

Decision Summary RA18081

This document summarizes my reasons for issuing Approval RA18081 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA18081. 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 5, 2018, applicant, Brett Law on behalf of Maverick Holdings Ltd. (Maverick Holdings) submitted a Part 1 application to the NRCB to increase manure production at an existing swine confined feeding operation (CFO) by converting from a 300 sow farrow to finish operation to a 4000 head grower/finisher (The equivalent livestock type under AOPA is feeders/boars) operation. No construction is proposed as part of this application. The Part 2 application was submitted on November 5, 2018. On November 15, 2018, I deemed the application complete.

Under AOPA, this type of application requires an approval. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The existing CFO is located at NW 1-41-25 W4M in Lacombe County, roughly 3.75 km northwest of Clive, Alberta. The terrain of the site is nearly level, with an overall slope to the south. The nearest common body of water is a creek located approximately 511 m to the southwest.

b. Existing permitted facilities

The CFO was originally permitted by Lacombe County on May 20, 1998 under development permit # 99/98. This permit allowed the construction and operation of a 300 sow farrow to finish CFO. The CFO’s deemed facilities are listed in the Appendix of RA18081.

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 1.0 mile. (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. Lacombe 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 Central Alberta Life on November 15, 2018 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 Lacombe County, Alberta Health Services (AHS), and Alberta Environment and Parks (AEP). Twenty-seven courtesy letters were sent to people identified by Lacombe County as owning or residing on land within the affected party radius.

3. Responses from the municipality and referral agencies

Mr. Florian Goetz, a junior planner/development officer with Lacombe County, provided a written response on behalf of Lacombe County. As noted in section 2, Lacombe County is a directly affected party.

Mr. Goetz confirmed that the application is in compliance with the County’s MDP, and that no other planning type documents apply to the area of this CFO. This application’s consistency with Lacombe County’s MDP is addressed in Appendix A, attached.

Mr. Goetz also stated that the application meets the setbacks required by Lacombe County’s land use bylaw (LUB).

Ms. Laura Partridge, a senior water administration officer with AEP, provided a written response on behalf of AEP. Ms. Partridge indicated that no additional water licensing is required at this time; however a land ownership amendment is required. The applicant is reminded that he is required to complete this change by way of this decision and the correspondence sent to the applicant from AEP.

Mr. Quentin Schatz, a public health inspector with AHS, provided a written response on behalf of AHS. Mr. Schatz commented on the EMS’s liner and risk to the water wells. In follow up conversations, I provided Mr. Schatz with additional information to address his comments. Mr. Schatz was satisfied with the information, and had no concerns with the application.

4. Responses from other directly affected parties

The NRCB received responses from two individuals.

Both of the individuals who submitted responses own or reside on land within the 1.0 mile radius

for affected persons. Because of their location within this radius, they are presumed to be directly affected by the application.

The directly affected parties raised concerns regarding air pollution, odour, flies, and potential health implications.

These concerns are further discussed and addressed in Appendix B.

5. Environmental risk screening of existing facilities

As part of my review of this application, I assessed the risk to surface water and groundwater posed by the CFO's existing 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/Guides on the NRCB website at www.nrcb.ca.)

All of the CFO's existing facilities pose a low potential risk to groundwater and surface water: (The CFO's existing facilities are listed in the Appendix to RA18081 and Technical Document RA18081.)

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 Lacombe County's municipal development plan. (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 (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from 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

As stated in Technical Document RA18081, one barn is within the required AOPA setback from a water well. The sites does not have to meet AOPA requirements under the *Standards and Administration Regulation* unless there is a risk to the environment. Under the ERST, I determined a low potential risk to the environment for this barn.

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. I have carefully considered the concerns raised by the directly affected parties, and in my view, those concerns have been adequately addressed by the application. I also determined that the application's effects on the economy and community

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

are presumed to be 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 RA18081 specifies the new permitted livestock capacity as 4000 feeders/boars.

Approval RA18081 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.

