

Decision Summary RA24044

This document summarizes my reasons for issuing Approval RA24044 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24044. 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 October 28, 2024, Craig Ference, on behalf of Ference Land and Cattle Corp. (Ference), submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on March 4, 2025. On March 19, 2025, I deemed the application complete.

The proposed expansion involves:

- Increasing the permitted number of beef finishers from 9,000 to 11,000
- Constructing north catch basin 4 – 50 m x 50 m x 2 m deep
- Constructing livestock pens 32, 33 and 34, 35 – 196 m x 67 m (each pair)

a. Location

The existing CFO is located at E½ and SW 17-34-2 W4M in Special Area No. 4, approximately 4 km east of Kirriemuir, Alberta. The terrain is slightly hummocky with a general slope to the south and southwest, as well as to the north and northwest.

b. Existing permits

To date, the NRCB has issued Approval RA24030 and Authorization RA24048. These permits allow Ference to construct and operate a 9,000 head beef finisher CFO. The CFO's existing permitted facilities are listed in the appendix to Approval RA24044.

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 two (2) 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 Special Area No. 4, 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 Consort Enterprise newspaper in circulation in the community affected by the application on March 19, 2025, and
- sending 35 notification letters to people identified by Special Area No. 4 as owning or residing on land within the notification distance.

The full application was made available for viewing at the Red Deer NRCB office 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.

A referral letter and a copy of the complete application was emailed to Alberta Environment and Protected Areas (EPA).

I also sent a copy of the application to Telus and Dry Country Gas Co-op Ltd. as they are utility right of way holders.

Approval RA24044 does not relieve the permit holder from complying with other applicable laws, such as safety codes, other municipal bylaws, provincial legislation (e.g. *Historical Resources Act*), and federal legislation (e.g. *Migratory Birds Convention Act*).

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.

There is no ALSA regional plan for the area where the existing CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Special Area’s municipal development plan. (See Appendix A for a more detailed discussion of the Special Area’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 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

With the terms and conditions summarized in part 10 and in Appendix B, 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.” Special Area No. 4 is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Taryl Abt, an administrator with Special Area No. 4, provided a written response on behalf of Special Area No. 4. Ms. Abt stated that the application is consistent with Special Area No. 4’s land use provisions of the Land Use Order (LUO). The application’s consistency with the land use provisions of Special Area No. 4’s LUO is addressed in Appendix A, attached.

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

8. Environmental risk of CFO facilities

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 Ference’s existing CFO facilities were assessed in 2024 using the ERST. According to those assessments, 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 those assessments were done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

New manure collection areas and manure storage facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require monitoring for the facility. In this case a determination was made, and monitoring 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. Abt also listed the setbacks required by Special Area No. 4's land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments.

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 April 5, 2025).

Finally, I considered the effects of the proposed expansion 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, having considered all the information before me (including in Technical Document RA24044 and from my site visit), 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 based on the information available.

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 Land Use Order (see NRCB Operational Policy 2016-7: Approvals, part 9.10.9). In my view, this presumption is not rebutted because I did not see any information that suggested it was not an appropriate use of land.

10. Terms and conditions

Approval RA24044 specifies the cumulative permitted livestock capacity as 11,000 beef finishers and permits the construction of livestock pens 32, 33 and 34, 35 and north catch basin 4.

Approval RA24044 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 RA24044 includes conditions that generally address construction deadline and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval RA24044: Approval RA24030 and Authorization RA24048 (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.

11. Conclusion

Approval RA24044 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24044.

Previously issued NRCB Approval RA24030 and Authorization RA24048 are therefore superseded, and their content consolidated into this Approval RA24044, unless Approval RA24044 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA24030 and Authorization RA24048 will remain in effect.

May 26, 2025

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with municipal land use planning
- B. Explanation of conditions in Approval RA24044

APPENDIX A: Consistency with the municipal land use planning

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).

The Special Areas Board is constituted under the Special Areas Act. The Special Areas Board has also adopted a Land Use Order (LUO) to regulate and control the use and development of lands and buildings within Special Areas 2, 3 and 4, and to facilitate orderly and economic development in those areas.

