

Decision Summary LA21051

This document summarizes my reasons for issuing Authorization LA21051 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21051. 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 an authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On October 19, 2021, Silver Winds Hutterian Brethren (Silver Winds) submitted a Part 1 application to the NRCB to construct a solid manure storage facility (MSF) (40 m x 17 m) at an existing multi species CFO.

The Part 2 application was submitted on October 19, 2021. On October 20, 2021, I deemed the application complete.

a. Location

The proposed MSF is located at NW 6-17-21 W4M in Vulcan County, roughly 18 km northwest of the Village of Lomond, AB. The terrain is undulating. The nearest watercourse is an unnamed tributary to Lake McGregor; the unnamed tributary is approximately 800 m south of the CFO.

b. Existing permits

The CFO is currently permitted under Approval LA17073.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is located or is to be located
- 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
- any other municipality whose boundary is within a notification distance.

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

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), and Alberta Transportation.

4. Municipal Development Plan (MDP) consistency

I have determined that 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.)

5. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed construction:

- 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 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 8, the application meets all relevant AOPA requirements.

6. Responses from municipality

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 facility is located within its boundaries.

Ms. Anne Erickson, a development officer 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. The application's consistency with the Vulcan County's municipal development plan is addressed in Appendix A, attached.

Ms. Erickson stated that Vulcan County council requests a public meeting be held regarding the application. As covered in section 3 above, I followed the requirements of the AOPA for notice for an authorization permit. A public meeting was not required for this application and therefore will not be held.

Ms. Erickson also listed the setbacks required by Vulcan County's land use bylaw (LUB) and noted that it is not certain if the application meets these setbacks. Based on the submitted application, the proposed manure storage pad will meet these setbacks.

7. Environmental risk of facilities

New manure storage facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. All permitted facilities were risk screened as part of Approval LA17073 which is still valid. For further detail on the risk screening completed for this site please refer to Technical Document LA17073.

8. Terms and conditions

Authorization LA21051 permits the construction of the solid manure storage pad.

Authorization LA21051 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 LA21051 includes conditions that generally address a construction deadline, and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA21051 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21051.

Authorization LA21051 must be read in conjunction with Silver Winds NRCB issued Approval LA17073, which remains in effect.

December 3, 2021

(original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA21051

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.”).

Silver Wind’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. Silver Wind’s 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 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. Nevertheless, the 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.

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 AOPA and 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 3 of Technical Document LA21051. See Operational Policy 2016-7: Approvals, part 8.10). In any case this application is for a manure storage pad and would not require any additional water.

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 LA21051

Authorization LA21051 includes several conditions, discussed below:

1. Construction deadline

Silver Wind's proposes to complete construction of the proposed manure storage pad by December of 2021. This time-frame is not reasonable for the proposed scope of work. In my opinion, a deadline allowing for two complete building seasons is more appropriate. The deadline of November 30, 2023 is therefore included as a condition in Authorization LA21051.

2. Post-construction inspection and review

The NRCB's general practice is to include conditions in new permits to ensure that the new or expanded facilities are constructed according to the required design specifications.

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 LA21051 includes a condition stating that Silver Wind's shall not place manure on the manure storage pad until NRCB personnel have inspected the pad and confirmed in writing that it meets the authorization requirements.