



Decision Summary LA18055

This document summarizes my reasons for issuing Authorization LA18055 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA18055. That document and the full application are available from the decisions search engine on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca. 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 October 1, 2018, Vanee Livestock Marketing & Truck Wash (Vanee) submitted a Part 1 application to the NRCB to construct a new manure storage pad. The Part 2 application was submitted and deemed complete on February 26, 2019.

The proposal involves constructing a 100 metre x 80 metre manure storage pad that would store manure from Vanee's truck wash which is located in the City of Lethbridge. There is no livestock associated with the manure storage pad.

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 proposed facility is located at NE 19-9-20 W4M in Lethbridge County, roughly 7 km northeast of the City of Lethbridge. The terrain is flat.

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 proposed facility 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.)

Lethbridge County is both an affected and directly affected party because the proposed facility is located within its boundaries.

On February 26, 2019, the NRCB emailed referral letters and a copy of the application to Lethbridge County; Alberta Health Services (AHS); Alberta Environment and Parks (AEP); Alberta Transportation; and the St. Mary River Irrigation District (SMRID).

3. Responses from the municipality and referral agencies

I received responses from Lethbridge County, AEP, Alberta Transportation, and the SMRID. No response was received from AHS.

Ms. Hilary Janzen, a senior planner, provided a written response on behalf of Lethbridge County. As noted in section 2, the Lethbridge County is a directly affected party.

Ms. Janzen stated that the application is consistent with the Lethbridge County's municipal development plan and there are no other planning type documents which apply to the referred area. The applications consistency with Lethbridge County's municipal development plan is addressed in Appendix A, attached.

Ms. Janzen also listed the setbacks required by the Lethbridge County's land use bylaw (LUB) and noted that the application must meet the 125 foot setback to the center of the county's road.

Mr. Jeff Gutsell, a hydrogeologist, submitted a written response on behalf of AEP. Mr. Gutsell stated AEP has no comments on this application.

Ms. Leah Olsen, a development/ planning technologist, submitted a written response on behalf of Alberta Transportation. Ms. Olsen stated a permit would be required from their department. In following up with Alberta Transportation, it was later confirmed that though the section of land is within an area requiring permits, the manure storage pad itself is not. Therefore, a permit would not be required from their department.

Ms. Linda Park, a land administrator, provided a written response on behalf of the SMRID. Ms. Park stated the SMRID is opposed to the application as the subject property slopes towards Eight Mile Lake which then connects to the SMRID canal system. This concern is addressed in Appendix B, attached.

4. Environmental risk screening of the proposed facility

As part of my review of this application, I assessed the risk to surface water and groundwater posed by the manure storage pad. I used the NRCB's environmental risk screening tool for this purpose (see NRCB Operational Policy 2016-7: *Approvals*, part 8.13). The 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.)

The proposed manure storage pad poses a low potential 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 6.¹

In addition, the proposed construction is consistent with the land use provisions of Lethbridge County's municipal development plan and with Lethbridge County's land use bylaw. (See Appendix A for a more detailed discussion of the county's planning requirements.)

1. For a summary of these requirements, please see the [2008 AOPA Reference Guide](#), available on the NRCB website at www.nrcb.ca/about/documents).

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)
- 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 LA18055 permits construction of the proposed solid manure storage pad.

Authorization LA18055 also contains terms that the NRCB generally includes in all AOPA authorization, 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 LA18055 includes conditions that:

- Set a deadline of November 30, 2019 for the approved construction to be completed
- Prohibit Vanee from placing manure on the proposed manure storage pad until the facility has been inspected by the NRCB following its construction
- Require Vanee to control all run-on and run-off water at the site of the manure storage pad
- Prohibit Vanee from storing more than a maximum of 5,000 tonnes of manure on the manure storage pad at any one time

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

7. Conclusion

Authorization LA18055 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA18055.

April 12, 2019


Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by the St. Mary River Irrigation District (SMRID)
- C. Explanation of conditions in Authorization LA18055

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may approve 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 8.2.5.). 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.”).

Vanee’s proposed manure storage pad is located in Lethbridge County and is therefore subject to that county’s MDP. Lethbridge County adopted the latest revision to this plan on January 20, 2010 under Bylaw #1331.

CFOs and by extension, related facilities, are addressed in section 6.6 of the MDP.

As relevant here, section 6.6.3(a) states that the county “shall restrict the development of CFOs in the Rural Urban Fringe.” Vanee’s proposed manure storage pad is not in any of the rural urban fringe areas designated in the MDP, so the proposal is consistent with this policy.

