



## Decision Summary LA19017

This document summarizes my reasons for issuing Approval LA19017 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA19017. 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.

### 1. Background

On April 3, 2019, Sundown Feeders Ltd. (Sundown Feeders) submitted a Part 1 application to the NRCB to expand an existing beef confined feeding operation (CFO). The Part 2 application was submitted on May 2, 2019. On May 7, 2019, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 2,500 beef feeders to 3,500 beef feeders
- Constructing a new catch basin (55 m x 50 m x 2 m deep)
- Constructing new feedlot pens (140 m x 80 m)
- Constructing a new recovery pen (35 m x 20 m)

In discussions with the operator at the time of application, it was found that an existing catchment area at the site has been altered since the AOPA came into effect in 2002 without a permit. The alterations which occurred are considered to have negated the grandfathered status of the catchment area's liner. Sundown Feeders has proposed constructing an entire new catch basin (55 m x 50 m x 2 m deep) with an AOPA approved liner. The proposed catch basin is intended to accommodate all of the manure impacted run-off generated at the CFO and will overlap the existing catchment area's footprint. The existing catchment area will be decommissioned.

Under AOPA, this type of application requires an approval.

#### a. Location

The existing CFO is located at NW 1-8-21 W4M in Lethbridge County, roughly 4 km southeast of the City of Lethbridge. The terrain is relatively flat with the landscape sloping gently towards the Oldman River valley which is located approximately 8 km west of the CFO. The nearest common body of water is an SMRID irrigation canal located approximately 170 metres north of the CFO. This canal drains towards Six Mile Coulee and then into the Oldman River.

#### b. Existing permitted facilities

The CFO was originally permitted by Lethbridge County on March 22, 1994 under development permit # 94-08. This permit allowed the remodelling of an existing feedlot of 2,500 head. The CFO's deemed facilities are listed in the appendix of LA19017. The CFO's grandfathered status is explained in Appendix D, attached.

## 2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct 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:

- the municipality where the CFO is 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 individuals who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For this application, the distance is 1.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. Lethbridge County is an affected party (and therefore also a directly affected party) because the proposed expansion is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the application.

The NRCB published notice of the application in the Sunny South News on May 7, 2019 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to Lethbridge County, Alberta Health Services (AHS), Alberta Environment and Parks (EP), Alberta Transportation, and the St. Mary River Irrigation District (SMRID). Sixty-one courtesy letters were sent to people identified by Lethbridge County as owning or residing on land within the affected party radius.

## 3. Responses from the municipality and referral agencies

I received responses from Lethbridge County, Alberta Transportation, and the SMRID. No response was received from AHS or AEP.

Ms. Hilary Janzen, a senior planner, provided a written response on behalf of Lethbridge County. As noted in section 2, Lethbridge County is a directly affected party.

Ms. Janzen stated that the application is consistent with Lethbridge County’s municipal development plan. The application’s consistency with Lethbridge County’s municipal development plan is addressed in Appendix A, attached.

Ms. Janzen also listed the setbacks required by Lethbridge County’s land use bylaw (LUB) and noted that the application appears to meet these setbacks.

Ms. Leah Olsen, a development/planning technologist, provided a written response on behalf of Alberta Transportation. Ms. Olsen stated a permit would not be required from her department and that Alberta Transportation had no concerns with the application.

Ms. Linda Park, a land administrator, provided a written response on behalf of the SMRID. Ms. Park indicated that additional water allocation will be needed to accommodate the expansion. This response was forwarded to Sundown Feeders for their information and follow up.

#### **4. Responses from other directly affected parties**

The NRCB received responses from two parties. One response represented a statement of concern while the other was a statement of support. The letter of support was submitted by Bruce and Linda Murray while the statement of concern was submitted by legal counsel on behalf of Shawn Sakamoto.

Both respondents to the application notice own or reside on land within the 1.5 mile radius for affected persons. Because of their location within this radius, and because they submitted a response within the timeline, they are presumed to be directly affected by the application.

Mr. Sakamoto raised concerns regarding:

- The location, and capacity of the proposed catch basin.
- The potential for contamination of surface water, specifically the Six Mile Coulee Canal and Oldman River.
- The adequacy of the submitted plan in containing surface water runoff on the CFO, and lack of berm.
- Potential for increase in flies and odour.
- Adherence of the application with minimum distance of separation (MDS) under the AOPA and adequacy of NRCB notification process.