Ference Land & Cattle’s CFO is located in Special Area No. 4 and is therefore subject to the Special Areas Board LUO. (The LUO was enacted on August 24, 2024, under Ministerial Order No. MSD:064/24.) The LUO may be helpful for the purposes of AOPA’s MDP consistency requirement. See NRCB Operational Policy 2016-7: Approvals, part 9.2.5.

The Special Areas Board does have an MDP that was approved on February 23, 2021. It does not have any specific mention of CFOs, rather the agriculture section provides guiding principles regarding the promotion of the agriculture sector within the area. It states that they will “review the Land Use Order for opportunities to support Agricultural diversification...”. Based on this the LUO will be used for assessing land use provisions consistency.

While I will treat the Special Areas Board’s LUO as an MDP, I will still focus on the LUO’s “land use provisions.” The NRCB interprets the term “land use provisions” as covering policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: Approvals, part 9.2.7.) Under this interpretation, the term “land use provisions” also excludes policies that impose procedural requirements. In addition, section 20(1.1) of AOPA 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”.) Therefore, any tests or conditions in the LUO will not be considered.

Under the LUO, the subject land is currently zoned as Agricultural District. Section 4.5 of the order states that the “purpose and intent” of this district is to “provide for extensive agriculture while accommodating similar and compatible uses...”. CFOs are not listed as either permitted or discretionary uses for this land use category, nor are CFOs “similar in character and purpose” to any such listed use. I interpret the land use bylaw as meaning that either the Special Areas Board intended CFOs to have the same effective status as the listed permitted (or discretionary) order, or that the Special Areas Board simply does not intend to address CFOs in its LUO (given the NRCB’s permitting role under AOPA).

In their response letter, the Development Officer, on behalf of Special Area No. 4 indicated that the application is consistent with the municipal development plan and confined feeding operations are not listed under the current Land Use Order as they are permitted by the NRCB.

Based on this information and application meeting the AOPA requirements, I conclude that the application is consistent with the relevant land use provisions of the Special Areas Board LUO.

APPENDIX B: Explanation of conditions in Approval RA24044

Approval RA24044 includes several conditions, discussed below, and carries forward a condition from Approval RA24030 (see section 2 of this appendix). Construction conditions from historical permits that have been met are identified in the appendix to Approval RA24044.

1. New conditions in Approval RA24044

a. Groundwater protection requirements

Ference proposes to construct the pens and catch basin with a naturally occurring protective layer. Section 9 of AOPA's Standards and Administration Regulation specifies a maximum hydraulic conductivity for this type of protective layer in order to minimize leakage.

Ference measured the hydraulic conductivity of the protective layer by installing a monitoring well (or water table well) at the time of borehole drilling. This approach provides an adequate representation of the protective layers proposed to be used to protect the groundwater resource.

The regulations provide that the actual hydraulic conductivity of a 2 metre thick naturally occurring protective layer must not be more than 1×10^{-6} cm/sec for solid manure storage facilities or solid manure collection areas.

For a catch basin, the regulations provide that the actual hydraulic conductivity of a 5 metre thick naturally occurring protective layer must not be more than 1×10^{-6} cm/sec.

In this case, the in-situ measurement was 2.9×10^{-8} cm/sec for the pens and 1.6×10^{-8} cm/sec for the catch basins. This value is below the maximum value in the regulations. Therefore, the proposed naturally occurring protective layer meets the hydraulic conductivity requirement in the regulations and no additional condition is required.

b. Construction Deadline

Ference proposes to complete construction of the proposed new livestock pens and catch basin by spring of 2025. This timeframe is considered unreasonable for the proposed scope of work given the time of this decision. To allow for any unforeseeable construction delays, the deadline of December 1, 2026 is included as a condition in Approval RA24044.

c. Post-construction inspection and review

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 RA24044 includes conditions stating that Ference shall not place livestock or manure in the manure storage or collection portions of the new livestock pens nor allow manure contaminated runoff to enter into the catch basin until NRCB personnel have inspected each facility and confirmed in writing that they meet the approval requirements.

2. Conditions carried forward from Approval RA24030

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition 13 from Approval RA24030 should be carried forward. (*now condition 7*)

7. The permit holder shall ensure the pens located southeast of the feedlot (Pen 10 and 11, see TD RA24030 pg. 6 and 8) are used for cow-calf or other non-CFO purposes.