

Decision Summary LA21020

This document summarizes my reasons for issuing Registration LA21020 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21020. 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.

Under AOPA this type of application requires a registration. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On April 14, 2021, Hannah Logan and Dalin Van Hecke (Logan and Van Hecke) submitted a Part 1 application to the NRCB to construct a new sheep CFO consisting of 500 ewes and lambs, and 800 feeder lambs.

The Part 2 application was submitted on August 20, 2021. On September 1, 2021, I deemed the application complete.

The proposed CFO involves:

- Constructing a lambing barn - 24.4 m x 79.3 m (80 ft. x 260 ft.)
- Constructing eight pens for growing and feeding lambs - 19.8 m x 19.8 m each (65 ft. x 65 ft. each)
- Constructing a catch basin - 28 m x 15.5 m x 2.5 m deep

a. Location

The proposed CFO is located at NW 35-15-20 W4M in Vulcan County, roughly four kilometres south of the village of Lomond. The terrain is gently undulating with the entire site sloping towards the location of the proposed catch basin. The nearest common body of water is a Bow River Irrigation District canal located three kilometres east of the site.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by a registration application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- In the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a municipality entitled to divert water from that body within 10 miles downstream
- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a ½ mile (805 m) from the CFO
- all persons who own or reside on land within the greater of ½ mile (805 m) or the minimum distance separation for the land on which the CFO is located

A copy of the application was sent to Vulcan County, which is the municipality where the CFO is to be located.

The NRCB gave notice of the application by public advertisement in the Vulcan Advocate on September 1, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, five letters were sent to people identified by Vulcan County as owning or residing on land within the notification distance.

3. Notice to other persons or organizations

Under NRCB policy, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and the Bow River Irrigation District (BRID).

Comments were received from Alberta Transportation and no concerns were raised. No other referral agencies responded to the notice.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 22(9) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

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.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO 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.)

6. AOPA requirements

With respect to the technical requirements set out in the regulations, 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/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 9, the application meets all relevant AOPA requirements.

7. Responses from municipality and other directly affected parties

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application, and are entitled to request an NRCB Board review of the approval officer's decision. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the act as "directly affected." Vulcan County is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Ms. Anne Erickson, manager of developmental services with Vulcan County, provided a written response on behalf of Vulcan County. Ms. Erickson stated that the application is consistent with Vulcan County's land use provisions of the municipal development plan because it is located outside of the CFO exclusion zones. Ms. Erickson also indicated there is an intermunicipal development plan (IDP) between the Village of Lomond and Vulcan County. I confirmed that the subject CFO parcel is located outside of the IDP boundary area and the plan therefore does not apply to this application.

The application's consistency with Vulcan County's municipal development plan is addressed in Appendix A, attached.

Ms. Erickson confirmed the application meets the setbacks required by Vulcan County's land use bylaw (LUB).

No other responses were received.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. As summarized in section 6 above, this application meets all AOPA requirements and therefore is presumed to pose a low risk to surface and groundwater.

9. Terms and conditions

Registration LA21020 specifies the cumulative permitted livestock capacity as 500 ewes and lambs, and 800 lamb feeders and permits the construction of the lambing barn and year round indoor facility, eight pens and a catch basin.

Registration LA21020 contains terms that the NRCB generally includes in all AOPA registrations, 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, Registration LA21020 includes conditions that generally address construction deadline(s), and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

10. Conclusion

Registration LA21020 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21020.

October 15, 2021

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration LA21020

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may grant an application for a registration 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.”).

Logan and Van Hecke’s proposed 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 reads:

“New confined feeding operations (CFOs) are not permitted to be established and existing confined feeding operations are not permitted to expand within the exclusion areas as shown on the map in Appendix B (re: Confined Feeding Operation Exclusion Area). However, although new CFOs and expansions to existing CFOs are prohibited in the exclusion areas (as per the map in Appendix B), improvements with respect to the maintenance and/or environmental protection of an existing CFO are permitted.”

Section 4.1 precludes new CFOs in the exclusion zones shown in Appendix B of the MDP. The subject land location is not located in any of these areas.

Sub-sections 4.2(a), (c) and (d) of the MDP also provide several setbacks to roads. Based on the site plan, the proposed CFO facility would meet 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 the 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. Therefore I will not discuss these considerations further.

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 five courtesy letters, advising of the application, to the persons whose land is within 0.5 mile (805 m) of the proposed CFO site and published a general public notice in the local newspaper, in addition to notifying Vulcan County, and several referral agencies. Therefore, the NRCB’s notice process for registrations 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 not a “land use provision,” or, the sub-section is a “term or condition” under section 22(2.1) of AOPA. Therefore, this sub-section is 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 LA21020 See Operational Policy 2016-7: *Approvals*, part 8.10).

With consideration of the discussion above, I have concluded that the application is consistent with the land use provision of Vulcan County’s MDP. The county’s response confirms my conclusion.

APPENDIX B: Explanation of conditions in Registration LA21020

Registration LA21020 includes several conditions, discussed below:

1. Conditions in Registration LA21020

a. Construction Deadline

Logan and Van Hecke proposes to complete construction of the proposed new lambing barn, eight pens and catch basin by November 30, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2024 is included as a condition in Registration LA21020.

b. 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, Registration LA21020 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the lambing barn to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Logan and Van Hecke to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the lambing barn.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Registration LA21020 includes conditions stating that Logan and Van Hecke shall not place livestock or manure in the manure storage or collection portions of the new lambing barn, eight pens and catch basin until NRCB personnel have inspected the new lambing barn, eight pens, and catch basin and confirmed in writing that they meet the registration requirements.