These concerns are addressed in Appendix B, attached.

Mr. David Carlson, who submitted a MDS waiver, is also presumed to be directly affected party (See NRCB Operational Policy 2016:7 – *Approvals*, part 6.2).

#### **5. Environmental risk screening of existing and proposed facilities**

As part of my review of this application, I assessed the risk to surface water and groundwater posed by the CFO's existing and proposed manure storage facilities. I used the NRCB's environmental risk screening tool for this purpose (see NRCB Operational Policy 2016-7: *Approvals*, part 8.13). The tool 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](http://www.nrcb.ca).)

All of the CFO's existing and proposed facilities pose a low potential risk to groundwater and surface water: (The CFO's existing facilities are listed in the appendix to LA19017.)

#### **6. Other factors considered**

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 7.<sup>1</sup>

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1. For a summary of these requirements, please see the [2008 AOPA Reference Guide](#), available on the NRCB website at [www.nrcb.ca/about/documents](http://www.nrcb.ca/about/documents).

In addition, the proposed expansion is consistent with the land use provisions of Lethbridge County's municipal development plan and land use bylaw. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed expansion:

- With the use of expansion factor, meets the required AOPA setbacks from all 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.
- 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 liners of manure storage facilities.

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.

In addition, I assessed the effects of the proposed expansion on the environment. Consistent with NRCB policy, I presumed that these effects are acceptable because the application meets all of AOPA's technical requirements and the directly affected parties' concerns have been addressed. I also presumed that the application's effects on the economy and community are acceptable, and that the proposed expansion is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipal development plan and land use bylaw. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.) I considered concerns from the directly affected parties (see Appendix B), as well as the conditions I have imposed (see Appendix C). I then concluded that the presumptions are not overcome by contrary evidence.

## **7. Terms and conditions**

Approval LA19017 specifies the new permitted livestock capacity as 3,500 beef feeders and permits the construction of the new catch basin, feedlot pens and recovery pen.

Approval LA19017 also 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 LA19017 includes conditions that:

- Set a deadline of November 30, 2021 for the approved construction to be completed.
- Require written confirmation from a qualified third party that the completed compacted clay liners meet AOPA requirements.
- Prohibit Sundown Feeders from placing manure or livestock in the proposed feedlot pens, recovery pen, or from allowing runoff to enter the proposed catch basin, until the facilities have been inspected by the NRCB following their construction.
- Require Sundown Feeders to contact the NRCB if the water table is encountered during construction.
- Require the existing catchment area to be decommissioned.

For an explanation of the reasons for these conditions, see Appendix C, attached.

**a. Conditions carried forward from previously issued permits**

For clarity, and pursuant to NRCB policy, I consolidated municipal development permit #94-08 with Approval LA19017 (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). 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, and then cancelling all existing permits once the new permit is issued. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend permits on their own motion.

Therefore, in addition to containing the new terms and conditions summarized above, Approval LA19017 includes all existing terms and conditions in municipal development permit #94-08, except the terms and conditions noted below. Construction conditions that are being carried forward and that have been met are identified and included in an appendix to the new approval.

Pursuant to section 23 of AOPA, I have determined that conditions #3, #4, #5, #6, and #8 from municipal development permit #94-08 should be deleted and therefore are not carried forward to Approval LA19017. My reasons for deleting these conditions are provided in Appendix C, attached.

**8. Conclusion**

Approval LA19017 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19017.

Sundown Feeders' deemed approval, including municipal development permit #94-08, is therefore cancelled, unless Approval LA19017 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed permit, including municipal development permit #94-08, will remain in effect.

July 8, 2019



Joe Sonnenberg  
Approval Officer

**Appendices:**

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Explanation of conditions in Approval LA19017
- D. Grandfathering determination

## APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for an approval only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP 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 8.2.5). Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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 for” 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.”).

Sundown Feeders CFO is located in Lethbridge County and is therefore subject to that county’s MDP. Lethbridge County adopted the latest revision to this plan on August 2, 2018 under Bylaw #18-016.

CFO and by extension, related facilities, are addressed in section 6.6 of the MDP.

