

## Decision Summary RA23022A

This document summarizes my reasons for issuing Amendment to Approval RA23022A, under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23022A. 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.

Under AOPA this type of application requires an amendment to an approval. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On August 20, 2024, the NRCB issued Approval RA23022 to Mitchel and Lindy Kroetsch (Kroetsch), which allowed the construction of a new 2,500 beef feeder and 2,500 beef finisher confined feeding operation. The approval permitted the construction of feedlot pens, and two catch basins. Several individuals sought a review of Approval RA23022 by the NRCB Board, and the Board agreed to hold a review.

On September 10, 2024, Mitchel Kroetsch notified me that while they were trenching in water lines for the feedlot, he observed that water was flowing in, presumably from the water table. He then dug two test holes in the location of where catch basin 1 would be constructed. He noted that it appeared that the water table was at approximately 13 feet below grade (3.96 m). Condition 5 of RA23022 required the co-permit holders to immediately cease construction of the catch basin, and contact the NRCB, if the water table is observed to be one metre or less from the bottom of the liner of the catch basin. Based on this notice I verbally directed Mr. Kroetsch to cease construction of the catch basin. Upon advising the Board of what had happened, the NRCB Board suspended the review on RA23022 pending further action initiated by Kroetsch.

On October 17, 2024, Emily Low (Envirowest Engineering), on behalf of the Kroetschs, submitted an application to amend Approval RA23022. This amendment application was updated on October 30, 2024, and deemed complete on November 13, 2024.

The proposed amendment involves modifying the dimensions of the two catch basins to shallower depths, in order to meet the one metre setback to the water table requirement, at the time of construction. The width of both catch basins was also increased, in order to provide sufficient capacity. The proposed dimension changes are as follows:

- Catch basin 1: from 53 m x 44 m x 3.5 m deep to 53 m x 51 m x 2.7 m deep
- Catch basin 2: from 46 m x 36 m x 3.5 m deep to 46 m x 40.5 m x 2.7 m deep.

There are no proposed changes to the previously permitted feedlot pens, nor to the proposed livestock numbers.

### **a. Location**

The permitted CFO is located at NW 15-42-16 W4M in Flagstaff County, roughly 5 km south of the Village of Heisler, and 11 km northwest of the Village of Forestburg. The terrain is relatively flat. The closest common body of water is an ephemeral creek, located approximately 1100 m to the east. The Battle River is located approximately 10 kilometers west of the CFO site.

## **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 amendment to 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 amendment application was sent to Flagstaff County, which is the municipality where the permitted CFO is located. No other municipalities are located within the notification distance.

The NRCB gave notice of the amendment application by:

- posting it on the NRCB website,
- advertisement in the Community Press, a newspaper in circulation in the community affected by the application on November 13, 2024, and
- sending 29 notification letters to people identified by Flagstaff County as owning or residing on land within the notification distance.

On November 12, 2024, the Canadian Union of Postal Workers provided Canada Post with official notice that they would begin strike activity on November 15, 2024. The NRCB had been aware of the possibility of a strike before this, and the NRCB mailed notification letters the previous week. Flagstaff County provided additional notification by posting the notice of this application on their website and on social media.

The full application was made available for viewing 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) and Alberta Transportation & Economic Corridors (TEC).

I also sent a copy of the application to Signalta Resources Ltd., Nova Chemicals Corp., TC Energy and Phoenix Gas Co-op Ltd. as they are right of way/easement holders.

Ms. Cindy Skjaveland, a development & planning technologist, responded on behalf of TEC. Ms. Skjaveland stated that all new structures or ground disturbances within 150 metres of Highway 855 may require a roadside development permit; however, she noted that it appears that all of the proposed development falls well outside of this distance.

Monique Cheung, a planning analyst with TC Energy, responded and stated that TC Energy has no concerns.

No other responses from the organizations listed previously 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.

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

#### **5. Municipal Development Plan (MDP) consistency**

This is the same MDP that I considered when I issued Approval RA23022. Kroetsch's present application is consistent with that MDP, for the same reasons as those provided in Appendix A of Decision Summary RA23022. The proposed changes in the catch basin dimensions in this application have no impact on the previous determination. This is confirmed by the County providing the same response to RA23022A as they did RA23022.

#### **6. AOPA requirements**

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

- 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 liners 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 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." Flagstaff County is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Ms. Wanja Nordin, a development coordinator with Flagstaff County, provided a written response on behalf of Flagstaff County. The response to RA23022A was the same as what was provided to RA23022. Ms. Nordin stated that the application is consistent with Flagstaff County's land use provisions of the municipal development plan. The application's consistency with the land use provisions of Flagstaff County's municipal development plan was addressed in Appendix A of Decision Summary RA23022; the MDP has not changed since then, and that determination is still valid.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received responses from 6 parties.

The NRCB received one submission from Dallas Oberg after the submission deadline in the notice. The submission was simply a forwarded e-mail of his submission to the Board relating to application RA23022. Under NRCB Operational Policy 2016-7: Approvals at part 8.13.2, I considered whether there were exceptional circumstances that warranted considering the submission nonetheless. In this case, I could not identify exceptional circumstances for the lateness of the submission, so I did not consider nor address his submission in the amendment decision.

Of the 5 parties who submitted responses before the deadline, 4 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.) These parties are Ruth and Bob Burke; Nancy and Rick Hewson; Thomas and Heidi Rohe; and Norman, Lorraine and John Congdon.

