



Decision Summary LA20022

This document summarizes my reasons for issuing Approval LA20022 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20022. 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 June 15, 2020, Van Driel Farms Ltd. (Van Driel) submitted a Part 1 application to the NRCB to expand an existing multi species CFO. The Part 2 application was submitted on July 8, 2020. On July 15, 2020, I deemed the application complete.

Van Driel received Enforcement Order 20-02 on June 9, 2020, for the unpermitted construction of pens #1 and #2 and catch basin #5 that are part of this application (as shown in Technical Document LA20022). In addition, the enforcement order also noticed an expansion of animals at this CFO. I have determined that the expansion of animal numbers and the constructed facilities require a permit and will included them in this approval. Therefore:

The proposed expansion involves:

- Increasing beef/dairy calf numbers from 1,746 to 3,000

As well as permitting the already constructed facilities:

- Pens – 128 m x 49 m and 43 m x 49 m
- Extension to dairy barn – 20 m x 15 m
- Catch basin – 24 m x 35 m x 3.5 m deep

The application also mentions a roof that was constructed over top of the existing calf pens (#6 on site plan) (81 m x 45 m), as well as a shelter to be constructed on the east side of the existing dairy barn within existing pens (#4). As both of these are built/ will be built over top of an existing footprint and the existing, grandfathered liner will not be compromised, no permit is required.

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 NE 22-8-25 W4M and NW 23-8-25 W4M in the Municipal District (MD) of Willow Creek, located approximately 4 km southeast of Fort Macleod, Alberta. The topography of the area is rolling to undulating.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval LA12014. This approval allows the construction and operation of a dairy CFO with 107 milking cows (plus associated dries and replacements) and 1,746 dairy calves. The CFO’s existing permitted facilities are listed in Approval LA20022.

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. The MD of Willow Creek 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 Macleod Gazette on July 15, 2020 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 the MD of Willow Creek, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Agriculture and Forestry (AF), and Alberta Transportation. Seventeen courtesy letters were sent to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius.

3. Responses from the municipality, referral agencies, and other affected parties

I received responses from AEP, Alberta Transportation, and AF. No response was received from the MD of Willow Creek or AHS. A statement of support was also received for the application.

As noted in section 2, the MD of Willow Creek is a directly affected party.

Ms. Cindy Chisholm, MD of Willow Creek, contacted me to inquire what facilities were already constructed and which ones would be new. However, I did not receive a final response to this application.

Mr. Gutsell, a hydrogeologist at AEP, sent a response to the application concluding that the

applicant must apply for and obtain appropriate water licensing for the current operation and its expansion. In a follow-up with the applicant, they provided a water licence obtained in February 2020 for the operation. Van Driel is reminded to obtain all necessary licenses as needed.

Mike Courtney, an inspector, replied on behalf of AF. Mr. Courtney stated AF has no concerns with the application.

Ms. Leah Olsen, a planning technologist with Alberta Transportation stated that a permit from her department is not required and that she has no concerns with this application.

The NRCB did not receive any statements of concern to its notice of the application.

4. Environmental risk screening of existing and proposed facilities

When reviewing new approvals applications 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, 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 Van Driel's existing CFO facilities were assessed in 2012. The assessment determined that the risks to surface water and groundwater were low.

Since the 2012 risk assessment, a new risk screening tool has been made available. For this reason, I re-assessed the risks posed by the CFO's existing facilities. My re-assessment found that all of the existing and proposed facilities pose a low risk to both surface and groundwater.

I also assessed the proposed new facilities, using the NRCB's risk screening tool, and determined that they all pose 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 expansion is consistent with the land use provisions of the MD of Willow Creek's municipal development plan and with the MD of Willow Creek'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 (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

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 and land use bylaw. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

6. Terms and conditions

Approval LA20022 specifies the new permitted livestock capacity as 107 milking cows (plus associated dries and replacements), and 3,000 beef/dairy calves. This approval also permits the use of the already constructed pens, the extension to the dairy barn, and the catch basin.

Approval LA20022 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.

In addition to the terms described above, Approval LA20022 includes a condition that requires the permit holder to retain a professional agrologist to conduct annual soil sampling in the area that receives runoff from pen #2 area.

For an explanation of the reasons for and details of this condition, see Appendix B.

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA20022: Approval LA12014 (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 LA2022 includes all existing terms and conditions in Approval LA12014, except the terms and conditions noted below. Construction conditions that are being carried forward are included in an appendix to the new approval.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition #2a from Approval LA12014 should be deleted and therefore will not be carried forward to Approval LA20022. My reason for deleting this condition is provided in Appendix B.

7. Conclusion

Approval LA20022 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20022.

Van Driel's Approvals LA12014 and LA05020X, Authorization LA06019, and municipal permit 43-89 are therefore cancelled, unless Approval LA20022 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approvals LA12014 and LA05020X, Authorization LA06019, and municipal permit 43-89 will remain in effect.

September 4, 2020

(Original Signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA20022

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may grant an approval only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable MD 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.”)

Van Driel Farms is located in the MD of Willow Creek and is therefore subject to that district’s MDP. The MD of Willow Creek adopted the latest revision to this plan on June 14, 2017, under Bylaw #1765.