As relevant here, section 6.6.3(a) states that the county “shall restrict the development of CFOs in the Rural Urban Fringe.” Sundown Feeders CFO is not in any of the rural urban fringe areas designated in the MDP, so the proposal is consistent with this policy.

Section 6.6.3(d)(II) states that the NRCB “should also consider” the following:

- The cumulative effect of a new approval on any area near other existing confined feeding operations.
- Environmentally sensitive areas as shown in the report, *County of Lethbridge: Environmentally Significant Areas in the Oldman River Region* (see maps in Appendix C).
- Giving notice to adjacent landowners even in the case of applications for registrations or authorization, and
- Applying MDS calculations to all county residential clusters whether or not they are specifically designated in the land use bylaw.

The first of these four items is likely not a land use provision because of its project-specific focus (viewed cumulatively with other existing CFOs), and its request for the NRCB to make a discretionary judgement about the degree of cumulative effects that are acceptable. Therefore, this policy is not relevant to my MDP consistency determination (See Operational Policy 2016-7: *Approvals*, part 8.2.6.). That said, AOPA provides guidance with respect to the siting of facilities to minimise nuisance effects on neighbouring residences.

As for the second item, the CFO is not located in any of the environmentally significant areas noted in the report referenced in the MDP.

The third of these four considerations is likely not a land use provision because it requests notification to adjacent landowners about registration and authorization applications and therefore imposes procedural requirements. Sections 19 and 21 of AOPA determine the required notification process.

The fourth item appears to refer to the “minimum distance separation” (MDS) requirements under AOPA. Under NRCB policy, approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. (See also Operational Policy 2016-7: *Approvals*, part 8.2.5.) Nonetheless, Sundown Feeders CFO meets AOPA’s MDS requirements.

Section 6.6.3(d) (IV) of the MDP states that a CFO “shall not be approved in the areas shown and designated on Figure 11B as exclusion areas.” Sundown Feeders CFO is not located in any of the designated CFO exclusion areas, so the application is consistent with this policy.

Finally, section 6.6.3(e) of the MDP imposes and lists development setbacks. The proposed facility meets these setbacks.

For these reasons, I conclude that the application is consistent with the relevant land use provisions of Lethbridge County’s MDP. As stated above, the municipality raised no concerns with this application and stated that the application is consistent with its MDP and that no other planning-type documents apply to this application.

The CFO is also subject to Lethbridge County’s Land Use Bylaw (LUB) #1404, which the MDP clearly intends to incorporate as stated in section 6.6.3. (e) *development setbacks: “council will require the application of development setbacks for confined feeding operations to meet the current setbacks applicable to public roadways and property lines as per the Lethbridge County Land Use Bylaw stipulations”*. Under that bylaw, the subject land is currently zoned Rural Agriculture. CFOs and CFO expansions are a discretionary use under this bylaw. Under NRCB policy, CFO expansions are considered to be consistent with a LUB’s land use zoning provisions, if CFOs are listed as either a permitted or discretionary land use for the relevant land use district (See NRCB Operational Policy 2016-7: *Approvals*, part 8.3).



## APPENDIX B: Concerns raised by directly affected parties

### 1. Concerns from directly affected parties

Mr. Sakamoto, who for the purposes of this application is considered a directly affected party, raised the following concerns:

- The location, and capacity of the proposed catch basin

Mr. Sakamoto raised concerns about the CFO's location in relation to a flood plain. Section 8 of the *Standards and Administration Regulation* under AOPA requires that manure storage facilities and manure collection areas be at least one metre above any 1:25 year maximum flood level, or if that is not known, the highest known flood level. No manure storage facilities or collection areas are proposed below this level. Though the grandfathered catchment area is located in a localized low lying area, it is considered to be a CFO facility rather than a flood plain. Additionally this area is wholly contained on land owned by the applicant.

The proposed catch basin (which will be located on the grandfathered footprint of the existing catchment area) exceeds the required minimum setback of 30 metres from a common body of water, in section 7(1)(c) of the AOPA's *Standards and Administration Regulation*.

In relation to capacity, the proposed catch basin can store manure-contaminated runoff caused by a one day rainfall that has a one in 30 year probability, as required by section 19(2) of that regulation (also see Technical Document LA19017). As noted in part 5 of the decision summary, all of the CFO's existing and proposed facilities, pose a low risk to surface water. For these reasons, I am of the opinion that Mr. Sakamoto's concern has been addressed.

