



Decision Summary LA18065

This document summarizes my reasons for issuing Approval LA18065 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA18065. That document and the full application are available from the decisions search engine on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca. 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 November 7, 2018, Harold Vandenberg Dairy Ltd. (Vandenberg) submitted a Part 1 application to the NRCB to expand an existing beef confined feeding operation (CFO). The Part 2 application was submitted on January 10, 2019. On January 15, 2019, I deemed the application complete.

The proposed expansion involves:

- Increasing beef finisher livestock numbers by 400 to a total of 1,300
- Constructing three new feedlot pens (35 m x 40 m each).
- Expanding the existing catch basin (final dimensions: 104 m x 5 m x 3 m deep)

Under AOPA, this type of application requires an approval.

a. Location

The existing CFO is located at SW 21-010-21 W4M in Lethbridge County, roughly 3.5 km northeast of Diamond City, AB. The terrain is flat with a steep coulee 240 metres to the southeast, which in turn drops into the Oldman River which is 560 metres to the southeast of the CFO.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval LA18037. This approval allows the construction and operation of a 900 beef finisher feedlot. The CFO's existing permitted facilities are listed in the Appendix of Approval LA18065.

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 approval application.

The NRCB published notice of the application in the Sunny South News on January 15, 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 Lethbridge Northern Irrigation District (LNID). Forty-three 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, the LNID, EP and Alberta Transportation.

Ms. Hilary Janzen, a senior planner with Lethbridge County, 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 the Lethbridge County’s municipal development plan (MDP). The application’s consistency with Lethbridge County’s MDP, is addressed in Appendix A, attached.

Ms. Janzen also listed the setbacks required by Lethbridge County’s MDP and noted that the application meets these setbacks.

The NRCB also received a written response from Alan Harrold, general manager of the LNID, Mr. Jeff Gutsell, hydrogeologist with EP, and Ms. Leah Olson, development/planning technologist with Alberta Transportation.

Mr. Harrold stated that an additional water conveyance agreement is required. A copy of the letter was provided to the applicant. Mr. Harrold also stated that a 30 metre setback to any irrigation infrastructure for manure application and manure storage must be observed.

Mr. Gutsell stated that they have no concern in respect to this application, given that Vandenberg's water needs are covered by the irrigation district.

Ms. Olson stated that a permit from her department is not required and that she does not anticipate an appreciable impact of the expansion on the provincial highway network.

4. Responses from other directly affected parties

The NRCB received one response from one individual:

Alberta Prime Holdings
Andy Hammerling
Box 419
Picture Butte, Alberta

Mr. Hammerling owns or resides on land within the 1.5 mile radius for affected persons. Because of his location within this radius, he is presumed to be directly affected by the application.

Mr. Hammerling has no objections to this application.

5. Environmental risk screening of existing and proposed facilities

When reviewing a new approval application for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This 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/Guides 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 done with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: *Approvals*, part 8.13.

In this case, the risks posed by Vandenberg Dairy Ltd. existing CFO facilities were assessed in 2018. According to that assessment, the CFO facilities posed a low risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

I also assessed the proposed new feedlot pens and the catch basin extension, using the NRCB's risk screening tool, and determined that they all pose a low risk to groundwater and surface water.

6. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 7.¹

In addition, the proposed expansion is consistent with the land use provisions of Lethbridge County's municipal development plan and with Lethbridge County's 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:

- 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 determined that these effects are acceptable because the application meets all of AOPA's technical requirements. I also determined 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. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

7. Terms and conditions

Approval LA18065 specifies the new permitted livestock capacity as 1,300 beef finishers and permits the construction of the three new feedlot pens and a catch basin extension.

Approval LA18065 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.

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

In addition to the terms described above, Approval LA18065 includes conditions that:

- Set a deadline of December 21, 2021 for the approved construction to be completed.
- Require written confirmation from a qualified third party that the dimensions of the catch basin extension is as specified in this permit.
- Prohibit Vandenberg from placing manure or livestock in the new feedlot pens and allowing manure contaminated runoff from entering the catch basin until the facilities have been inspected by the NRCB following their construction

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

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated Approval LA18037 with Approval LA18065 (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 AOPA permits on their own motion.

Therefore, in addition to containing the new terms and conditions summarized above, Approval LA18065 includes all existing terms and conditions from Approval LA18037. Construction conditions that have been met are identified and included in an appendix to Approval LA18065.

8. Conclusion

Approval LA18065 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA18065.

Vandenberg's Approval LA18037 is therefore cancelled, unless Approval LA18065 is held invalid following a review and decision by the NRCB's board members or by a court, in which case LA18037 will remain in effect.

March 4, 2019



Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA18065

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may grant 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” 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.”)

Vandenberg’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 on August 2, 2018 under Bylaw 18-016.

The MDP provisions relating to CFOs are in part 6.6 of the plan.

As relevant here, section 6.6.3(a) states that the county “shall restrict the development of CFOs in the Urban Fringe land use districts.” Vandenberg’s CFO is not in any of the rural urban fringe areas designated in the MDP, so the proposal is consistent with this provision.

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*
- Giving notice to adjacent landowners even in the case of applications for registration or authorization, and
- Applying MDS calculations to all country residential clusters whether or not they are specifically designated in the land use bylaw

The first of these three considerations 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 consideration is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: *Approvals*, part 8.2.5.)

As for the second consideration, the CFO is not located close to any of the environmentally significant areas noted in the county’s report.

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. Sections 19 and 21 of AOPA determine the required notification process. In this case, the application was for an approval which triggered the notification requirements set out in section 19.

The fourth consideration appears to refer to AOPA's "minimum distance separation" (MDS) requirements. 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.) At any rate, there are no country residential clusters in the immediate vicinity of the CFO, so this MDP consideration does not apply to Vandenberg's application.

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". Vandenberg's CFO is not located in any of the designated CFO exclusion areas, so the application is consistent with this provision.

Finally, section 6.6.3(e) of the MDP requires the application of development setbacks as set out in the county's land use bylaw. As mentioned above, the proposed new feedlot and catch basin extension both meet these setbacks.

For these reasons, the proposed CFO expansion is consistent with the relevant land use provisions of Lethbridge County's MDP. As stated above, the county agrees with this conclusion (and has no concerns with the 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: Explanation of conditions in Approval LA18065

Approval LA18065 includes several conditions, discussed below:

a. Construction deadline

Vandenberg Dairy proposes to complete construction of the proposed new feedlot pens and the catch basin extension by December 21, 2021. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 21, 2021 is included as a condition in Approval LA18065.

b. 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 LA18065 includes conditions requiring:

- Vandenberg to provide proof, prepared by a qualified third party that the dimensions of the catch basin extension is as specified in this permit.

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 LA18065 includes a condition stating that Vandenberg shall not place livestock or manure in the manure storage portions of the new feedlot pens or allow manure contaminated runoff entering the catch basin extension until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.