



## Decision Summary LA23044

This document summarizes my reasons for issuing Approval LA23044 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23044. 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 approval. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

During an inspection on July 11, 2023, an NRCB inspector noted unauthorized construction of several feedlot pens, a catch basin, and livestock numbers above the permitted threshold. The inspector instructed the Hutterian Brethren Church of Turin (Turin Colony) through Enforcement Order EO23-04 to apply to the NRCB to acquire a permit for the unauthorized expansion.

On November 27, 2023, (Turin Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on September 12, 2024. On September 24, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 3,000 to 6,000 beef finishers
- Decreasing livestock numbers from 110 to 10 milking cows (plus associated dries and replacements)
- Decreasing livestock numbers from 1,900 to 300 chicken layers
- Constructing new feedlot pens - D1, D2, D3, D4, D5 (275 m x 69 m (total length))

Turin Colony also applied to expand an already constructed but unauthorized catch basin to the following final dimensions: 161 m x 26 m x 4 m and to gain permission to use the following already constructed, but currently unauthorized, facilities:

- Feedlot pens C1, C2, C3, C4 (236 m x 83 m (total length))
- Feedlot pens E1, E2, E3 (55 m x 34 m (total length))
- Feedlot pens E4, E5, E6 (125 m x 55 m (total length)).

#### a. Location

The existing CFO is located at NE 19-12-19 W4M in Lethbridge County, roughly 6.4 km northwest of Turin. The topography of the area is flat sloping to the north. The Little Bow River runs approximately 1 km along the west side of the CFO and the closest tributary of the Little Bow is within 130 m of a CFO facility.

## **b. Existing permits**

To date, Turin Colony is permitted under Municipal development permit 96-129, issued on January 14, 1997, approving the expansion of the existing hog CFO to a total of 600 sow farrow to finish. Subsequently, Turin Colony received Approval LA08033, approving the renovation of an existing hog barn. In addition, the approval also determined the permitted animal numbers to be 600 sows farrow to finish, 1,900 layer chicken, 1,200 ducks, 14,500 broiler chicken, 3,000 beef finishers, and 110 dairy cows (plus associated dries and replacements). The CFO's existing permitted facilities are listed in the appendix to the Approval LA23044.

## **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 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 and no other municipality borders Lethbridge County 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 News newspaper in circulation in the community affected by the application on September 24, 2024, and
- sending 21 notification letters to people identified by Lethbridge County as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours at NRCB's Lethbridge office.

## **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 Lethbridge Northern Irrigation District (LNID).

I also sent a copy of the application to Atco Gas & Pipelines, Hunt Oil Company Canada Inc., Lethbridge North County Water Coop Ltd., and Fortis Alberta Inc. who are right of way holders at this land location.

The NRCB received a response from:

Leah Olsen, a development technician with TEC. In her response, Ms. Olsen stated that a permit from her department is not required.

Janet Beck, administration and land manager with the LNID. In her response Ms. Beck stated that an additional water conveyance agreement is required to meet the increase in water needs. No other concerns were voiced. A copy of the response was provided to Turin Colony for their information and action.

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 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

## **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, manager 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. The application's consistency with the land use provisions of Lethbridge County's municipal development plan 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**

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.

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (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).)

For the sake of efficiency, I first assessed the CFO's existing feedlot pens and catch basin using the ERST. These appear to be the CFO's highest risk facilities because the feedlot pens have the highest potential risk to contaminate surface water and the catch basin is the deepest facility and therefore the potential highest risk to groundwater at this CFO. The assessment found that these facilities pose a low potential risk to groundwater and surface water. Because these are the CFO's highest risk facilities, I presume that the CFO's other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

## **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.

I have considered the effects the proposed feedlot and catch basin may have on natural resources administered by provincial departments. I have not made aware of any 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 of any written decision of 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, and I have not been made aware of any circumstances that prove otherwise.

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 LA23044 specifies the cumulative permitted livestock capacity as:

- 6,000 beef finishers,
- 600 swine (farrow to finish),
- 10 milking cows (plus associated dries and replacements),
- 300 chicken layers,
- 14,500 chicken broilers, and
- 1,200 ducks.

Approval LA23044 also permits the construction of:

- pens D1, D2, D3, D4, D5 (275 m x 69 m), and
- the expansion of an already constructed but unauthorized catch basin south to the final dimensions of 161 m x 26 m x 4 m;

Approval LA23044 also permits the use of the already constructed:

- pens C1, C2, C3, C4 (236 m x 93 m),
- pens E1, E2, E3 (55 m x 34 m), and
- pens E4, E5, E6 (125 m x 55 m).

Approval LA23044 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 LA23044 includes conditions that generally address construction deadline, 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 permits with Approval LA23044: Municipal development permit 96-129 and Approval LA08033 (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. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval.

## **11. Conclusion**

Approval LA23044 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23044.

Turin Colony's deemed permit, including municipal development permit # 96-129, and NRCB-issued Approval LA08033 are therefore superseded, and their content consolidated into this Approval LA23044, unless Approval LA23044 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 # 96-129, and NRCB-issued Approval LA08033 will remain in effect.