- The potential for contamination of surface water, specifically the Six Mile Coulee Canal and Oldman River

As discussed above, the CFO will meet AOPA requirements in terms of catch basin design and capacity. This means manure is unlikely to escape the feedlot facilities. In the unlikely event manure did escape the CFO, it is improbable that this manure would enter the SMRID canal, Six Mile Coulee, or the Oldman River due to the flat nature of the landscape and distance between the facilities and surface water (see Technical Document LA19017).

Improper manure spreading could also have the potential to contaminate the Oldman River or SMRID canal (which drains to Six Mile Coulee).

Regulations under AOPA require CFO operators to have access to sufficient land base to apply the amount of manure generated by the CFO in the year following the issuance of a permit. Sundown Feeders has provided proof of access to an adequate land base for manure spreading, for the first year after the approval is issued (see page 12 of technical document LA19017).

The AOPA manure spreading requirements also provide protection for the environment. The *Standards and Administration Regulation* also includes soil testing requirements, soil salinity limits, nitrate-nitrogen limits and setbacks from water bodies, water wells and residences. Operators are required to keep manure spreading and soil sampling records for the last five years and to provide them to the NRCB upon request. The regulations reduce the impact of these activities on surface water by limiting the accumulation of manure and nutrients on the land.



- The adequacy of the submitted plan in containing surface water runoff on the CFO and lack of berm

AOPA includes several requirements to protect surface water from manure-contaminated runoff. One of these requirements is in section 7(1)(c) of the *Standards and Administration Regulation*, which precludes permitting manure storage facilities within 30 metres of a “common body of water.” The nearest common body of water is an SMRID canal that is located 170 metres from the existing CFO.

Another runoff-related requirement in the *Standards and Administration Regulation* is in section 19, which requires that catch basins be large enough to store sufficient runoff from a one day rainfall that has a one in 30 year probability, with a half metre freeboard above that minimum storage level. Sundown Feeders’ proposed catch basin meets this storage requirement, as shown on page 25 of Technical Document LA19017.

Concern was also raised regarding the lack of proposed berms. Section 6 of the *Standards and Administration Regulation* gives Approval Officers the authority to require a surface water control system but does not expressly state such a system must be constructed at every CFO. The natural contour of the land, combined with the already constructed feedlot pens adequately convey runoff, and exclude run-on water, at the Sundown Feeders CFO. Therefore, additional berms were not deemed as necessary in meeting AOPA requirements. In my opinion this concern has been adequately addressed.

- Potential for increase in flies and odour

As noted in Technical Document LA19017, the proposed CFO, including its proposed expansion, exceeds by approximately three times, the minimum distance separation requirement (MDS) under AOPA to Mr. Sakamoto’s residence. The MDS requirement is a means for reducing and mitigating impacts from odours and other nuisance effects from CFOs such as flies.

There may also be odours from manure spreading. However, these odours are normally infrequent and of limited duration. Section 24(1) of the *Standards and Administration Regulation* requires that all manure applied to cultivated land must be incorporated within 48 hours of its application. This should also help to reduce odours.

Section 20 of AOPA’s *Standards and Administration Regulation* requires the owner or operator of a CFO to adopt reasonable measures to control flies from their operation.

- Adherence of the application with minimum distance separation (MDS) under the AOPA and adequacy of NRCB notification process.

The response letter advises of the belief that the respondent’s property “is within the MDS specified in the *Agricultural Operations Practices Act* and its *Agricultural Operations, Part 2 Matters Regulation*.” The letter then advises Mr. Sakamoto is unwilling to sign a MDS waiver.

For clarity, the *Part 2 Matters Regulation* sets out who are “affected parties” for certain applications. In this application, the affected parties occupied or owned land within 1.5 mile of the confined feeding operation. This includes this respondent. The “affected party” radius is not the same as the MDS distance, however. The *Standards and Administration Regulation* governs MDS under section 3 and Schedule 1.

As shown on page 15 of technical document LA19017, the proposed application meets the MDS setbacks to all residents except for one. The owner of this residence provided a waiver which accompanied the application. The respondent who voiced this concern, on the other hand, does not need to sign a waiver. As the application meets the MDS requirements under the AOPA, I have determined this concern has been adequately addressed.

