



Decision Summary LA19002

This document summarizes my reasons for issuing Approval LA19002 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA19002. 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 January 17, 2019, Henk Vander Veen Dairy Ltd. (Vander Veen) submitted a Part 1 application to the NRCB to construct a new beef confined feeding operation (CFO). The Part 2 application was submitted on January 24, 2019. On January 30, 2019, I deemed the application complete.

The proposed CFO involves constructing a new 3,500 beef finisher feedlot consisting of:

- North row of pens: 595 m x 46 m
- South row of pens: 412 m x 45 m
- Catch basin (110 m x 25 m x 4 m deep).

Under AOPA, this type of application requires an approval.

a. Location

The proposed CFO is located at SW 18-013-24 W4M in Vulcan County, roughly 12 km southwest of the village of Carmangay. The terrain is flat with surface water generally draining into localized sloughs.

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. Vulcan County is an affected party (and therefore also a directly affected party) because the proposed facility is located within its boundaries. The Municipal District of Willow Creek is also an affected party because its boundary is within the 1.5 mile affected party radius.

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 Vulcan Advocate and the Claesholm Press on January 30, 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 Vulcan County, The Municipal District of Willow Creek, Alberta Health Services (AHS), Alberta Environment and Parks (EP), and Alberta Transportation. Twenty courtesy letters were sent to people identified by Vulcan County and the Municipal District of Willow Creek as owning or residing on land within the affected party radius.

3. Responses from the municipalities, referral agencies, and other parties

I received responses from Vulcan County, the Municipal District of Willow Creek, AHS, EP, and Alberta Transportation. In addition, I also received a written response from the Little Bow Gas Co-op Ltd. No responses were received from individuals or other parties.

Ms. Anne Erickson, the manager of development services with Vulcan County, provided a written response. As noted in section 2, Vulcan County is a directly affected party.

Ms. Erickson stated that the application does not fall within any exclusion areas and is consistent with Vulcan County and the Municipal District of Willow Creek’s Intermunicipal Development Plan (IDP). The application’s consistency with Vulcan County’s municipal development plan and IDP, is addressed in Appendix A, attached.

Ms. Erickson also listed the setbacks required by Vulcan County’s land use bylaw (LUB) and noted that the county could not confirm that the application meets these setbacks. Vulcan County’s setback requirements are 38.1 metres from the center line of the road and 7.6 metres from property lines. Vulcan County also requested additional information regarding manure spreading land locations and requested that a public hearing be held prior to a decision being issued on the application. These requests are addressed in Appendix B, attached.

Ms. Cindy Chisholm, Manager of Planning and Development for the Municipal District of Willow Creek, provided a written response. As noted in section 2, the Municipal District of Willow Creek is a directly affected party.

Ms. Chisholm stated the application appears to be consistent with the Vulcan County and Municipal District of Willow Creek’s IDP and is not located within any exclusion areas. Ms. Chisholm also states that the application appears to meet its setbacks and requests that the NRCB ensures the minimum distance of separation is met to an adjacent residence. The applications consistency with Vulcan County and the Municipal District of Willow Creek’s IDP is addressed in Appendix A, attached.

Ms. Carol Brittain, a Public Health Inspector II Land Use Specialist with AHS, provided a written response. Ms. Brittain provided general comments relating to the Public Health Act but raised no specific concerns with the technical aspects of the application. These comments have been forwarded to the applicant for their information and follow up.

Mr. Jeff Gutsell, a hydrogeologist with EP, provided a written response. Mr. Gutsell raised concerns regarding water licensing for the CFO. EP's response was forwarded to the applicant for their follow up.

Ms. Leah Olsen, a development/ planning technologist with Alberta Transportation, provided a written response. Ms. Olsen stated a permit would not be required from their department.

Mr. Alan Fraser, chairman of the Little Bow Gas Co-op submitted a written response. Mr. Fraser indicated existing pens and an alleyway conflict with a utility right of way and gas pipeline situated at the site. This information was provided to the applicant for their action. Alterations to the submitted plan which address this concern were submitted by the applicant and are included in technical document LA19002.

4. Environmental risk screening of existing and proposed facilities

As part of my review of this application, I assessed the risk to surface water and groundwater posed by the CFO's proposed 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 proposed facilities pose a low potential risk to groundwater and surface water.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.¹

In addition, the proposed CFO is consistent with the land use provisions of Vulcan County's municipal development plan, Vulcan County and the Municipal District of Willow Creek's Intermunicipal Development Plan, and with Vulcan County's land use bylaw. (See Appendix A, attached for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed CFO:

- 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

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

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 CFO 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 CFO is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipal development plan and land use bylaw. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

6. Terms and conditions

Approval LA19002 specifies the new permitted livestock capacity as 3,500 beef finishers and permits the construction of two rows of pens and a catch basin.

Approval LA19002 also contains terms that the NRCB generally includes in all AOPA approval, 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 LA19002 includes conditions that:

- Set a deadline of November 21, 2021 for the approved construction to be completed.
- Require written confirmation from a qualified third party that the catch basin is constructed in accordance with the specifications as outlined in the engineer report (see Technical Document LA19002).
- Prohibit Vander Veen from placing manure or livestock in the feedlot pens or from allowing runoff to enter 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 C, attached.