November 22, 2024

(Original signed)  
Carina Weisbach  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA23044

## **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.)

Turin Colony’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. Additionally, approval officers shall not consider any tests or conditions related to the site of a CFO (section 20(1)(1.1) AOPA).

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 CFO is very close but not located within any of the CFO exclusion areas of Lethbridge County. Therefore, this section does not apply.

Section 3.3 continues to state that 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 allow for such.

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

Section 3.4 talks about consistency of planning documents.

This is not a land use provision, and I therefore cannot 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 borders an area identified as of regional significance in that report but not within and therefore meets this provision.

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

The CFO meets all of these setbacks and therefore meets this provision.

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.

Apart from the fact the this is not a new CFO, the stipulation of a minimum parcel size to establish a new CFO would appear to fall under section 20(1)(1.1) of AOPA that states that approval officers shall not consider any tests or conditions related to the site of a CFO. Therefore, I am not able to consider this provision.

Section 3.8 states that the county supports existing CFOs located within the MDP area.

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.

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

Section 3.10 discusses the application of a reciprocal MDS.

This is not a land use provision; 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.

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 LA23044**

Approval LA23044 includes several conditions, discussed below, and carries forward all conditions from Approval LA08033 and a number of conditions from municipal permit 96-129 (see section 2 of this appendix). Construction conditions from historical permits including municipal development permit LA08033 are listed in the appendix to Approval LA23044.

### **1. New conditions in Approval LA23044**

#### **a. Groundwater protection requirements**

##### Catch basin:

Turin Colony proposes to expand the already constructed but unauthorized catch basin with a 1 metre thick compacted soil liner. Section 9 of AOPA's Standards and Administration Regulation specifies a maximum hydraulic conductivity for this type of liner in order to minimize leakage.

To demonstrate compliance with this standard, Turin Colony 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.

The regulations provide that the actual hydraulic conductivity of a 1 metre thick compacted soil liner must not be more than  $5 \times 10^{-7}$  cm/sec.

In this case, the lab measurement was  $8.35 \times 10^{-9}$  cm/sec. With the required ten-fold modification, the expected field value is  $8.35 \times 10^{-8}$  cm/sec. This expected value is below (better than) the maximum value in the regulations. Therefore, the proposed liner meets the hydraulic conductivity requirement in the regulations.

##### Feedlot pens:

Turin Colony measured the hydraulic conductivity of the protective layer in the area of the already constructed pens and the proposed pens 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  $1 \times 10^{-6}$  cm/sec.

In this case, the in-situ measurement was between  $2.3$  to  $3.9 \times 10^{-7}$  cm/sec. 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.

#### **b. Construction deadline**

Turin Colony proposes to complete construction of the proposed new pens and catch basin by Spring, 2025. This time-frame is rather vague and does not consider unforeseen circumstances. Therefore, I will allow two construction seasons to complete the proposed construction. The deadline of December 31, 2026, is included as a condition in Approval LA23044.

### **c. Water table**

The permit holder shall cease construction and notify the NRCB immediately should the water table be encountered within 1 m of the water table to ensure that Section 9(2) of the *Standards and Administration Regulation* under AOPA has been met.

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

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Approval LA23044 includes conditions requiring:

- a. Turin Colony to provide an engineer's completion report certifying that the catch basin was constructed with the same liner material as that used for hydraulic conductivity testing and that the catch basin was constructed according to the proposed procedures and design specifications.
- b. Turin Colony to provide evidence or written confirmation from a qualified third party that the new feedlot pens have been constructed in accordance with the proposed design.

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 LA23044 includes a condition stating that Turin Colony shall not place livestock or manure in the manure storage or collection portions of the new pens and shall not allow manure contaminated runoff to enter the catch basin until NRCB personnel have inspected the pens and catch basin and confirmed in writing that they meet the approval requirements.

## **2. Conditions not carried forward or modified from Municipal development permit 96-129**

Approval LA23044 includes all terms and conditions in Municipal development permit 96-129 except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions # 5 and 6 from Municipal development permit 96-129 should be deleted and therefore are not carried forward to Approval LA23044. My reasons for deleting these conditions:

Condition 5 states: "*The irrigation spill ditch is to be protected from manure runoff and manure spreading. No spreading is to occur within 100' of the ditch.*"

This condition is less stringent than AOPA and shall be replaced by the general terms and conditions in this permit including the requirement, as laid out in the opening paragraph of Approval LA23044 that states that the permit holder shall comply with the requirements of the *Agricultural Operation Practices Act* (AOPA) and the regulations passed pursuant to that Act.

Condition 6 states: "*All deads are to be removed within 48 hours.*"

NRCB-issued permits generally do not include conditions relating to dead animal disposal because this activity is regulated directly by Alberta Agriculture and Irrigation's Regulatory Services Branch, under the Animal Health Act. (See Operational Policy 2016-7: Approvals.) Given Alberta Agriculture and Forestry's regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistency with Alberta Agriculture and Irrigation's requirements.