Mr. Sakamoto also raised concern that not all courtesy letters notifying neighbors within the affected party radius were delivered in a timely fashion. The NRCB sent courtesy letters out to the addresses that the County provided as belonging to owners and occupants of land within the affected party radius. A number of the courtesy letters, including Mr. Sakamoto's, were returned to sender. As discussed in Section 2 of Decision Summary LA19017, the NRCB published the official public notice of the application in the Sunny South News on May 7, 2019 and posted the full application on the NRCB website for public viewing. The courtesy letters which are sent in addition to the public notice are not required under the AOPA, and are an additional effort to provide individuals who are most likely be impacted by the application with the opportunity to respond to the application notice. Based on the above, I feel as though the application advertisement process was sufficient in meeting the requirements of the AOPA and this concern has been addressed.

## APPENDIX C: Explanation of conditions in Approval LA19017

Approval LA19017 includes several conditions, discussed below, and carries forward all conditions from municipal development permit #94-08 except for those discussed in sections 2, below.

### 1. New conditions in Approval LA19017

#### a. Construction above the water table

Sections 9(2) and (3) of the Standards and Administration Regulation under the *Agricultural Operation Practices Act* (AOPA) prohibit construction of a manure storage facility if its bottom is less than one metre above the water table at the site “at the time of construction.”

Based on the information discussed in Technical Document LA19017, the proposed catch basin may not meet the one metre requirement of sections 9(2) and (3). However, because the height of the water table can vary over time, the lack of adequate depth to water table indicated in Sundown Feeder’s application does not mean that there will be an inadequate depth at the time of construction. To address this variability and ensure that the depth requirement is met at the time of construction, a condition is included requiring applicant to cease construction and notify the NRCB immediately if the water table is encountered during construction.

#### b. Groundwater protection requirements

Sundown Feeders proposes to construct the new feedlot pens, including the proposed recovery pen, with a 0.5 metre thick compacted soil liner, and the new catch basin with a 1.0 metre thick compacted soil liner. Section 9(6) of AOPA’s *Standards and Administration Regulation* specifies a maximum hydraulic conductivity for this type of liners in order to minimize leakage.

To demonstrate compliance with this standard, Sundown Feeders provided lab measurements of the hydraulic conductivity of the materials that will be used to construct the compacted soil liner.

Lab measurements of hydraulic conductivity are made in a precisely controlled setting and are typically based on a small soil sample. Therefore, the NRCB generally multiplies lab-measured hydraulic conductivity values by a factor of 10 to reflect the potential variability in actual liner materials and conditions that can reasonably be expected to be achieved in the field.

Example:      Hydraulic conductivity = k  
                    Lab k =  $1 \times 10^{-9}$  cm/sec  
                    Expected field k =  $10 \times (1 \times 10^{-9}$  cm/sec) =  $1 \times 10^{-8}$  cm/sec

The regulations provide that:

- In the case of the catch basin, the actual hydraulic conductivity of a 1.0 metre thick compacted soil liner must not be more than  $5 \times 10^{-7}$  cm/sec
- In the case of the feedlot and recovery pens, the actual hydraulic conductivity of a 0.5 metre thick compacted soil liner must not be more than  $5 \times 10^{-7}$  cm/sec

In this case, the lab measurement was  $8.9 \times 10^{-9}$  cm/sec. With the required ten-fold modification, the expected field value is  $8.9 \times 10^{-8}$  cm/sec. This expected value is below the maximum value in the regulations. Therefore, the proposed liner meets the hydraulic conductivity requirement in the regulations.

To provide additional assurance that the as-built liners adequately protect groundwater, Approval LA19017 includes a condition requiring Sundown Feeders to provide an engineer's completion report certifying that the constructed liners meet or exceed the AOPA thickness and hydraulic conductivity requirements.

### **c. Construction Deadline**

Sundown Feeders proposes to complete construction of the proposed new catch basin, feedlot pens and recovery pen by November 30, 2021. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2021 is included as a condition in Approval LA19017.

### **d. Post-construction inspection and review**

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA19017 includes a condition stating that Sundown Feeders shall not place livestock or manure in the proposed feedlot pens or allow runoff to enter the proposed catch basin until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

### **e. Decommissioning of existing catchment area**

Sundown Feeders proposes constructing a new catch basin which overlaps the grandfathered footprint of the existing catchment area. A condition has been included in the approval requiring the catchment area to be decommissioned in accordance with Agdex 096-90: Closure of Manure Storage Facilities and Manure Collection Areas before construction of the new catch basin occurs.