7. Conclusion

Approval LA19002 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19002.

March 29, 2019



Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by Vulcan County
- C. Explanation of conditions in Approval LA19002

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 6.4.) 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.”)

Vander Veen’s proposed CFO is in Vulcan County and is therefore subject to that county’s MDP. The proposed CFO is also located within the affected party radius of the Municipal District of Willow Creek and is therefore subject to the Intermunicipal Development plan shared between the two municipalities.

Vulcan County MDP and LUB

Vulcan County adopted the latest revision to its MDP on April 4, 2012, under Bylaw #2012-003.

Part 4 of Vulcan County’s MDP deals specifically with CFOs. That part starts by stating (p. 14) that CFO development within the county

[c]ontinues to influence the local economy and landscape. The preservation of the agricultural lifestyle is promoted and maintained through these operations. The potential issues caused by CFOs may be mitigated through long-range planning so those nearby settlements can still enjoy the rural lifestyle of the County.

Sections 4.1 to 4.3 of the MDP provide specific policies for new CFOs.

Section 4.1 precludes new CFOs in the exclusion zones shown in Appendix B of the MDP. Vander Veen’s proposed CFO site is not within any of the exclusion zones identified in this MDP appendix.

Sub-sections 4.2(a), (c) and (d) of the MDP provide several setbacks to roads. Based on the site plan, none of the proposed CFO facilities are within these setbacks.

Sub-section 4.2(b) states that applications for CFOs “adjacent” to a highway “should be referred to Alberta Transportation for a roadside development permit.” This is likely not a land use provision (and, therefore, is not relevant to my MDP consistency determination), because of its procedural focus. At any rate, as noted in part 3 of the decision summary above, the NRCB notified Alberta Transportation of Vander Veen’s application and they confirmed that a roadside development permit is not required.

Sub-sections 4.3(a) and (b) of the MDP list two factors that the NRCB “should consider” in its review of approval applications. These factors are:

- (a) the cumulative effects of a new approval on any area near other existing confined feeding operations [and]*
(b) impacts on environmentally sensitive areas shown in the report, "Vulcan County: Environmentally Sensitive Areas in the Oldman River Region"

Sub-section (a) is likely not a "land use provision," because it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects.

Sub-section (b) is also likely not a "land-use provision," as it calls for project-specific, discretionary judgements about the acceptable levels of impacts on environmentally sensitive areas. Nevertheless, Vander Veen's application is arguably consistent with this sub-section because the proposed CFO site is not within any environmentally sensitive area shown in the report referenced in the MDP.

Sub-section 4.3(c) calls for "giving notice to adjacent landowners" of AOPA permit applications. This policy is likely not a "land use provision" because of its procedural focus. At any rate, as explained above, the NRCB sent 20 courtesy letters, advising of the application, to the individuals whose land is within 1.5 miles (2.4 km) of the CFO site and published a general public notice in two local newspapers, in addition to notifying Vulcan County, the Municipal District of Willow Creek, and several referral agencies. Therefore, the NRCB's notice process is consistent with this MDP policy, in addition to satisfying AOPA's notice requirements.

Lastly, sub-section 4.3(d) of the county's MDP calls for the NRCB to consider "proof of the availability of water, specifically, confirmation of access and appropriate provision of the sufficient quantity and suitable quality of the required water supply."

This sub-section is likely not a "land use provision," or, the sub-section is a "term or condition" under section 20(1.1) of AOPA. Therefore, this sub-section is likely not relevant to my MDP consistency determination. (Beyond the MDP consistency context, under NRCB policy, approval officers will consider water supply issues only to the extent of requiring applicants to sign one of the water licensing declarations on page 4 of Technical Document LA19002. See Operational Policy 2016-7: *Approvals*, part 8.10).

For these reasons, I conclude that the application is consistent with the land use provisions of Vulcan County's MDP. The county's response confirms my conclusion.

Under Vulcan County's Land Use Bylaw #2017-031, the subject land is currently zoned Rural General. The MDP does not specifically list CFOs as a permitted or discretionary use in this zoning district. Ordinarily, a land use bylaw intends to preclude a land use in a district if the land use is not listed as either permitted or discretionary in that district. However, in the Rural General part, section 2(c) has a parcel size limit for CFOs; and section 13(c) disallows subdivisions for existing or proposed CFOs. These provisions imply that the county did not intend to preclude CFOs in the Rural General district, otherwise these restrictions would be pointless.

In addition, section 4(r) of Schedule 3 of the land use bylaw states that CFOs do not require a development permit. This section is additional evidence that the county's omission of CFOs from its list of permitted and discretionary uses is simply a reflection of the county's recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs. See Operational Policy 2016-7: *Approvals*, part 8.3.

The county's response confirms this conclusion, stating that the land use bylaw does not specifically address CFOs within each district. (As noted above, the county nevertheless confirmed that the CFO meets the LUB's setbacks for other types of developments that would require a county permit.)

