

Decision Summary LA24002XA

This document summarizes my reasons for issuing Approval LA24002XA, an amendment of Approval LA24002X, under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24002XA. 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 July 23, 2024, I issued Approval LA24002 to Van Huigenbos Farms Ltd. (Van Huigenbos) permitting an expansion to its existing beef CFO by constructing additional feedlot pens and catch basins, decommissioning an existing row of feedlot pens, increasing beef feeder calf numbers from 2,500 to 16,500, and decreasing beef feeder numbers from 1,200 to 0.

On September 17, 2024, I issued Approval LA24002X, an amendment to Approval LA24002, to Van Huigenbos as directed by the NRCB Board's Decision RFR 2024-05. In that decision, the Board "strongly recommends that the approval officer require Van Huigenbos to provide written confirmation from a professional surveyor that the MDS measured from the outside walls of the closest neighbouring residence to the point closest to manure storage facilities or manure collection areas is at least 526 m." Approval LA24002X was issued to add a condition that included that recommendation.

During the post construction inspection of both catch basins, the North pens, and partially constructed West pens on October 31, 2024, with NRCB Inspector, Denny Puszkur, I noticed that the not-yet built portion of the West pens would be different from the permitted site plan. I asked the operator if there was going to be a change to the site layout, and they explained that they were required to construct the freshwater dugout larger than they initially thought, and to accommodate the larger freshwater dugout, they would need to alter some of the pens. I informed the operator that any alteration to the site layout will require an amendment of his permit, and the affected facilities could not be constructed until an amendment is issued. The operator asked if they could enlarge the rows of the West and East pens that are the furthest south to accommodate for the lost pen space, and I told the operator that they must apply for an amendment in order to do so.

On January 17, 2025, I received the new proposed site plan. On that plan, in addition to the altered pens, the North and South catch basins had different dimensions than permitted in Approval LA24002X and was indicated in the construction completion report received from the engineer on October 30, 2024. I asked the operator why there was a discrepancy with the dimensions of both catch basins, and they explained that they had to alter the catch basins to accommodate for the larger freshwater dugout. As the engineer report from October 30, 2024, indicated that the catch basins were constructed to the permitted dimensions, I required the applicant to provide an updated report from the engineer that shows the as built dimensions of the North and South catch basins and how they still met AOPA requirements. The updated

report from the engineer was included as part of the amendment application and indicated the catch basins still meet AOPA requirements for a naturally occurring protective layer. Additionally, the new volume of the catch basins is sufficient to meet AOPA requirements for the control of run-off.

On January 31, 2025, Van Huigenbos Farms Ltd. (Van Huigenbos Farms) submitted an Application for Amendment to the NRCB to amend a permit at an existing beef CFO.

On February 19, 2025, I deemed the application complete.

The proposed amendment involves:

- Amending the north catch basin to the as built dimensions - 185 m x 42 m x 2.25 m deep, average
- Amending the south catch basin to the as built dimensions - 96 m x 42 m x 2.25 m deep, average
- Amending the west pens dimensions (152.1 m x 35.7 m (5 rows, already constructed), 38.8 m x 35.7 m (2 rows), and 38.8 m x 45.9 m, irregular shape (1 row))
- Amending the east pens dimensions (152.8 m x 35.7 m (5 rows, partially constructed) and 152.8 m x 62.5 m, irregular shape (1 row))

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 SE 21-9-26 W4M in the Municipal District (MD) of Willow Creek, roughly two kilometres northwest of Fort Macleod, Alberta. The terrain is relatively flat at the CFO site but drops immediately north of the site into a low-lying area before Willow Creek.

b. Existing permits

The CFO was originally permitted in 1977 by the MD of Willow Creek. It has since received several other municipal and NRCB-issued permits. The CFO is currently covered by Approval LA24002X (which superseded all prior permits). This permit allowed the construction and operation of a beef CFO with 16,500 beef feeder calves. The CFO's existing permitted facilities are listed in the appendix to Approval LA24002XA.

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”).

None of the CFO facilities are located within 100 m of a bank of a river, stream or canal.

A copy of the application was sent to the MD of Willow Creek, which is the municipality where the CFO is located, and to the Town of Fort Macleod which has a boundary within the notification distance.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Macleod Gazette newspaper in circulation in the community affected by the application on February 19, 2025, and
- sending 68 notification letters to people identified by MD of Willow Creek and the Town of Fort Macleod as owning or residing on land within the notification distance.

The full application was made available for viewing at the NRCB office in Lethbridge 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).

I also sent a copy of the application to Fortis Alberta Inc., South Alta Rural Electrification, and Atco Gas, as they are utility right of way holders on the subject land.

I received a response from Bradley Calder, a water administration technologist, with EPA. In his response, Mr. Calder stated that based on the information provided, it appeared that there will be no additional water requirements and EPA had no further questions or concerns.

I did not receive a response from any utility right of way holders.

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 remains 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 change in dimensions to the North catch basin, South catch basin, West pens, and East pens remain consistent with the land use provisions of the MD of Willow

Creek's municipal development plan and with the intermunicipal development plan between the MD of Willow Creek and the Town of Fort Macleod. There have been no changes to either plan since Approval LA24002 was issued and the time I issued this decision. (See Appendix A in Decision Summary LA24002 for a more detailed discussion of the planning requirements, which remains applicable to LA24002XA.)

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed 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 water wells, springs, and common bodies of water, with one exemption (unaffected by this amendment)
- 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

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

7. Responses from municipalities 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." MD of Willow Creek is an affected party (and directly affected) because the proposed modification is located within its boundaries.