As relevant here, section 9.2 of the MDP directs the NRCB to consider six provisions. These are quoted below (in italics); each one is followed by my discussion of how the provision related to this application. The requested considerations are:

(a) The cumulative effect of a new approval on any area near other existing CFO’s/ILO’s

This policy is likely not a “land use provision,” as 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. For this reason, I do not consider the MDP provision to be relevant to my MDP consistency determination. In any case, the application meets the AOPA requirements for minimum distance separation which is intended to mitigate nuisance impacts of CFO’s such as odours. Additionally, all CFO operators are required to meet AOPA nutrient loading limits for manure spreading which further mitigates the potential cumulative effects of a CFO.

(b) Environmentally significant areas contained in the MD of Willow Creek: Environmentally Significant Areas in the Oldman River Region report

Van Driel Farms CFO is not within any areas designated “environmentally significant” in the referenced report.

(c) Providing notice to adjacent landowners including applications for registration or authorization

This is likely not a “land use provision” because of its procedural focus and thus I do not consider it to be relevant to my MDP consistency determination. At any rate, as explained above, the NRCB met the notification requirements of AOPA. The NRCB emailed referral letters and a copy of the complete application to the MD of Willow Creek, Alberta Health Services (AHS), Alberta Environment and Parks (AEP) and Alberta Transportation. In addition, 17 courtesy letters were sent to people identified by the MD of Willow Creek as owning or residing

on land within the affected party radius of 1.5 miles. (See also Operational Policy 2016-8: *Approvals*, part 6).

(d) Applying minimum distance separation calculations to all country residential development

I interpret “minimum distance separation” as referring to the minimum distance separation (MDS) requirements in section 3 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no country residential development located within the MDS for Van Driel Farms Ltd.’s CFO and the application meets the AOPA MDS requirements.

(e) Restricting development in the flood plain, floodway, the flood way fringe and flood prone, or hazard lands within or adjacent to any watercourse within the MD; and

(f) Restricting development in any wetland or riparian area

Van Driel’s CFO meets the AOPA setbacks to common bodies of water and is not located in a known flood plain. The proposed CFO facility is also not located in a wetland or riparian area. This provision is therefore met by the application.

For these reasons, I conclude that the application is consistent with the land use provisions of the MD of Willow Creek’s MDP. The district’s response supports my conclusion.

In my view, the Land Use Bylaw is clearly incorporated in the MDP in section 15.5:
The Development Authority shall require the NRCB to take into consideration the policies adopted in this plan and the Land Use Bylaw, when issuing an approval.

Therefore I also considered the application’s consistency with this document. Under the MD of Willow Creek’s Land Use Bylaw (#1826 consolidated to Bylaw No. 1849 in April 2019), the subject land is currently zoned as Rural General. CFOs are not listed as a prohibited, permitted, or discretionary land use under this zoning. Ordinarily, a land use bylaw intends to preclude land uses that are not listed as permitted or discretionary (and that do not meet any other relevant criteria). However, the land use bylaw lists “intensive livestock operations” (ILOs), defined essentially as CFOs below AOPA’s permit thresholds, as a discretionary use within areas zoned Rural General. Therefore, I interpret the omission of CFOs from the lists of permitted and discretionary land uses as simply the municipality’s recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs above AOPA thresholds.

As for the lot size restriction, section 2(4) of the Rural General part of the bylaw states that the “parcel size shall remain the same size for which the development approval was originally issued.” Although CFOs are not specifically addressed in the LUB, it is my interpretation that the lot restrictions are intended to apply to both, ILOs that are permitted by the municipality, and CFOs above AOPA’s permit thresholds. Apart from that, this application is for a new CFO and section 2(4) does not apply.

Section 3 of the Rural General part of the bylaw lists several setbacks. The proposed feedlot pens and catch basins would meet the 75 ft road setback required under that section. For these reasons, I conclude that the application is consistent with the land use bylaw.

APPENDIX B: Explanation of conditions in Approval LA20022

Approval LA20022 includes several conditions, discussed below, and carries forward a number of conditions from LA12014 (see sections 2 and 3 of this appendix).

1. New conditions in Approval LA20022

Nutrient management testing requirements

Van Driel proposed an alternative runoff control mechanism for the runoff from pens #2. The expected runoff from these pens is 123 m³. The runoff is proposed to flow into the adjacent field (south of the pens #2). In order to not exceed the nutrient limits set out in Schedule 3 and section 25 of the Standard and Administration Regulation in this area, a condition will be added requiring Van Driel, or the permit holder, to retain a professional agrologist to conduct annual soil sampling of soils within 100 m (south, east and west) of the area where runoff leaves the pen area. The sampling area shall be divided into 4 equal sections with 3 samples per section that can be combined to composite samples for soil analysis (1 composite sample per section). Soil sampling and soil analysis shall be done according to Schedule 3 of the Standard and Administration Regulation. Soil test results must be submitted annually by December 15 to the NRCB, starting in 2020. The NRCB may revise those requirements as determined necessary, in writing.

2. Conditions carried forward from Approval LA12014

1. Manure storages
 - a. The NRCB is to be notified immediately if there is an overflow or leak from any of the manure storages

3. Manure application
 - a. Manure must not be spread on frozen or snow covered ground.
 - b. Solid manure applied to cropland must be incorporated within 48 hours of spreading as proposed by the operator.

3. Conditions not carried forward from LA12014

2. Nutrient Management
 - a. The applicant must maintain records as identified in AOPA and its associated regulations.

The applicant is required currently under Section 24 of the Standards and Administration Regulation to maintain and record nutrient limits. For this reason, this condition is not being carried forward as written, rather, this condition is being rewritten as a general statement that is included in all AOPA permits: *the permit holder shall comply with the requirements of the Agricultural Operation Practices Act and the regulations pursuant to the act.*