The Village of Heisler provided a response, but is not located within the 1.5 mile notification distance for affected persons. In Decision Summary RA23022, Appendix B, I concluded that the Village of Heisler did not meet their burden to demonstrate that they are directly affected by the application. In their response to this amendment, I did not receive any additional evidence to change this determination.

As this application is an amendment of a previously issued approval, I stated in the public notice and notification letters that I would only consider responses relating to the proposed change in catch basin dimensions. The applicable concerns from the directly affected parties were about how the water table was assessed, and that the modified dimensions would not alleviate their concerns about the water table. These concerns are addressed in Appendix A, attached.

The respondents also reiterated most of their concerns from Approval RA23022, including water licensing/water use, location of the site, nuisances, air quality, and health concerns. It is important to highlight that this amendment application deals only with the modified dimensions of the catch basins, and the previous application (RA23022) dealt with all the technical requirements under AOPA. In a recent decision (see Hutterian Brethren of Murray Lake, RFR 2020-09/LA20035 at p 3), the NRCB Board stated that "When making a permit decision on a new application, approval officers do not have the jurisdiction to re-visit previously issued

permits”. Application RA23022 met all relevant AOPA requirements, with the terms and conditions included in the permit (Approval RA23022), and that decision is currently before the NRCB Board on review.

## **8. Environmental risk of CFO facilities**

In RA23022, I had requested that Scott (Sheila) Cunningham, NRCB Environmental Specialist, assist me in assessing the potential risk to surface and groundwater using the NRCB’s environmental risk screening tool (ERST) (see NRCB Operational Policy 2016-7: Approvals, part 9.17). The tool provides for a numeric scoring of risks, which can fall within 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).)

The assessment had found that the proposed feedlot pens, and both catch basins pose a low potential risk to both groundwater and surface water.

Due to the change in dimensions in this amendment application, I wanted to re-assess the catch basins. Scott (Sheila) Cunningham’s assessment found that the amended catch basins remain a low potential risk to both groundwater and surface water, and I agree.

## **9. Factors considered**

The previous application RA23022 met all relevant AOPA requirements. The proposed change to the dimensions of the catch basins has no impact on that determination, which still stands.

## **10. Terms and conditions**

Because a review of Approval RA23022 is currently in front of the NRCB Board, I am issuing a separate amendment to an approval (RA23022A). RA23022A modifies only the dimensions of the catch basins. The remainder of Approval RA23022 and its terms and conditions, remains in effect. Additionally, the applicant has proposed to construct a barrier around the catch basins to protect the liner; as such, a condition was added to reflect this commitment.

## **11. Conclusion**

Amendment to Approval RA23022A is issued for the reasons provided above, in the attached appendix, and in Technical Document RA23022A. Amendment RA23022A must be read in conjunction with Approval RA23022.

In its decision on the requests for review of Approval RA23022, the Board indicated that a decision on an amendment application would be open to filing of new requests for review. In that case, the Board would “merge the approval officer decision on the amendment application with the Board review” directed in RFR 2024-06 (issued September 24, 2024). For this reason, if following a merged review, the Board upholds any or all of Approval RA23022 and Amendment to Approval RA23022A, the approval officer asks the Board to direct the approval officer to consolidate any resulting permit.

January 31, 2025

(Original signed)  
Lynn Stone  
Approval Officer

## **Appendices:**

A. Directly affected parties and their concerns

## APPENDIX A: Directly affected parties and their concerns

The following people qualify as directly affected parties:

- Ruth and Bob Burke, SE 27-42-16 W4M (multiple responses)
- Nancy and Richard Hewson, NW 14-42-16 W4M
- Thomas and Heidi Rohe, NE 17-42-16 W4M
- Norman, Lorraine, and John Congdon, SW 27-42-16 W4 and SE 14-42-16 W4

The directly affected parties raised concerns that the water table is currently too low due to drought conditions; several suggested that the depth of the water table be reassessed in spring. Many parties provided additional documents, including a reference from 1954, where a nearby cemetery was “shut down” due to the rising water table; and photos from when a neighbour encountered water when excavating a basement.

### Approval Officer’s comments:

In support of Application RA23022A, the applicant retained a professional engineer to further assess the water table. The engineer found that the water table was 3.69 metres below grade in the area of catch basin 1, and 3.96 metres below grade in the area of catch basin 2. (The assessment is included in Technical Document RA23022A, with a water table measurement date of October 7, 2024.) The same engineer previously assessed the site in May 2023, and found that the water table was not encountered during the assessment, up to a maximum depth of 6.0 metres below grade. The shallowest of the two water table assessments are used in this amendment. These measurements are site-specific; therefore, I relied upon them more than historical levels throughout the region.

The applicant has proposed that the depths of both catch basins be amended to 2.7 m below grade. This meets AOPA’s requirements that that bottom of the liner must be not less than 1 m above the water table, at the time of construction (Standards and Administration Regulation, 9(3)(a)).

The water table level can fluctuate throughout the season, and from year to year. The NRCB’s Technical Guideline Agdex 096-62 states that the depth to the water table must be measured at the time of the subsoil investigation, and confirmed prior to construction of the facility.

Conditions 5 and 9 of Approval RA23022 require the co-permit holders to immediately cease construction, and notify the NRCB if the water table is observed to be one metre or less from the bottom of the liner of the catch basin. This condition will remain in place while the amended catch basins are constructed.