



Decision Summary LA22001A

This document summarizes my reasons for issuing Approval LA22001A, an amendment of Approval LA22001, under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22001A. 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 of an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On August 22, 2024, NRCB staff conducted a post construction inspection of Scholten Farms feedlot pens and catch basins permitted in Approval LA22001. The NRCB staff noticed that the catch basins were not constructed as permitted. Instead of three catch basins being constructed, as proposed and permitted by Approval LA22001, only two were constructed with different dimensions. On October 16, 2024, Scholten Farms submitted the construction completion report for the constructed catch basins and in turn, they received a post construction inspection letter from the NRCB allowing use of the pens and catch basins and advising them to apply for an amendment to reflect the changes in the constructed catch basins. The construction completion report included the dimensions and slopes of catch basins #1 and #2. Catch basin #1 was constructed with the inside side walls sloped at 2.2:1, rather than the proposed and permitted slopes of 3:1. This approval includes a condition that requires the inside side walls of catch basin #1 to be re-sloped to 3:1.

On November 27, 2024, I received the amendment application. I deemed the application complete on January 14, 2025.

The proposed modification involves:

- Permitting the as built dimensions of catch basin #1 – 59 m x 10 m x 2.2 m deep
- Permitting the as built dimensions of catch basin #2 – 120 m x 20 m x 2.5 m deep

a. Location

The existing CFO is located at NE 1-11-22 W4M in Lethbridge County, roughly six kilometres west of the town of Picture Butte, Alberta. The terrain is undulating. The closest body of water is the Piyami drain, 30 m away, which runs from the northwest to the southeast through the footprint of the CFO towards the Oldman River roughly 10 km away. The surrounding areas slope towards this drain.

b. Existing permits

The CFO is permitted under NRCB Approval LA22001 which superseded all previous permits. This permit allows the operation of a 4,800 head beef feeder CFO. The CFO's existing permitted facilities are listed in the appendix to Approval LA22001A.

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”.)

Although the CFO is located within 100 m of Piyami drain, the drain is part of the LNID’s return-flow system and it is not considered “a river, stream or canal.” Additionally, no water is withdrawn within 10 miles downstream of this CFO.

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 newspaper in circulation in the community affected by the application on January 14, 2025 and
- sending 53 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 hours at the NRCB office in Lethbridge.

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 North Irrigation District (LNID).

I also sent a copy of the application to Atco Gas and the Lethbridge North County Potable Water Coop as they are right of way or easement holders at this land location.

In their response, an EPA water administration technologist stated that the change in constructed catch basins does not result in additional water requirements and that they do not have any concerns with the application.

In their response, the LNID stated that they do not have any objections to the 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

In Decision Summary LA22001, it was determined that the proposed CFO expansion, including the construction of the catch basins, was consistent with the land use provisions of Lethbridge County's municipal development plan (MDP). No changes have been made to the MDP since Approval LA22001 was issued. The new number of, and dimensions of, the constructed catch basins has no effect on this determination. Therefore, the previous assessment of the application's consistency with the MDP is still valid and additional analysis is not required.

6. AOPA requirements

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

- Meets the required AOPA setbacks from nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). Approval LA22001 met the MDS with one exception. The owner of that residence signed a written waiver of the MDS requirement to their residence. A new MDS waiver for Approval LA22001A is not required as the feedlot pens and catch basins were constructed within the footprint permitted by Approval LA22001.
- 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 groundwater protection requirements for the design of floors and 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.

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 modification is located within its boundaries.

Ms. Hilary Janzen, manager of planning and development, 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. Additionally, Ms. Janzen noted that the application is within an area zoned Rural Agricultural and is not with any Intermunicipal Development Plan or Area Structure Plan areas.

Ms. Janzen had concerns about catch basin #1 being constructed with the inside side walls sloped at 2.2:1, as best management practices recommends that inside side slopes should be 3:1 or greater. This concern is consistent with the Standards and Administration Regulation section 14(1), which stipulates that "the slope of the inside side wall of an earthen liquid manure storage facility must not be less than 3:1."

In Approval LA22001, the catch basins were proposed and permitted to be constructed with the inside side walls sloped at 3:1. This was included as a term in the permit and needs to be met. I am including a condition in Approval LA22001A that the inside side walls of catch basin #1 be re-sloped to 3:1. The re-sloped catch basin must be inspected by NRCB personnel.

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

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 risks posed by the catch basins were assessed in Approval LA22001. According to that assessment, the catch basins posed a low potential risk to surface water and groundwater as they met the technical requirements of AOPA. The change in dimensions of the catch basins does not have a significant effect on the risk assessment as they were constructed to the proposed depth and did not move closer to a surface water body. As a result, a new assessment of the risks posed by the catch basins is not required.

Additionally, 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. 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 listed the setbacks required by Lethbridge County's land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the proposed construction may have on natural resources administered by provincial departments. EPA has not made me aware of statements 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 February 20, 2025).

Finally, I considered the effects the modification of the catch basins will have 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. 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 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 modification of the catch basins 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, the subject land is zoned Rural Agricultural. In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA22001A specifies the cumulative permitted livestock capacity as 4,800 beef feeders and permits the as built dimensions of catch basins #1 and #2.

Approval LA22001A 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 LA22001A includes conditions that generally address construction deadlines and construction inspection. For an explanation of the reasons for these conditions, see Appendix A.

11. Conclusion

Approval LA22001A is issued for the reasons provided above, in Decision Summaries LA22001 and LA22001A, and in Technical Documents LA22001 and LA22001A. In the case of a conflict between these documents, the latest ones will take precedence.

Scholten Farm's NRCB-issued Approval LA22001 is therefore superseded, and its content consolidated into this Approval LA22001A, unless Approval LA22001A is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA22001 will remain in effect.

March 11, 2025

(Original signed)
Kailee Davis
Approval Officer

Appendices:

A. Explanation of conditions in Approval LA22001A

APPENDIX A: Explanation of conditions in Approval LA22001A

Construction conditions from Approval LA22001 that have been met are identified in the appendix to Approval LA22001A.

Approval LA22001A includes several conditions, discussed below:

a. Construction Deadline

Scholten Farms must complete the re-sloping of the inside side walls of catch basin #1 to 3:1 by November 30, 2025. This is included as a condition in Approval LA22001A.

b. Post-construction inspection

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. A condition is included in Approval LA22001A that NRCB personnel must inspect catch basin #1 to ensure that the inside side walls are re-sloped to 3:1.