



Decision Summary LA24011

This document summarizes my reasons for issuing Approval LA24011 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24011. 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 March 12, 2024, Trower Calf Ranch (Trower) submitted a Part 1 application to the NRCB to expand an existing beef calf CFO.

The application was initiated through an inspection conducted by the compliance division as part of the Livestock Population Verification Program. The inspection identified that the CFO was exceeding its permitted livestock number of 2000 feeder calves as permitted under Approval LA21046 and expanded its footprint without a permit. The NRCB inspector for this file instructed Trower to become compliant with AOPA. As mentioned above, Trower submitted his Part 1 on March 12, 2024, the Part 2 application was submitted on May 17, 2024. On May 28, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing beef calf feeder numbers from 2,000 to 4,000
- Constructing a catch basin – 40 m x 12 m x 2 m deep
- Get approval to use an already constructed expansion of the footprint of the hutch area by 127 m x 23 m (group hutch area) and approximately 8000 m² for individual hutches (irregular shape extending from the permitted footprint towards the east end of the parcel. See site picture for details)

The applicant also applied for a variance for the require 30 m setback to a surface water body (See Appendix C).

a. Location

The existing CFO is located at NW 20-11-20 W4M in Lethbridge County, roughly one kilometer west of the Village of Iron Springs. The terrain is relatively flat, and the nearest body of water is the Lethbridge Northern Irrigation District's canal located 25 m south of the hutch area.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA21046. That permit allows the construction and operation of a 2,000 beef calf feeder CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA24011.

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 “notification distance”.)

Because of the closeness to an irrigation canal, which is part of the Lethbridge Northern Irrigation District (LNID) works, the district was notified of this application (see section 3 below).

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Sunny South, a newspaper in circulation in the community affected by the application on May 28, 2024, and
- sending 70 notification letters to people identified by Lethbridge County as owning or residing on land within the notification distance.

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

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 Lethbridge Northern Irrigation District.

I also sent a copy of the application to ATCO and Lethbridge North County Potable Water Co-op Ltd. who have utility right of ways on this land.

The NRCB received responses from Mr. George Roth, a water administrative technologist with EPA, from a representative with the LNID, and from Leah Olson, a planning/development technologist with TEC.

- In this response, Mr. Roth stated that there are no groundwater diversion licences for the

water well located at this land location. He continues to state that the applicant has supplied a water conveyance agreement with the LNID and, although the available amount may be sufficient to cover the increased water needs, it is the responsibility of Tower to assess whether this is a suitable amount for their needs. Because water needs are not under the jurisdiction of the NRCB, I will not discuss this topic any further, however, a copy of both statements was forwarded to the applicant for his information and action.

- The representative from the LNID stated that they do not oppose the application but pointed out that the proposed increase needs an additional water conveyance agreement. In the second response from the LNID, the representative stated that a 30 m setback from the canal bank must be observed for all permanent structures. The updated location of the catch basin meets this setback. The individual calf hutches are non-permanent structures to which this setback does not apply.
- In a phone conversation with Ms. Olson, we discussed the fact that TEC was prepared to issue a waiver for the encroachment on the setback from the highway. However, the issuance of the waiver will no longer be pursued. She had no concerns with this application.

No other responses were received.

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 one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has 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 with a variance
- 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 expansion is located within its boundaries.

Ms. Hilary Janzen, 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 Lethbridge County's land use provisions of the municipal development plan except the required 70 m setback from the centerline of the highway. After reviewing the updated site plan, Ms. Janzen provided me with a second response, adding that should the NRCB determine the application is consistent with the MDP, the NRCB should ensure that all applicable setbacks have been met. The updated site plan does meet all these setbacks, including the 70 m from the centerline of the highway.

The application's consistency with the land use provisions of 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." The NRCB received a joint response from two individuals.

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 7.2.1). Darren Van Ray provided an MDS waiver and is a directly affected party.

Both individuals who submitted the joint response own or reside on land within the 1.5 mile 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 strong odor, which will get worse with the expansion, cleanliness, dead animals and manure stockpiling. These concerns are 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. In this case, the calf hutch area and the proposed catch basin are close to the LNID irrigation canal. However, the risk to surface water is low because the irrigation canal is 'uphill' from the hutch area, separated by the canal bank, and no manure contaminated water can enter the canal.

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 9.17.

In this case, the risks posed by Trower's existing CFO facilities were assessed in 2021 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

9. Variances

The applicant applied for a variance of the requirement for a common body of water to be at least 30 m away from a manure storage facility/manure collection area. I determined that the existing, individual calf hutches, which were placed without a permit, are located within the required AOPA setback from a common body of water. As explained in Appendix C, I am prepared to issue a variance to the 30 m common body of water setback due to their lower elevation in respect to the top of the canal bank. Manure contaminated runoff cannot enter the canal, and a condition for on-going inspection is not required.

10. 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 initial site photo provided in the application does not meet these setbacks and concluded that the application is not consistent with the MDP land use provisions. However, a second site photo was provided, indicating the footprint of the proposed expansion which meets the required setbacks.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concerns 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. I also did not receive any responses from any utility right-of-way holders.

I am not aware of a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed June 27, 2024.

Finally, I considered the effects of the proposed expansion on the environment, the economy, the community, and the appropriate use of land. In doing so, I had before me information in the application, responses from the Lethbridge County, a submission from a directly affected party, and my own observations from site visits.

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. In my view, having considered the relevant information, 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 then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted from the information I have.

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 9.10.9). In my view, this presumption is not rebutted, and all setbacks have been met. See Appendix A of this decision summary for a more detailed discussion of the County's planning requirements.