Ms. Cindy Chisholm, a director of planning and development with MD of Willow Creek, provided a written response on behalf of MD of Willow Creek. Ms. Chisholm stated that the application may not be consistent with MD of Willow Creek's land use provisions of the municipal development plan based on minimum setbacks from adjacent property boundaries and road allowances, sufficient water to support the application, construction of liners, and impacts to parcels of land zoned Grouped Country Residential.

The dimensions of the as built north and south catch basins, and the proposed change in dimensions to the West and East pens still meet the minimum setback requirements to adjacent property boundaries and the minimum setback requirements to the road allowance for Range Road 263. The naturally occurring protective layer for both catch basins and all feedlot pens meet AOPA requirements for the protection of groundwater. This amendment application is for a change in dimensions to facilities, and no increase in livestock numbers or manure production is proposed. The proposed changes to the West and East pens do not encroach into the minimum distance separation (MDS) to neighbouring residences as determined in Approval LA24002, including those zoned Grouped Country Residential. The application's consistency with the land use provisions of the MD of Willow Creek's MDP was addressed in Appendix A of Approval LA24002. The MDP and the analysis remain the same.

The Town of Fort Macleod is also a directly affected party because the Town's boundary is located within the notification distance. In addition, Van Huigenbos Farms' CFO is located within the IDP boundary between the MD of Willow Creek and the Town of Fort Macleod. Keli Sandford, a planning and development officer with the Town of Fort Macleod provided a written response on behalf of the Town of Fort Macleod. In their response, Keli Sandford stated that Council had no additional comments. The application's consistency with the land use provisions of the IDP is addressed in Appendix A of Approval LA24002. The IDP and the analysis remain the same.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received 1 response from 2 individuals.

The 2 people who submitted a 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 the CFO's non-compliance with regulations and unapproved construction. These concerns are addressed in Appendix A.

8. Environmental risk of CFO facilities

When reviewing an approval amendment application for an existing CFO, NRCB approval officers assess the CFO's existing building, 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 Van Huigenbos' facilities were assessed in 2015 and 2024 using the ERST. According to those assessments, all the facilities posed a low potential risk to surface water and groundwater.

There is a change in the depth of the catch basins by adding an additional 0.5 m of depth. However, that change has no impact on the previously assessed risk to groundwater or surface water protection or water wells. The change in dimensions to the feedlot pens also do not have an impact on those previous assessments. As a result, a new assessment of the risks posed by the CFO's facilities is not required.

9. Other factors

The decision summary for Approval LA24002 (e.g. part 10) discussed other factors to be considered, including MDP/IDP consistency, the environment, economy, the community, and the appropriate use of land. I have determined the change in dimensions to the North catch basin, South catch basin, West pens, and East pens has no impact on these determinations.

10. Terms and conditions

Approval LA24002XA specifies the cumulative permitted livestock capacity as 16,500 beef feeder calves (unchanged), permits the as built dimensions of the North catch basin and South catch basin, and permits the change in dimensions to the West pens and East pens.

Approval LA24002XA 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.

Rather than issuing a separate amendment to be read in conjunction with Approval LA24002X, I am consolidating it into this amended permit, Approval LA24002XA (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 LA24002XA carries forward all existing terms and conditions from Approval LA24002X, with the amendments noted above. Construction conditions from Approval LA24002X that have been met are identified in the appendix to Approval LA24002XA.

11. Conclusion

Approval LA24002XA is issued for the reasons provided above, in Decision Summaries LA24002X and LA24002, in the attached appendices, and in Technical Documents LA24002XA and LA24002.

Van Huigenbos' NRCB-issued Approval LA24002X is therefore superseded, and its content consolidated into this Approval LA24002XA, unless Approval LA24002XA is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA24002X will remain in effect.

April 16, 2025

(Original signed)
Kelsey Peddle
Approval Officer

Appendices:

A. Determining directly affected party status and concerns raised by directly affected parties

APPENDIX A: Determining directly affected party status and concerns raised by directly affected parties

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:

- Kyle and Morgan Rosendal – NE 22-09-26 W4

See NRCB Operational Policy 2016-7: Approvals, part 7.2.1.

The directly affected parties raised concerns regarding the CFO’s non-compliance with regulations and unapproved construction. In their response, they stated that it appeared that unapproved construction was discovered during a site visit, which raises further concerns about the CFO’s adherence to approved processes, as it appears changes are being made without proper authorization and highlights a case of non-compliance with regulations.

Approval officer’s conclusions

When applications and their supporting materials meet AOPA requirements, approval officers presume applicants generally have the intent and resources to meet the requirements of AOPA and their permits. Approval LA24002X included conditions for post-construction inspection. These conditions are included in permits to make sure operators construct facilities as proposed, and any deviations from the original design would be noticed by the NRCB at the time of inspection, like in this case during the first post-construction inspection. Additionally, NRCB Inspectors routinely attend post-construction inspections and can deal with issues of unauthorized construction, if unauthorized construction occurred. With unauthorized construction, operators are required to obtain a permit for those facilities, however, there is never a guarantee they will get a permit for what they have built. While the north and south catch basins were not constructed to their original permitted dimensions, they were constructed in their approved locations and still meet the requirements of AOPA. This amended permit is changing the dimensions of the catch basins to reflect the as-built dimensions.

For instances where alterations need to be made to approved, not-yet constructed CFO facilities, applicants apply to amend their permit to reflect any changes they need to make, like in this case.

If a member of the public has concerns regarding a CFO, including whether or not the operation is complying with AOPA and their permit, they may contact the NRCB through its 24-hour reporting line (1-866-383-6722). An NRCB inspector will follow up on the concern.