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated Lacombe County Development Permit 99/98 with Approval RA18081. 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.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions 1-12 from Lacombe County Development Permit 99/98 should be deleted and therefore are not carried forward to Approval RA18081. My reasons for deleting these conditions are provided in Appendix C.

8. Conclusion

Approval RA18081 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA18081.

Maverick Holdings' deemed approval and Lacombe County's Development Permit 99/98 are therefore cancelled, unless Approval RA18081 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Development Permit 99/98 will remain in effect.

March 27, 2019

(Original Signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by referral agencies and directly affected parties
- C. Explanation of conditions not carried forward

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). In my consideration of this, I also reviewed other planning documents from Lacombe County, and found that no area structure plan applies to this CFO.

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.”)

Maverick Holdings’ CFO is located in Lacombe County and is therefore subject to that county’s MDP. Lacombe County adopted the latest revision to this plan on July 6, 2017 (updated on March 14, 2019), under Bylaw #1238/17.

Sections 3.8 of the MDP relates to CFOs. Under section 3.8.1(a), the MDP prohibits “new” CFOs within 1.6 km (1 mile) from several areas listed in that section. Maverick Holdings’ application is not for a new CFO, and therefore, is not subject to these setbacks. Irrespective, the CFO is outside of these 1.6 km setbacks. Additionally, section 3.8.1 states that “further restrictions on the development of confined feeding operations may apply as directed by an Intermunicipal Development Plan or other local plan approved by Council.” No other intermunicipal development plans apply to this site.

For these reasons, I conclude that the application is consistent with the land use provisions of Lacombe County’s MDP. The county’s response letter confirms this conclusion.

In my view, the MDP clearly intends to incorporate Lacombe County’s Land Use Bylaw (LUB) #1237/17 (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3). Section 1.3.4 (Statutory Plans and the Land Use Bylaw) of the MDP states that “...*the LUB was created in consort with the MDP to ensure the County’s long range strategic goals are reflected in its current development. The LUB is the key implementation tool for the County’s long range planning policies as it set out the rules and regulations for the development and use of land within the County*”. Accordingly, I considered the LUB. Under that bylaw, the subject land is currently zoned as Agricultural “A” District (According to the county’s response, the surrounding lands within a 1,600 metre radius of the CFO are also all within the Agricultural “A” district). CFOs are not listed as either a permitted or discretionary use within that zoning category. However, section 3.2.2(j) of the LUB states that CFOs do not require a development permit. I interpret this provision as meaning either that the county intended CFOs to have the same effective status as listed permitted uses, or that the county simply does not intend to address CFOs in its LUB (given the NRCB’s permitting role since AOPA came into effect in 2002). In its response, the county stated that the CFO is a permitted use, which is consistent with the first of these two interpretations. Under either interpretation, the proposed CFO expansion is not inconsistent with the LUB.

APPENDIX B: Concerns raised by directly affected parties

Two directly affected parties (Mr. Murray Meldrum and Mr. Wietse Kloosterman) raised a number of issues in their statements of concern. The issues are summarized and listed below, together with my analysis and conclusions.

- 1. Increase in air pollution and flies-** Both respondents stated that they would be concerned if the air pollution increased from current levels. One questioned what the process is if they do experience negative impacts, and how to prevent future conflict between operator and neighbour. One individual expressed concern about an increase in flies.

Approval officer's conclusions:

AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. Maverick Holdings' CFO is located outside of the required MDS from all existing residences.

Notwithstanding the CFO's distances to its nearest neighbours, it is reasonable to expect that there will be some odour emissions and other potential nuisances after the CFO expansion in hog numbers.

Under section 20(1) of the *Standards and Administration Regulation*, operators must employ reasonable measures to control the level of infestation of flies at their operation. If necessary, the NRCB can require the operator to adopt a fly control program.