## **2. Conditions not carried forward from municipal development permit #94-08**

The following conditions and my reason for not carrying them forward are as follows:

- *"All deads should be disposed of in a prompt and acceptable manner"*

The disposal of dead animals is directly regulated by Alberta Agriculture and Forestry under the *Animal Health Act*. Concurrent oversight of dead animal disposal under AOPA would be inefficient and might lead of inconsistent approaches. This condition is vaguely worded, and has none of the prescribed regulatory distance setbacks, terms, or definition, as provided in the *Animal Health Act*, so it is arguably less stringent than existing regulations. For these reasons, and pursuant to the NRCB policies, this condition will not be carried forward. (See Operational Policy 2016-7: Approvals, section 10.1 and Operational Policy 2016-1: *Amending Municipal Permit Conditions*, section 2.2.4).

- *"Manure should not be stockpiled for extended periods of time, rather, pens cleaned, land spread and incorporated within a reasonable time"*

Rules relating to the storage of manure are contained in section 5 of the *Standards and Administration Regulation* under AOPA. Section 5 of the *Standards and Administration Regulation* sets out but is not limited to the following requirements: manure must not be stored more than an accumulated total of 7 months over a 3 year period at the same site, manure must not be stored less than 150 metres from the nearest residence not owned or under the control of the owner or operator of the manure storage area, and sets out required setbacks to water bodies. As such, the condition from the municipal development permit is arguably less stringent than AOPA and would be difficult to enforce as written. The condition will therefore not be carried forward and is effectively replaced by the general terms and conditions stated in the opening paragraph of all permits issued under AOPA that requires the operator to adhere to AOPA and its regulations.

- *“A plan to control flies should be part of the ongoing feedlot management”*

Section 20 of AOPA’s *Standards and Administration Regulation* requires the owner or operator of a CFO to adopt reasonable measures to control flies from their operation. This condition is therefore redundant and will not be carried forward.

- *“Maintenance of or access to an adequate land base for animal waste disposal must be considered”*

This condition is no longer relevant as this permit allows an expansion in animal numbers and will require additional land base for manure spreading. As manure spreading is now regulated under AOPA and the operation will require more than the prescribed land area, this condition is no longer relevant and will not be carried forward.

- *“All water ways within the areas to the facility and/or areas where manure is to be land spread must be protected from animal waste contamination”*

AOPA has requirements to protect soil, groundwater, and surface water from excessive application of manure. These include soil testing requirements, soil salinity limits, nitrate-nitrogen limits, and setbacks from water bodies, water wells, and residences. Operators are required to keep manure spreading and soil sampling records for five years and must provide them to the NRCB upon request. This conditions is therefore redundant and will not be carried forward.

## **APPENDIX D: Grandfathering determination**

Sundown Feeders claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA.

The CFO was originally permitted by Lethbridge County on March 8, 1994 under development permit #94-08. This permit allows works to remodel an existing 2,500 head feedlot. This development permit is a deemed (i.e. grandfathered) approval under section 18.1(1)(b) of AOPA. The CFO’s deemed facilities are listed in the appendix of Approval LA19017.

I considered, then, whether the CFO had facilities that existed in fact on January 1, 2002. In that case, the operator might be able to claim additional grandfathered facilities under section 18.1(2)(a) of AOPA. I reviewed aerial photographs taken between 1999 and 2018 to determine which facilities were grandfathered under AOPA. Based on a review of these air photos, it appears as though all of the CFO’s pens and the existing runoff catchment area were originally constructed prior to 2002. These facilities are listed in the appendix to Approval LA19017.

Based on this review, and on conversations with the applicant, I also determined that since 2002, excavation had occurred within the footprint of the grandfathered catchment area. This excavation constitutes unauthorized construction under the AOPA and negates the grandfathered status of the facility liner. As discussed in section 1 of decision summary LA19017, Sundown Feeders proposes to construct an entire new catch basin on a footprint which overlaps that of the grandfathered catchment area. The grandfathered facility, including any unauthorized construction, will be decommissioned as part of the CFO expansion.