Vulcan County and Municipal District of Willow Creek IDP

The application is also subject to the Vulcan County and Municipal District (M.D.) of Willow Creek No. 26 Intermunicipal Development Plan (Bylaw No. 2015-006 and Bylaw No. 1717) which was last revised in April 2015.

The following policies from the Intermunicipal Development Plan (IDP) pertain to CFO's:

4.3.1 Existing CFO's located within the Plan Area will be allowed to continue to operate under acceptable operating practices and within the requirements of the Agricultural Operation Practices Act and Regulations

4.3.2 New CFO's are not permitted to be established within the CFO Exclusion Area as per the Little Bow River Project Intermunicipal Development Plan, Section 4.2 Policy 4.2.2, as illustrated on map 12.

4.3.3 New CFO's are not permitted to be established within the CFO Exclusion Area as defined in the Vulcan County Municipal Development Plan and illustrated on Map 12.

4.3.4 Any existing CFO permit holders may be allowed to expand operations within CFO Exclusion Areas if it is to upgrade and modernize (within the requirements of the Agricultural Operations Practices Act and Regulations). Demonstrating changes will reduce negative impacts (e.g., odours) to the residents of the area, additional environmental protection will be considered, and comments from both the municipalities are received and considered by the NRCB.

4.3.5 If either Vulcan County or the M.D. of Willow Creek No. 26 are in receipt of an application for new or expanded CFO's within the Plan Area, they shall forward a copy of the application to the other municipality.

Policy 4.3.1 and 4.3.4 do not apply to the application as Approval LA19002 concerns the establishment of a new CFO. Policies 4.3.2 and 4.3.3 do not apply to the application as the subject CFO is located outside of any of the aforementioned exclusion areas.

Policy 4.3.5 is not a land use provision, but rather refers to process between the two municipalities. In any case, the NRCB referred application LA19002 to both municipalities.

For these reasons, I conclude that the application is consistent with the land use provisions of the IDP. The municipal responses confirm my conclusion.

APPENDIX B: Concerns raised by Vulcan County

Vulcan County raised concerns regarding the location of spreading lands and lack of accompanying map identifying such land, and also requested the NRCB hold a public meeting.

Vulcan County requested a map showing the location of the spreading lands which were proposed to support the application for LA19002. Though a map was not included in the application, the legal land location of all spreading lands and notes regarding the lands suitability for spreading can be found on page 12 of Technical Document LA19002. Though specific lands are specified in the application, Vander Veen is not obligated to utilize these lands for manure spreading. If other lands are available to Vander Veen, they may utilize alternative areas without any amendments to their permit. All spreading lands are still subject to the AOPA rules and regulations pertaining to record keeping, soil nutrient limits, and setbacks to common bodies of water, water wells, residences, and property line boundaries.

Vulcan County also requested the NRCB hold a public meeting concerning the application. Section 20(1)(b)(iv) of AOPA allows approval officers to hold “meetings and other proceedings” with respect to an approval application. Approval officers do not routinely convene public meetings even on applications that may be likely to generate public interest. However, approval officers regularly meet, provide information, and have conversations with parties, including municipalities, CFO operators, and neighbors to CFOs to provide information on the AOPA permit application process. Approval officers do not discuss the merits of an application.

Public meetings on CFO applications are only convened if the applicant identifies early in the process that they want to hold one. In this case, no statements of concerns were received from individuals and no interest to hold such a meeting was expressed by the applicant. As such, a public meeting will not be held as part of the considerations for Approval LA19002.

APPENDIX C: Explanation of conditions in Approval LA19002

Approval LA19002 includes several conditions, discussed below.

1. Conditions in Approval LA19002

a. Groundwater protection requirements

Vander Veen measured the hydraulic conductivity of the protective layer by installing a monitoring 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 1 metre thick naturally occurring protective layer must not be more than 1×10^{-7} cm/sec.

In this case, the in situ measurement was 4.1×10^{-8} 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.

During site investigation, a sandy soil layer was detected near the surface at the site of the proposed catch basin, above the proposed protective layer. To provide additional assurance that the as-built catch basin adequately protects groundwater, Approval LA19002 includes a condition requiring Vander Veen to provide a completion report prepared by a qualified third party certifying that the catch basin was constructed with the protective layer material that was used for hydraulic conductivity testing and that the catch basin was constructed according to the proposed procedures and design specifications as contained in the engineering report which is attached to Technical Document LA19002.

b. Construction Deadline

Vander Veen proposes to complete construction of the new rows of pens and catch basin by November 21, 2021. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 21, 2021 is included as a condition in Approval LA19002.

c. 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 LA19002 includes conditions requiring a completion report, signed by a qualified third party, certifying that the manure storage and collection portions of the catch basin have been constructed in accordance with the recommendations made in the submitted engineering report.

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 LA19002 includes a condition stating that Vander Veen shall not place livestock or manure in the manure storage portions of the feedlot pens or catch basin until NRCB personnel have inspected the facilities and confirmed in writing that they meets the approval requirements.