11. Terms and conditions

Approval LA24011 specifies the cumulative permitted livestock capacity as 4,000 beef calves and permits the construction of a catch basin and the expansion of the hutch area.

Approval LA24011 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 LA24011 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix D.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA24011: Approval LA 21046 (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. All conditions of Approval LA21046 have been carried forward into the new approval.

12. Conclusion

Approval LA24011 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24011.

Trower's NRCB-issued Approval LA21046 is therefore superseded, and its content consolidated into this Approval LA24011, unless Approval LA24011 is held invalid following a review and

decision by the NRCB's board members or by a court, in which case Approval LA21046 will remain in effect.

August 12, 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. Variance
- D. Explanation of conditions in Approval LA24011

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.)

Trower’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 20(1)(1.1) 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 in proximity but not within an urban fringe district.

Section 3.4 talks about consistency of planning documents.

This is not a land use provision, and I therefore cannot 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 not close to any areas identified in that report.

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.

Apart from the fact that this is not a new CFO, the stipulation of a minimum parcel size to establish a new CFO would appear to fall under section 20(1)(1.1) AOPA that states that approval officers shall not consider any tests or conditions related to the site of a CFO. Therefore, I am not able to consider this provision.

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 20(1)(1.1) 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: Determining directly affected party status and concerns raised

The following individual qualifies for directly affected party status because he owns a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing: Darren VanRay (SW 29-11-20 W4) See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.

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 “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation: Martin and Mary Penner (NW 21-11-20 W4) Iron Springs. See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.

The directly affected parties raised the following concerns: Odour, deads, and manure stockpiling.

Odour and other nuisance impacts

The directly affected parties raised concerns regarding the negative odours that would get worse as a result from the approval of the expansion.

Approval officer’s conclusions

AOPA’s MDS requirements are a proxy for minimizing odours, flies, and other nuisance effects from CFOs. Trower’s CFO proposed expansion meets the MDS to all neighbouring residences in the Hamlet of Iron Springs.

Often, any issues that arise relating to the operation of a CFO can be resolved through good communication between neighbours and the CFO operator. However, if a member of the public has concerns regarding a CFO, including whether or not the operation is complying with AOPA, they may contact the NRCB through its 24-hour reporting line (1-866-383-6722). A NRCB inspector will follow up on the concern.

Dead animal disposal

The directly affected parties raised a concern about Trower’s poor handling of dead animals.

Approval officer’s conclusions

The disposal of dead animals is regulated under the *Animal Health Act*, which is administered by Alberta Agriculture and Irrigation. AOPA does not address dead animal disposal and approval officers will not include new conditions relating to dead animal disposal in permits under AOPA (Operational Policy 2016-7: *Approvals* part 9.15). Future concerns about the disposal of dead animals at a CFO should be forwarded to Alberta Agriculture and Irrigation.

Manure stockpiling

Mr. Penner is concerned about the high manure piles on the property.

Approval officer’s conclusions

The stockpiling on areas permitted as manure collection and storage areas is allowed if all applicable setbacks have been met. In addition, stockpiling is also allowed on a short-term basis in a particular location as long as the manure is not left for more the seven consequent months over a period of three years (Section 5, short term solid manure storage, Standards and Administration Regulation (SAR)). In case of noncompliance with these regulations, any

member of the public may contact the NRCB through its 24-hour reporting line (1-866-383-6722). A NRCB inspector will follow up on the concern.

APPENDIX C: Variances

The proposed calf hutch area has already been constructed (without a permit) less than 30 m from an LNID canal which is a common body of water (CBW). This is in conflict with the section 7(1)(c) of the SAR. The applicant has requested a variance for the 30 m setback to the irrigation canal for the calf hutches.

I therefore need to either deny the application or alternatively consider if a variance is warranted under AOPA's section 17(1). It is my opinion that considering a variance is appropriate in this case.

Approval officers must not grant variances lightly or in the absence of substantive evidence they will produce equivalent or greater levels of protection and safety. In considering whether a variance is appropriate in this particular circumstance, I have used the same tools that I would normally use to determine if an exemption is warranted under section 7(2) of the SAR.

The calf hutch area is more than one meter lower in elevation than the irrigation canal bank and no manure contaminated runoff can enter the canal. In addition, Trower received a waiver from the LNID for the calf hutches, stating that they are in agreement of the placement of these hutches within the 30 m setback.

Based on the above, I am of the opinion that a variance for the 30 m setback to a CBW (irrigation canal) is appropriate.

APPENDIX D: Explanation of conditions in Approval LA24011

Approval LA24011 includes several conditions, discussed below, and carries forward all conditions from Approval LA21046. Construction conditions from historical Approval LA21046 are in the appendix to Approval LA24011.

1. New conditions in Approval LA24011

a. Construction Deadline

Trower proposes to complete construction of the proposed new catch basin and complete hutch area expansion by December 31, 2024. This timeframe seems somewhat short for the proposed scope of work. I will therefore extend the construction completion deadline for an additional construction season. The deadline of December 31, 2025, is included as a condition in Approval LA24011.

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 LA24011 includes conditions requiring:

- a. a completion report, prepared by a qualified third party, certifying that the manure storage and collection portions of the hutch area have been constructed in accordance with the proposed design and meet the 70 m setback from the highway.
- b. A survey confirming that the calf hutch area on the east side meets the MDS to the nearest houses in the village of Iron Springs.
- c. A completion report, prepared by a qualified third party, certifying that the catch basin is constructed according to the dimensions in this permit, meets the 30 m setback from the canal and the 70 m setback from the highway, and is located at the location indicated on the updated site plan.

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 LA24011 includes conditions stating that Trower shall not place livestock or manure in the manure storage or collection portions of the calf hutch area or allow manure contaminated runoff to enter the catch basin until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.