

Decision Summary RA20037

This document summarizes my reasons for issuing Registration RA20037 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20037. 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 July 28, 2020 Weinans Poultry Farm Ltd., and Gerard and Rineke Weinans (Weinans Poultry) submitted a Part 1 application to the NRCB to convert livestock category on an existing sheep CFO. The application is to convert the existing 700 ewes with lambs and 900 feeder sheep, and expand it into a beef CFO with 500 feeder calves. The Part 2 application was submitted on July 28, 2020. On August 4, 2020, I deemed the application complete.

There is no construction proposed with this application.

Under AOPA, this type of application requires a registration. (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 SE 6-33-27 W4 in Mountain View County, approximately 19 km east of Olds, Alberta. The terrain is nearly level with a general slope towards the east.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Registration RA14031A. This registration allows the construction and operation of a sheep CFO with 700 ewes with lambs and 900 feeder sheep. The CFO’s existing permitted facilities are listed in an Appendix of Registration RA20037.

2. Notices to affected parties

Under section 21(1) of AOPA, the approval officer must notify all “affected parties” of a registration 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 existing CFO is located. Mountain View County is an affected party under the Part 2 Matters Regulation, because the CFO is located within its boundaries.

Under section 21(1) of the act, affected parties also include owners and occupants of land that is within the “minimum distance separation” or 0.5 miles from the parcel of land where the CFO is located, whichever distance is greater. (The NRCB refers to this distance as the “affected party radius.”)

Under section 21(3) of the act, all affected owners and occupants of land are entitled to provide written submissions regarding whether the application meets the requirements of the regulations

under the act. (The NRCB interprets this section as implying that it includes municipalities. See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Under section 21(2) of the act, affected municipalities are automatically also considered “directly affected” parties. Under section 21(3), all owners or occupiers of land who are affected parties may apply for a determination as to whether they are directly affected parties. However, under NRCB policy, all affected parties 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.

All directly affected parties are entitled to request that the NRCB’s board members review the approval officer’s decision on the registration application.

The NRCB published notice of the application in the Mountain View Gazette on August 4, 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 Mountain View County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Transportation. Twelve courtesy letters were sent to people identified by Mountain View County as owning or residing on land within the affected party radius.

3. Responses from the municipality and referral agencies

I received responses from the county and AT. No response was received from AHS or AEP.

Ms. Peggy Grochmal, a permitting and development officer, provided a written response on behalf of Mountain View County. As noted in section 2, Mountain View County is a directly affected party.

Ms. Grochmal stated that the application to convert the existing sheep confined feeding operation (CFO) into a beef CFO was brought to the Municipal Planning Commission “for their review”. Her response indicated that the application is consistent with the county’s municipal development plan (MDP).

Ms. Grochmal also listed the setbacks required by Mountain View County’s land use bylaw (LUB) and noted that it appears that the existing facilities meet these setbacks.

The application’s consistency with Mountain View County’s MDP, is addressed in appendix A attached.

Ms. Carly Cowles, a development and planning technologist with AT, indicated that as there is no construction proposed with the application, AT has issued an exemption from the permit requirements for this development.

No responses were received from individuals or other non-government parties.

4. Environmental risk screening of the existing facilities

When reviewing a new registration 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 Weinans Poultry's existing CFO facilities were assessed in 2014. 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 conversion and expansion is consistent with the land use provisions of Mountain View County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed CFO conversion:

- 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

6. Terms and conditions

Registration RA20037 specifies the new permitted livestock capacity as 500 beef feeder calves.

Registration RA20037 also 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.

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated Registration RA14031A with Registration RA20037 (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 summarized above, Registration RA20037 includes all existing terms and conditions from Registration RA14031A. Construction conditions that have been met are identified and included in an appendix to Registration RA20037.

7. Conclusion

Registration RA20037 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA20037.

Registration RA14031A is therefore cancelled, unless Registration RA20037 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Registration RA14031A will remain in effect.

October 2, 2020

(Original Signed)
Francisco Echegaray, P.Ag.
Approval Officer

Appendix:

A. Consistency with the municipal development plan

APPENDIX A: Consistency with the municipal development plan

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

Weinans Poultry’s CFO is located in Mountain View County and is therefore subject to that county’s MDP. Mountain View County adopted the latest revision to this plan on August 22, 2018, under Bylaw #09/12.

As relevant here, section 2.0 of the MDP provides a “growth management strategy” that is reflected in the land use map in Figure 3 of the MDP. Because the land use designations in Figure 3 are not meant to be definitive, the MDP’s “growth management strategy” based on these designations is not considered to be a “land use provision”, rather it helps to identify where the location of CFO’s would be considered to be more suited within the county. Because of this I do not consider it to be relevant to my MDP consistency determination.

At any rate, Weinans Poultry’s CFO is within the “Agricultural Preservation Area” marked on Figure 3. Section 2 of the MDP explains that the “majority” of this area is subject to the “applicable Land Use Policies outlined in section 3.0 of the MDP...” (Figure 3 identifies a sub-part of this area as a “concentrated confined feeding operation” area). Weinans Poultry’s CFO is located within this concentrated CFO area.

As relevant here, sub-section 3.3.15 precludes new CFOs within 1.6 km (1 mile) of any identified residential growth centre or urban centre shown in Figure 3. Weinans Poultry is an existing CFO so this policy is not relevant to my MDP consistency determination. Regardless, the CFO is not within this 1.6 km setback.

Sub-section 3.3.17 states that applications for new or expanding CFOs “shall meet all Provincial standards.” This sub-section likely isn’t a “land use provision” and therefore is not relevant to my MDP consistency determination. Regardless, Weinans Poultry’s application meets AOPA requirements, as discussed in part 6 above.

No other policies in section 3.0 preclude Weinans Poultry’s application. Therefore, their proposed CFO conversion and expansion is an acceptable land use within the Agricultural Preservation Area of the MDP. Thus, the CFO is consistent with the MDP.

For these reasons, I conclude that the application is not inconsistent with the land use provisions of Mountain View County’s MDP.

In my view, under sections 3.3.5, 3.3.14, 13.3.1 and 13.3.2, amongst others, Mountain View County's MDP provides a clear intent to adopt provisions from the land use bylaw # 16/18 (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered Mountain View County's LUB. Under that bylaw, the subject land is currently zoned as Agriculture. CFOs are not listed as permitted or discretionary use in this district. Section 9.5 of the LUB states that CFOs are regulated by the NRCB under provincial regulations, and are therefore exempt from municipal control under the land use bylaw.

Section 9.5.1 (b)(i) of the LUB relates to required CFO (new and expanding) setbacks (0.5 miles) from multi-parcel residential development, any urban centre, school, or hospital. This CFO is not located near any of these and meets this setback requirement. Section 9.5.1 (b)(ii) relates to MDS requirements in AOPA. As noted in Part 6 of this Decision Summary, the CFO meets the MDS requirements.