Often, any issues that arise relating to the operation of a CFO, and other disagreements, can be resolved through good communication between neighbours and the CFO operator. However, if a member of the public has concerns regarding a CFO, including whether or not the operation is complying with AOPA, they may contact the NRCB through its toll free response line (1-866-383-6722 or 310-0000). An NRCB inspector will follow up on the concern.

- 2. Health concerns-** One respondent expressed health concerns from the smell of the CFO and manure spreading. These concerns included respiratory issues, and organ impairments.

Approval officer's conclusions:

AOPA does not expressly require approval officers to consider the nuisance or health effects of a proposed development, when deciding whether to issue an approval under the act.

Approval officers refer all applications to Alberta Health Services (AHS) for its information, and for it to identify any potential health issues related to the proposed developments.

As per NRCB Operational Policy 2016-7: *Approvals*, part 8.8., I referred the application to AHS for its comments. After the deadline for submission of statement of concerns, I also referred the SOC that identified health concerns and issues to AHS.

A summary of AHS response to the health-related statement of concerns is as follows:

- AHS does not recognize odour as a health risk at this time
- Air pollution for the CFO should be diluted prior to travelling offsite. Cumulative

effects are not measured.

- Increased particulate matter from the farm could potentially lead to respiratory irritation, especially of an existing condition.
- Control measures could be implemented to reduce fly concerns

I have carefully considered the concerns raised by the two individuals. Given that AHS has not identified any health related concerns, and the fact that the proposed expansion of the CFO meets all of AOPA's technical requirements, it is my opinion that the concerns are addressed.

APPENDIX C: Explanation of conditions not carried forward

Conditions not carried forward from Lacombe County 99/98

1. *Any manure contaminated run-off to be fully contained on owner's property. Owner/operator must also ensure that manure stays on lands on which it is applied. Drainage courses or other bodies of water on property and other lands used for manure application must be protected from contamination*
2. *All manure applied to land to be done in accordance with guidelines set out in Code of Practice for the Safe and Economic Handling of Animal Manures, and including any revisions thereto*
3. *Prior to start of expanded operation, soil testing to be done by qualified professional on all lands on which manure is to be applied to determine proper manure application rates and adequacy of land base. Testing to be repeated on a yearly basis or other interval as may be agreed to by County. Results of such testing to be provided to County and Alberta Agriculture, Food and Rural Development*
4. *Owner/operator to ensure that sufficient land base is available at all times for manure application, based on standards in Code of Practice, including any revisions thereto, and results of soil testing. If land not owned by owner/operator, letters from owners of land that will accept manure will be required*

AOPA and its regulations state how manure must be applied, including setbacks to surface water bodies, land application rates, and soil testing requirements. As required by Section 24(2) of Standards and Regulation under AOPA, the applicant has provided the NRCB with a list of their spreading lands available. I have reviewed the listed lands, and have determined that they have sufficient land available for spreading. Since AOPA already speaks to these conditions, these conditions will not be carried forward.

5. *Dead animals to be disposed of in prompt and acceptable manner. Designated collection sites must not be visible by public*

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 to inconsistent approaches. In addition, the requirements in these regulations arguably provide an appropriate benchmark for defining "acceptable" disposal practices. Therefore, this condition is not more stringent than the requirements under the *Animal Health Act*. For these reasons, and pursuant to the NRCB policy, this condition will not be carried forward. See Operational Policy 2016-1: *Amending Municipal Permit Conditions*, section 2.1. and the *Memorandum of Understanding between the NRCB and Agriculture and Rural Development, Animal Health and Assurance Division (with Addendum) Relating to Dead Animal Disposal Complaints*, June 2013 and December 2014).

6. *Owner/operator to maintain at all times high degree of cleanliness in and around livestock facilities to minimize odour nuisances for neighboring residents*

This condition is impossible to enforce as the standard for cleanliness is highly subjective. Furthermore, AOPA provides MDS as a way to mitigate nuisance and odour from CFO sites to neighbouring residences. Therefore, this condition is not carried forward (See Operational Policy 2016-1: *Amending Municipal Permit Conditions*, section 2.2.1.)