

Decision Summary LA19054

This document summarizes my reasons for issuing Authorization LA19054 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA19054. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

1. Background

On December 16, 2019, Riverbend Hutterian Brethren (Riverbend Colony) submitted a Part 1 application to the NRCB to expand an existing manure storage pad to a total of 45.7 m x 61.0 m (150 ft. x 200 ft.) at an existing multi species CFO. The Part 2 application was submitted on April 30, 2020 and I deemed the application complete the same day.

The purpose of the proposed construction is to increase the manure storage capacity at the existing site. There is no proposed increase in livestock.

Under AOPA, this type of application requires an authorization. (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 32-21-24 W4M in Vulcan County, roughly 12 km north of the hamlet of Mossleigh. The terrain is generally flat with the landscape sloping slightly towards the Bow River valley which is located immediately north of the CFO.

b. Existing permitted facilities

The existing, mixed livestock CFO holds NRCB approval LA18040 which permits the following livestock capacity:

- 150 milking dairy cows (plus replacements and dries)
- 24,000 chicken layers
- 24,000 chicken pullets
- 2,000 chicken broilers
- 200 geese
- 1,400 ducks
- 300 turkeys

2. Notices to affected parties

Under section 21 of AOPA, notice of an authorization application must be provided to municipalities that are “affected” by the application. Section 5 of AOPA’s Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the existing CFO is located. Under section 21(2) of the act, all affected municipalities are automatically also “directly affected” parties. The NRCB interprets section 21(3) as allowing affected municipalities to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Vulcan County is both an affected and directly affected party because the proposed manure storage pad expansion is located within its boundaries.

On April 30, 2020, the NRCB emailed referral letters and a copy of the application to Vulcan County; Alberta Health Services (AHS); Alberta Environment and Parks (AEP); and Alberta Transportation (AT).

3. Responses from the municipality and referral agencies

I received responses from Vulcan County, AEP, and Alberta Transportation. No response was received from AHS.

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

Ms. Erickson stated that the application does not fall within the exclusion area as identified in the Municipal Development Plan. Vulcan County did request the NRCB hold a public hearing prior to making a decision of the application. The application’s consistency with Vulcan County’s municipal development plan, is addressed in appendix A, attached.

Vulcan County has also requested the NRCB hold a public hearing in consideration of the application. Section 20(1)(b)(iv) of AOPA allows approval officers to hold “meetings and other proceedings” with respect to an approval application. In this case, Riverbend Colony has applied for an expansion to an existing manure storage pad which requires an authorization under the AOPA. There is no public notice requirement for this type of application. Therefore, I determined that the county’s request to consider holding a public meeting regarding the application would not be beneficial or appropriate considering the application scope and AOPA requirements.

Ms. Erickson also listed the setbacks required by Vulcan County’s land use bylaw (LUB) and noted that the application meets these setbacks.

Mr. Jeff Gutsell, a hydrogeologist, provided a written response on behalf of AEP. Mr. Gutsell raised no concerns regarding the application.

Ms. Leah Olsen, a development/ planning technologist, provided a written response on behalf of AT. Ms. Olsen raised no concerns regarding the application.

4. Environmental risk screening of existing and proposed facilities

When reviewing a new authorization 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/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was 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 Riverbend Colony's existing CFO facilities were assessed in 2018. According to that assessment, the 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 reassessed the manure storage pad with the proposed extension, using the NRCB's risk screening tool, and determined that it still poses a low 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.

In addition, the proposed construction is consistent with the land use provisions of Vulcan 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 construction:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS) with an exemption under Section 3(5)(c) of the Standard and Administration Regulation as the facilities are being constructed further away from an existing residence which is located north of the existing CFO.
- 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 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.

6. Terms and conditions

Authorization LA19054 permits the construction of the manure storage pad extension.

Authorization LA19054 also contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization LA19054 includes conditions that:

- Set a deadline of November 30, 2022 for the approved construction to be completed
- Require written confirmation from an engineer certifying that the manure storage pad extension meets the required specifications.
- Prohibit Riverbend Colony from placing manure on the manure storage pad extension until the pad has been inspected by the NRCB following its construction

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

7. Conclusion

Authorization LA19054 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19054.

Authorization LA19054 should be read in conjunction with previously issued Approval LA18040, which remains in effect.

June 10, 2020

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA19054

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may grant an application for an authorization 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 22 (2.1) 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.”).

Riverbend Colony’s CFO is in Vulcan County and is therefore subject to that county’s MDP. Vulcan County adopted the latest revision to this plan 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 CFOs.

Section 4.1 precludes new CFOs in the exclusion zones shown in Appendix B of the MDP. Riverbend Colony’s existing CFO is not within any of the exclusion zones shown 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, the proposed CFO facility meets 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 Riverbend Colony’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 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, Riverbend Colony's application is consistent with this sub-section because the CFO site is not within any environmentally sensitive area shown in the report referenced in the MDP. In addition, the site is approximately 500 metres away from the nearest environmentally sensitive area (classified as "flood plain," an area with major physical constraints for development). Because it is outside of, and 500 metres away from, the environmentally sensitive area it is unlikely to adversely impact or affect that area.

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 and is therefore not part of my consistency determination. The NRCB did notify Vulcan County, and several referral agencies of the authorization application, in accordance with NRCB policy.

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 22(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 5 of Technical Document LA19054. 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.

APPENDIX B: Explanation of conditions in Authorization LA19054

Authorization LA19054 includes several conditions, discussed below:

a. Groundwater protection requirements

Riverbend Colony proposes to construct the new manure storage pad with a 0.5 metre thick compacted soil liner with a hydraulic conductivity of less than 5×10^{-7} cm/sec. Section 9 of AOPA's Standards and Administration Regulation specifies this value as the maximum hydraulic conductivity for this type of liner in order to minimize leakage.

The regulations provide that the actual hydraulic conductivity of a 0.5 metre thick compacted soil liner must not be more than 5×10^{-7} cm/sec. To provide assurance that the as-built liner of the manure storage pad adequately protects groundwater, Authorization LA19054 includes a condition requiring Riverbend Colony to provide an engineer's completion report certifying that the solid manure storage pad was constructed with the same liner material as that used for hydraulic conductivity testing and that the solid manure storage pad was constructed according to the proposed procedures and design specifications.

b. Construction deadline

Riverbend Colony proposes to complete construction of the proposed manure storage pad extension by November 30, 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2022 is included as a condition in Authorization LA19054.

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, Authorization LA19054 includes a condition requiring Riverbend Colony to provide a copy of the completion report as discussed in Part a above, stamped by a professional engineer, certifying the suitability of the manure storage pad extensions compacted liner.

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. Authorization LA19054 includes a condition stating that Riverbend Colony shall not place manure on the manure storage pad extension until NRCB personnel have inspected the pad and confirmed in writing that it meets the authorization requirements.