

Decision Summary LA24035

This document summarizes my reasons for issuing Approval LA24035 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24035. 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 August 7, 2024, David Slingerland, operating as Tempest Red Angus (Tempest), submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on August 21, 2024. On September 3, 2024, I deemed the application complete.

The proposed expansion involves:

- Converting livestock numbers from 2,000 feeder calves to 2,000 beef feeders
- Incorporated pens C9 & C10 into one full row of new pens – 170.7 m x 54.9 m (560 ft. x 180 ft.) (total dimensions of this row)

The proposed conversion of pen C8 into a handling pen does not require a permit under AOPA. Therefore, because handling pens are not considered manure collection areas (See Technical Guideline Agdex 096-94 Identifying Manure Storage Facilities and Manure Collection Areas at Confined Feeding Operations) pen C8 is no longer considered part of the feedlot pen area. However, considering the circumstances, decommissioning of this pen is not required.

a. Location

The existing operation is located at SE 27-9-19 W4M in Lethbridge County, roughly 8 km east of Coaldale. The terrain is relatively flat with a gentle slope towards the southeast.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA23034. That permit allowed the construction and operation of a 2,000 head beef feeder calf CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA24035.

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 one mile. (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 and no other municipality is within the notification distance.

A copy of the application was sent to Lethbridge County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in Sunny South newspaper in circulation in the community affected by the application on September 3, 2024, and
- sending 71 notification letters to people identified by Lethbridge County as owning or residing on land within the notification distance.

The full application was also 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), Alberta Transportation & Economic Corridors (TEC), and the St. Mary River Irrigation District (SMRID).

I also sent a copy of the application to ATCO Gas Pipelines who has Right of Ways on this land.

I received a response from TEC and EPA.

Leah Olson a development/planning technologist with TEC stated that a permit from TEC is required. Her response was forwarded to the applicant for his information and action. On October 9, 2024, Tempest submitted the required permit from TEC (see Technical Document LA24035, pages 14-17).

George Roth, a water administration technologist with EPA stated that no surface water or groundwater licenses are issued for this land location and requested Tempest to submit proof of a legal source of water to EPA for all livestock on site. Tempest submitted an upgraded water conveyance agreement with the SMRID to proof that his increased water needs are covered (on file).

No other responses were received.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Lethbridge County's municipal development plan. (See Appendix A for a more detailed discussion of the county'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 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 protective layers of manure storage facilities and manure collection areas

7. Responses from municipality and other directly affected parties

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application and are entitled to request an NRCB Board review of the approval officer's decision. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the Act as "directly affected." Lethbridge County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Hilary Janzen, a supervisor of Planning and Development with Lethbridge County, provided a written response on behalf of Lethbridge County. Ms. Janzen stated that the application is consistent with Lethbridge County's land use provisions of the municipal development plan but was concerned about the distance of the CFO to an area zoned 'Grouped Country Residential' (GCR). The application's consistency with the land use provisions of Lethbridge County's municipal development plan is addressed in Appendix A, attached. The county's concern in respect to the MDS is discussed in section 9 below.

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

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1). Frank Sera provided an MDS waiver and is a directly affected party.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. The information on this file supports the assumption that risks to groundwater and surface water are low.

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 to surface water and groundwater posed by Tempest Red Angus's CFO facilities as approved in Approval LA24035 were presumed to be low (see Decision Summary LA24035). There is no new information that refutes this presumption.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Ms. Janzen also listed the setbacks required by Lethbridge County's land use bylaw (LUB) and noted that the application meets these setbacks. In her response, Ms. Janzen commented that the MDS to an area zoned Group Country Residential and to one residence, zoned Rural General, might not have been met. The owner of the residence to the south that is on land zoned Rural General has signed a waiver, waiving the MDS to this residence (see Technical Document LA24035). There is no residence within the MDS in the area zoned Group Country Residential (category 2 MDS).

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments. I have not received any information on statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application or any decisions made

by the Environmental Appeals Board / the Director under the *Water Act* in respect of the subject of this application.

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 in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and I have not received any information to the contrary.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA24035 specifies the cumulative permitted livestock capacity as 2,000 beef feeders, permits the conversion of C8 into a handling pen, and the incorporating of pens C9 and C10 into one full row of new pens.

