and concerns raised**

The following individuals qualify for directly affected party status because they submitted a response to the application and they own or reside on land within the “notification distance,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation: Thomas Jay and Dana Lovell, and Bob and Ruth Richardson (See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.)

### These directly affected parties raised the following concern

Contamination of the Lovell’s dug out with chaff and debris blowing from Traxel’s feed processing area

### Applicant’s response

In his response, Mr. Traxel explained that they are aware of the problem and have done substantial work to remedy this problem. In addition, feeder cattle require less straw as well as a shift to adding more oat hulls to the feed which can be stored inside, causing less blowing straw. However, he pointed out that they will not be able to eliminate the problem completely due to the challenging winds.

### AO Analysis

When deciding on NRCB permit application, the approval officer is restricted to assess matters arising from the land location where the CFO is or will be located. I was informed that the straw and other debris blowing over to the Lovell’s dugout is coming from the neighbouring operation located to the south of the Richardson’s, in the northwest corner of the NW 6-11-7 W4, immediately west of the proposed new CFO. I also understand that some of the feed that will be used to feed the cattle at this new CFO will be stored and prepared at this neighbouring site. Having said that, the lands where the existing, but independent, operation and the new CFO are located are zoned Agriculture where these kinds of operations are a permitted land use and some nuisance impacts, can be expected. Although, as pointed out by Traxel, the situation has improved, it cannot be fully remedied. Should this concern and incidences of nuisance impacts remain, anyone impacted can report the incidence to the NRCB’s 24 hour a day reporting line (1-866-383-6722 or 310-0000 toll free line).



## **APPENDIX C: Explanation of conditions in Approval LA24001**

### **a. Construction Deadline**

Traxel proposes to complete construction of the proposed new feedlot pens and catch basin by October 2024. This timeframe is short and does not consider unforeseeable circumstances. I therefore extended the deadline by an additional construction season. The deadline of December 31, 2025, is included as a condition in Approval LA24001.

### **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 LA24001 includes conditions requiring:

- a. Traxel to provide evidence or written confirmation from a qualified third party that the feedlot pens and the catch basin meet the required specifications, including applicable setbacks.

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. Approval LA24001 includes a condition stating that Traxel shall not place livestock or manure in the manure storage or collection portions of the feedlot pens and shall not allow manure contaminated runoff to enter the catch basin until NRCB personnel have inspected these facilities and confirmed in writing that they meet the approval requirements.