

Decision Summary LA20039

This document summarizes my reasons for issuing Approval LA20039 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20039. 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 September 22, 2020, Van Driel Farms Ltd. (Van Driel) submitted a Part 1 application to the NRCB to decrease milking cow numbers (plus associated dries and replacements) from 107 to 50 and to increase feeder calf numbers from 3,000 to 4,000 at an existing CFO. No new construction is proposed. The Part 2 application was submitted on October 6, 2020. On October 14, 2020, 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 NE 22-8-25 W4M and NW 23-8-25 W4M in the Municipal District (MD) of Willow Creek, approximately 4 km southeast of Fort Macleod, Alberta. The topography of the area is rolling to undulating. The closest common body of water is an ephemeral drainage 560 m to the south.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval LA20022. This approval allows the construction and operation of a dairy CFO with 107 milking cows (plus associated dries and replacements) and 3,000 feeder calves. The CFO’s existing permitted facilities are listed in Approval LA20039.

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 Municipal District (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 October 14, 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. Twenty two 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 directly affected parties

I received responses from the MD of Willow Creek, AHS, Alberta Transportation, AF and AEP. No responses were received from individuals or other non-government parties.

Ms. Cindy Chisholm, manager of planning and development with the MD of Willow Creek, provided a written response on behalf of the MD of Willow Creek. As noted in section 2, the MD of Willow Creek is a directly affected party.

Ms. Chisholm stated that the application is consistent with the MD of Willow Creek’s municipal development plan and that there are no concerns with this application. The application’s consistency with the MD of Willow Creek’s municipal development plan, is addressed in Appendix A, attached.

Mr. Robert Rippin, an executive officer/public health inspector with AHS, voiced concerns in respect to the CFO’s runoff control and manure management. These concerns are addressed in Appendix B below. Mr. Rippin also commented on the results of drinking water testing of water taken from a shallow well at this location. He suggested that this well might be influenced by spring runoff and recommended to take any necessary steps to protect groundwater from leachate from the feedlot. He also stated that CFOs in general produce dust that contain pathogens which could be harmful to human health. Because this concern is not specific to this application and human health issues are outside the jurisdiction of the NRCB I will not further address these concerns.

Ms. Leah Olson, a development/planning technologist with Alberta Transportation, stated that a permit from her department is not required and that there are no concerns with this application.

Mr. Stephan Desilets, manager inspections with AF stated that the producer does not produce milk at the present time and that his department has no concerns with this application.

Mr. Jeff Gutsell, hydrogeologist with AEP, stated in this response that there are currently no groundwater or surface water diversion authorizations issued for this land location. He also noted that it seems that this CFO is not located within any of the irrigation districts. He requested that the owner/operator of this CFO provides his department with the licence numbers for the water source they are currently using as well as additional water that might be required for the change in animal numbers. Because water licencing is solely governed by AEP I will not further discuss this concern and request. A copy of the response was forwarded to Van Driel for their information and action. In an email, sent November 11, 2020, Mr. Van Driel stated that he contacted AEP and was able to resolve the water licence issue with AEP.

4. Environmental risk screening of existing 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/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. 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.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.

In addition, the proposed CFO 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 or 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 AOPA's nutrient management requirements regarding the land application of manure

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.

I also 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 LA20039 specifies the new permitted livestock capacity as 50 milking cows (plus associated dries and replacements) and 4,000 feeder calves.

Approval LA20039 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 the following permit with Approval LA20039: Approval LA20022 (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 LA20039 includes all existing terms and conditions from Approval LA20022. Construction conditions that have been met are identified and included in an appendix to Approval LA20039.

7. Conclusion

Approval LA20039 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20039.

Van Driel's Approval LA20022 is therefore cancelled, unless Approval LA20039 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA20022 will remain in effect.

November 24, 2020

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by AHS

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).

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

Section 2 – Agriculture of the MDP points out that agriculture is a predominant land use in the MD while it is important to balance other interests. It continues to state that one of the main objectives of the MDP is to mitigate the siting of a CFOs to minimize conflicts with adjacent land uses. Policy 2.3 then continues to state that the MD shall establish guidelines with regards to the NRCB for the regulation an approval of CFOs within the MD. These guidelines are found in section 9.

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 Municipal District of Willow Creek: Environmentally Significant Areas in the Oldman River Region report

Van Driel’s CFO is close but 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 sent out courtesy letters to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius of 1.5 mile, gave public notice and therefore met the notification requirements of AOPA. (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’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

As discussed in Technical Document LA20039 Van Driel’s CFO meets the AOPA setbacks to common bodies of water and is not located in a known flood plain. 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 several sections throughout the MDP including section 15.5 which states:

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), the subject land is currently zoned as Rural General. CFOs are not listed as 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.” Since CFOs are not listed in the LUB, it is my interpretation that the lot restrictions are intended to apply to ILOs that are permitted by the municipality, and are not intended to apply to CFOs above AOPA’s permit thresholds.

Section 3 of the Rural General part of the bylaw lists several setbacks. The CFO existing facilities meet all of these setbacks.

APPENDIX B: Concerns raised by AHS

In a letter dated October 28, 2020, an AHS public health inspector stated that AHS was concerned about the adequacy of the CFO's runoff control. The public health inspector, Mr. Rippin, also referenced his response to Van Driel's last application that resulted in Approval LA20022. In his response he commented on runoff leaving the feedlot pen area and running along the county road eastwards.

In Decision Summary LA05020X, the responsible NRCB Approval Officer addressed this issue, stating that the "runoff from the existing dairy calf pen area was controlled and was not leaving property owned by the Van Driel's". This determination is still in place.

Mr. Rippin also commented on the results of drinking water testing of water taken from a shallow well at this location. He suggested that this well might be influenced by spring runoff and recommended to take any necessary steps to protect groundwater from leachate from the feedlot.

In his response, Mr. Rippin did not specify which water well has been tested. Currently, there are no water wells recorded at this site. Well 1250099 has been decommissioned due to lack of water. There is one water well on the SE 22-8-25 W4, water well 286157 with a reported UGR (uppermost groundwater resource) at 17.07 m below ground. The water bearing gravel layer of this well does not seem to extent to the NE 22-8-25 and NW 23-8-25 where the CFO is located.

To prevent manure spreading lands from accumulating nutrients, AOPA requires soil testing in addition to setting nutrient limits (Sections 23, 24, 25 including schedule 3 of the Standard and Administration Regulation, AOPA). These measures are in place to prevent the accumulation of nutrients and subsequent leaching on manure spreading lands. Van Driel is reminded to adhere to all applicable regulations in respect to manure spreading, including soil testing, nutrient limits, and setbacks as stated in the opening paragraph of this permit.