Section 6.6.3(d)(II) states that the NRCB “should also consider” the following:

- The cumulative effect of a new approval on any area near other existing confined feeding operations.
- Environmentally sensitive areas as shown in the report, *County of Lethbridge: Environmentally Significant Areas in the Oldman River Region* (see maps in Appendix C).
- Giving notice to adjacent landowners even in the case of applications for registration or authorization, and
- Applying MDS calculations to all county residential clusters whether or not they are specifically designated in the land use bylaw.

The first of these three items is likely not a land use provision because of its project-specific focus (viewed cumulatively with other existing CFOs), and its request for the NRCB to make a discretionary judgement about the degree of cumulative effects that are acceptable. Therefore, this policy is not relevant to my MDP consistency determination (See Operational Policy 2016-7: *Approvals*, part 8.2.6.). That said, AOPA provides guidance with respect to the siting of facilities to minimise nuisance effects on neighbouring residences.

As for the second item, the CFO is not located in or close to any of the environmentally significant areas noted in the report referenced in the MDP.

The third of these four considerations is likely not a land use provision because it requests notification to adjacent landowners about registration and authorization applications. Sections 19 and 21 of AOPA determine the required notification process.

The fourth item appears to refer to the “minimum distance separation” (MDS) requirements under AOPA. Under NRCB policy, approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. (See also Operational Policy 2016-7: *Approvals*, part 8.2.5.) Nonetheless, Vanee’s manure storage pad meets AOPA’s required MDS to the nearest country residential cluster.

Section 6.6.3(d) (IV) of the MDP states that a CFO “shall not be approved in the areas shown and designated on Figure 11B as exclusion areas.” Vanee’s manure storage pad is not located in any of the designated CFO exclusion areas, so the application is consistent with this policy.

Finally, section 6.6.3(e) of the MDP imposes and lists development setbacks. The proposed facility meets these setbacks.

For these reasons, I conclude that the application is consistent with the relevant land use provisions of Lethbridge County’s MDP. As stated above, the municipality has no concerns with this application, and stated that the application is consistent with its MDP and that no other planning-type documents apply to this application.

The CFO is also subject to Lethbridge County’s Land Use Bylaw (LUB) #1404, which the MDP clearly intends to incorporate as stated in section 6.6.3. (e) *development setbacks: “council will require the application of development setbacks for confined feeding operations to meet the current setbacks applicable to public roadways and property lines as per the Lethbridge County Land Use Bylaw stipulations”*. Under that bylaw, the subject land is currently zoned Rural Agriculture. CFOs and CFO expansions are a discretionary use under this bylaw. Under NRCB policy, CFO expansions are considered to be consistent with a LUB’s land use zoning provisions, if CFOs are listed as either a permitted or discretionary land use for the relevant land use district (See NRCB Operational Policy 2016-7: *Approvals*, part 8.3.).

APPENDIX B: Concerns raised by the St. Mary River Irrigation District (SMRID)

In a letter dated March 4, 2019, an SMRID land administrator stated their district is opposed to the application as they have concerns regarding the potential for surface water contamination.

The proposed manure storage pad is located 490 metres from the nearest SMRID canal. The land between the storage pad and the canal is flat and berms along the canal would prevent manure contaminated water from entering the canal. In addition, Vanee has committed to controlling run-on and run-off water at the site of the proposed storage pad. This commitment is reflected in condition #3 of Authorization LA18055.

As discussed above in Decision Summary LA18055, the proposed manure storage pad poses a low risk to surface water. As such, it is my opinion that the application adequately addresses this concern.

APPENDIX C: Explanation of conditions in Authorization LA18055

Authorization LA18055 includes several conditions, discussed below:

1. Conditions in Authorization LA18055

a. Construction Deadline

Vanee proposes to complete construction of the proposed new manure storage pad by November, 30 2019. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2019 is included as a condition in Authorization LA18055.

b. Post-construction inspection and review

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 LA18055 includes a condition stating that Vanee shall not place manure on the manure storage pad until NRCB personnel have inspected the manure storage pad and confirmed in writing that it meets the authorization requirements.

c. Operating Conditions

Vanee has committed to controlling all surface water run-on and run-off. A condition has been included in Authorization LA18055 requiring that these controls are maintained at all times.

A condition has also been included in Authorization LA18055 setting a maximum storage capacity of 5000 tonnes of manure at the site. This condition also requires Vanee to immediately contact the NRCB if this threshold is ever exceeded.