Approval LA24035 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 LA24035 includes conditions that generally address construction deadlines, document submission 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 permit with Approval LA24035: Approval LA23035 (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. All conditions of Approval LA23035 have been carried forward into the new approval.

11. Conclusion

Approval LA24035 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24035.

Tempest Red Angus's Approval LA23035 is therefore superseded, and its content consolidated into this Approval LA24035, unless Approval LA24035 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA23035 will remain in effect.

October 11, 2024

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA24035

APPENDIX A: Consistency with the municipal development plan

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).

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

“Land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, 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” 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.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: *Approvals*, part 9.2.7.)

Tempest Red Angus’s CFO is located in Lethbridge County and is therefore subject to that county’s MDP. Lethbridge County adopted the latest revision to this plan in March 2022, under Bylaw #22-001.

The relevant sections in the MDP can be found in section 3 – Intensive livestock/confined feeding operations.

Section 3.0 states that the county is supportive of CFOs that are in areas less prone to conflict and where the municipal infrastructure can support such development.

I do not consider this section as a land use provision because it is rather subjective in respect of what can be supported by municipal infrastructure in addition to the fact that such an assessment is not under the jurisdiction of the NRCB.

Section 3.1 and 3.2: These sections state that new CFOs are not permitted in areas zoned as CFO exclusion areas (as illustrated on Map 2 (2A & 2B), in particular areas with higher density residential growth centers, or within areas designated as CFO exclusion areas in any of the intermunicipal development plans.

This application is for the expansion of an existing CFO, not for a new one. Regardless, this CFO is not located within any of the CFO exclusion areas in Lethbridge County. Therefore, this application meets this provision.

Section 3.3 continues to state that existing established CFOs located within an urban fringe district may be permitted to expand or make improvements to the operations in consideration of any IDP policy that allows for such.

This section does not apply because the CFO is not in proximity or within an urban fringe district.

Section 3.4 talks about updating the MDP to reflect changes in an IDP.

I do not consider this as a land use provision, and I can therefore not consider it.

Section 3.5 states that CFOs shall not be supported to establish or expand within environmentally sensitive areas as shown in the *Cotton Wood Report: County of Lethbridge: Environmentally Significant Areas in the Oldman River Region (1987)*.

The CFO is not close to any areas identified in that report and therefore meets this provision.

Section 3.6 speaks on required setbacks of manure storage areas to property lines and roadways.

The CFO continues to meet all of these setbacks.

Section 3.7 discusses the land zoning, stating that CFOs are only allowed in areas zoned Rural Agriculture in which they are a discretionary use. The minimum parcel size for CFOs is 80 acres.

The stipulation of a minimum parcel size would appear to fall under section 20(1)(1.1) AOPA that states that approval officers shall not consider any tests or conditions related to the site of a CFO. Minimum parcel size refers to specifics with respect to siting of a CFO, rather than use of specific lands.

Section 3.8 states that the county supports existing CFOs located within the MDP area that operate under acceptable operating practices and within AOPA's requirements.

Because this is not a land use provision, I will not discuss this topic any further.

Section 3.9 expresses the county's expectation in respect to manure spreading within the CFO exclusion zones and that manure spreading occurs according to AOPA and its regulations.

Because this is not a land use provision, I will not discuss this topic any further. In addition, section 20(1)(1.1) AOPA applies, stating that approval officers are not to consider any provision respecting to the application of manure.

Section 3.10 discusses the application of a reciprocal MDS.

Because this is not a land use provision that governs CFOs, I will not discuss this topic any further.

Section 3.11 states that the county will continue to consult with the NRCB on CFO matters.

Because this is not a land use provision, I will not discuss this topic any further.

For the reasons provided above, I conclude that the application is consistent with the land use provisions of Lethbridge County's MDP that I may consider.

APPENDIX B: Explanation of conditions in Approval LA24035

Approval LA24035 includes several conditions, discussed below, and carries forward all conditions from Approval LA23034. Construction conditions from historical Approval LA23034 that have been met are in the appendix to Approval LA24035.

1. New conditions in Approval LA24035

a. Construction Deadline

Tempest Red Angus proposes to complete construction of the proposed new feedlot pens by December 31, 2026. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2026.

b. 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 LA24035 includes a condition stating that Tempest Red Angus shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens until NRCB personnel have inspected the new feedlot pens and confirmed in writing that they meet the approval requirements.