

Decision Summary RA20045

This document summarizes my reasons for issuing Registration RA20045 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20045. 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 November 2, 2020, Klarenbeek Farms Ltd., and applicants Andries and Ellen Boersma (the Boersmas) submitted a Part 1 application to the NRCB to expand an existing goat dairy CFO from 400 to 1,258 milking goats (plus kids and replacement animals). The Part 2 application was also submitted on November 2, 2020. On November 12, 2020, I deemed the application complete.

There is no proposed construction 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 SW 34-41-26 W4M in Lacombe County, roughly 2.5 km west of Morningside, Alberta. The terrain is nearly level with a general slope to the north.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Registration RA16055. This registration allows the construction and operation of a goat dairy CFO with 400 milking goats (plus kids and replacement animals). The CFO’s existing permitted facilities are listed in an appendix of Registration RA20045.

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. Lacombe County is an affected party under the Part 2 Matters Regulation, because the existing CFO is located within its borders.

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 Lacombe Express on November 12, 2020 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the application to Lacombe County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Agriculture and Forestry (AF), and right of way holders ATCO Gas & Pipelines Ltd. Thirty courtesy letters were sent to people identified by Lacombe 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, AHS, AEP, AF, and ATCO Gas & Pipeline.

Ms. Allison Noonan, planning services administrative assistant with Lacombe County, provided a written response on behalf of the county. As noted in section 2, Lacombe County is a directly affected party.

Ms. Noonan stated that the application is consistent with Lacombe County’s municipal development plan (MDP). The application’s consistency with Lacombe County’s MDP is addressed in Appendix A, attached.

Ms. Noonan also indicated that the application meets the setbacks required by Lacombe County’s land use bylaw (LUB).

The NRCB also received a response from Mr. Quentin Schatz, an AHS environmental health officer/executive officer, indicating that AHS has no concerns with this application. Mr. Schatz recommended in his response that existing water wells have a 90 day retention time.

Ms. Laura Partridge, a senior water administration officer with AEP, sent an email, to the applicant and the NRCB, with information related to water licencing under the *Water Act*. The applicant is reminded that they need to obtain and maintain a water license in accordance with the *Water Act*.

Mr. Stephan Desilets, inspections manager, responded on behalf of AF. Mr. Desilets acknowledged receipt of the application, and provided the name of the inspector assigned to the CFO. AF did not provide any other comments.

Ms. Carolyn Ross, a senior land administrator coordinator, responded on behalf of ATCO Gas & Pipeline indicating that there is not transmission in the area.

4. Responses from other directly affected parties

The NRCB received one response from Keith and Donna Round (NE 26-41-28 W4M). The response letter was in support of the application.

Mr. and Ms. Round own or reside on land within the 0.5 mile radius for affected persons. Because their location is within this radius, they are presumed to be directly affected by the application.

5. Environmental risk screening of existing and proposed 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 the Boersmas' existing CFO facilities were assessed in 2016. 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.

6. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 7.

In addition, the proposed CFO expansion is consistent with the land use provisions of Lacombe 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 expansion:

- 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 springs and common bodies of water. The existing CFO facilities are located within 100 metres of two water wells; however, an exemption of the 100 metres water well setback was granted under Registration RA16055.
- 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

7. Terms and conditions

Registration RA20045 specifies the new permitted livestock capacity as 1,258 milking goats (plus kids and replacement animals).

Registration RA20045 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 RA16055 into Registration RA20045 (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 RA20045 includes all existing terms and conditions from Registration RA16055. Construction conditions that have been met are identified and included in an appendix to Registration RA20045.

8. Conclusion

Registration RA20045 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA20045.

Registration RA16055 is therefore cancelled, unless Registration RA20045 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Registration RA16055 will remain in effect.

January 22, 2021

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

Appendices:

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.”).

The Boersmas’ CFO is located in Lacombe County and is therefore subject to that county’s MDP. Lacombe County adopted the latest revision to this plan on July 9, 2020, under Bylaw 1238/17. As relevant here:

Section 3.3.1 states that “All lands in the County shall be deemed to be agricultural lands unless otherwise designated by the Municipal Development Plan, an approved statutory or non-statutory plan, the Land Use Bylaw, or provincial legislation.”

I consider this section to be a procedural in nature and not a valid land use provision. However, it does provide insight for the interpretation of the remaining portions of the MDP and land use bylaw (LUB).

Section 3.9.1 of the county’s MDP states that the “County shall provide input on applications for confined feeding operations to the Natural Resources Conservation Board (NRCB) under the *Agricultural Operations Practices Act*. The county’s support is subject to the following:

a) No new confined feeding operation shall be permitted less than 1.6 kilometres (1 mile) from the boundary of:

- i) a town, village, summer village or hamlet;
- ii) an area developed or designated for multi-lot residential use; or
- iii) a provincial or municipal park or recreation area, or other area used or intended to be used for a recreational facility development,

except that where provincial regulations require a larger setback distance, that distance shall apply.

Further restriction on the development of confined feeding operations may apply as directed by an Intermunicipal Development Plan or other local plan approved by Council.”

The Boersmas’ application is for an expansion of an existing CFO; regardless the CFO is located outside any of these 1.6 km setbacks.

As for section 3.9.1’s reference to intermunicipal development plans (IDP) or other plans approved by the county’s council, this CFO is not located within land identified as part an IDP or any other plans.

For these reasons, I conclude that the application is consistent with the land use provisions of Lacombe County's MDP. This conclusion is consistent with the county's written response to the application.

In my view, under sections 1.3.4 and 3.3, the MDP clearly intends to incorporate Lacombe County's LUB #1237/17 (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3). Accordingly, I considered the LUB.

Under that bylaw, the subject land is currently zoned as Agricultural "A" District. CFOs are not listed as either a permitted or discretionary use within that zoning category. However, section 3.2(2)(j) of the LUB states that CFOs do not require a development permit. I interpret this provision as meaning either that the county intended CFOs to have the same effective status as listed permitted uses, or that the county simply does not intend to address CFOs in its LUB (given that the NRCB's permitting role since AOPA came into effect in 2002). Under either interpretation, the proposed CFO does not conflict with the LUB.