

Decision Summary LA20034

This document summarizes my reasons for issuing Registration LA20034 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20034. 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 July 29, 2020, Quintus Dairy Ltd. (Quintus) submitted a Part 1 application to the NRCB to expand an existing sheep and dairy CFO. On March 1, 2021, Quintus submitted an updated Part 1 application.

The Part 2 application was submitted on February 26, 2021. On March 10, 2021, I deemed the application complete.

The proposed expansion involves:

- Extending one sheep pen (north of pen area 2) – (by) 73 m x 21 m
- Construct a pen north of pen area 1 (area includes an existing shelter (24 m x 9 m)) – 26 m x 20 m
- Construct one pen north of pen area 2 (19 m x 41 m)
- Increase the sheep ewes (with lambs) numbers from 90 to 130

a. Location

The existing CFO is located at SW 9-20-13 W4M in the County of Newell, roughly 12 km northeast of the Town of Brooks. The terrain is flat. The closest common body of water is an ephemeral creek 70 m to the west and 810 m to a creek.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed registration under section 18.1 of AOPA. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix B attached. The deemed facilities are listed in the appendix to Registration LA20034.

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:

- 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

The notification distance is 0.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

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

The NRCB gave notice of the application by public advertisement in the Brooks Bulletin on March 10, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, nine letters were sent to people identified by the County of Newell 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 Eastern Irrigation District.

I also sent a copy of the application to TC Energy.

The NRCB received a response from Leah, Olsen, planning/development technologist with Alberta Transportation; and Kayla McCarthy, community planner with TC Energy.

Ms. Olsen stated in her response that a permit is not required and that her department has no concerns with this application. Ms. McCarthy stated that they have no concerns with this application.

The NRCB did not receive responses from any other persons or organizations.

4. Alberta Land Stewardship Act (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 expansion is consistent with the land use provisions of the County of Newell’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 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 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

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.” The County of Newell is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Maria Jackson, Supervisor of Planning and Development with the County of Newell, provided a written response on behalf of the County of Newell. Ms. Jackson stated that the application is consistent with the County of Newell’s land use provisions of the municipal development plan. The application’s consistency with the County of Newell’s municipal development plan, are addressed in Appendix A, attached.

Ms. Jackson also listed the setbacks required by the County of Newell’s land use bylaw (LUB) and noted that the application meets these setbacks.

No responses were received from any other person, organization, or member of the public.

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO’s existing manure storage facilities and manure collection areas. I used the NRCB’s environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within 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 assessment found that all existing facilities at this CFO pose a low potential risk to groundwater and surface water. The proposed facilities also pose a low risk to groundwater and surface water.

9. Terms and conditions

Registration LA20034 specifies the cumulative permitted livestock capacity as 130 sheep ewes (with lambs) and 73 dairy cows (plus associated dries and replacements), and permits the extension of a sheep pen (north of pen area 2), one pen north of pen area 2, and expansion of one pen in pen area 1.

Registration LA20034 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 LA20034 includes conditions that generally address construction deadlines and construction inspections. For an explanation of the reasons for these conditions, see Appendix C.

10. Conclusion

Registration LA20034 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20034.

Quintus's deemed registration is therefore superseded, unless Registration LA20034 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed registration will remain in effect.

April 14, 2021

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determination of deemed permit status
- C. Explanation of conditions in Registration LA20034

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for a registration or amendment of a registration if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, 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.”). “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Quintus’s CFO is located in the County of Newell and is therefore subject to that county’s MDP. The County of Newell adopted the latest revision to this plan on February 2013, under Bylaw # 1705-10, consolidated to Bylaw 1761-13.

The MDP policies relating to CFOs are in part 7. Section 7.1 states that the County “shall restrict the development of CFOs within the established urban fringe areas ...”

Quintus’ CFO is not located in any of the urban fringe areas designated in the MDP, so the proposal is consistent with this policy.

Section 7.2 states that the NRCB “should also consider” the following:

- Proximity to water bodies to minimize negative impact on drinking water supplies;
- The “cumulative effect of a new approval” on any area new other CFOs;
- Environmentally sensitive areas as shown on the report “environmentally Significant Areas of the County of Newell (1991)”;
- Giving notice to adjacent landowners even in case of application for authorizations.

Quintus’ CFO is not close to a common body of water. This policy therefore does not apply.

The second of these four items does not apply because this permit is an expansion of an existing operation and therefore not a “new approval”. In addition, this provision is likely not a land use provision as it calls for site-specific discretionary judgements (viewed cumulatively with other existing CFOs), so it is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.)

As for the third item, the CFO is not located in an environmentally significant area as listed in the report and is therefore consistent with this policy.

As for the fourth item in section 7.2, this item is likely not a land use provision because of its focus on process and therefore does not need to be considered in my MDP consistency determination. As explained above, the NRB did notify the County of Newell, several referral agencies, as well as all land owners within a 0.5 mile radius in addition to placing a notice in the Brooks Bulletin newspaper (see also Operational Policy 2016-7: approvals, part 7.5) The notification requirements under AOPA have been met.

Section 7.3 of the MDP states that the county “may use the [MDS] method...to establish separation distances between proposed developments and [CFOs].” This policy appears to refer to the “minimum distance separation” (MDS) requirements under AOPA. However, in several review decision, the NRCB’s board members have made it clear that approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. That said, the county may still rely on this for other developments that the county regulates.

Section 7.4 of the MDP states that the county “will impose a [CFO] exclusion zone” around the City of Brooks shown on the map in Appendix C. The applicant’s CFO is not located in the designated CFO exclusion area, so the application is consistent with this part of the plan.

Finally, section 7.5 of the MDP states that, as a “general guideline”. The county will use an 800 meter development setback from all reservoirs. However, this setback can be adjusted on a case-by-case basis depending on topography and other factors. As proposed, the proposed sheep pens meet this suggested setback of 800 meter to a reservoir and is therefore consistent with this policy.

For this reason, I conclude that the application is consistent with the land use provisions of County of Newell’s MDP.

Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also consider the County of Newell’s Land Use Bylaw # 1892-17 (consolidated to bylaw #1943-19 – April 2019). Under that bylaw, the subject land is currently zoned Agriculture. Although the land use bylaw does not explicitly mention CFOs (or intensive livestock operations) I would categorize it under ‘Agricultural operation’ which is a permitted use of land under that land zoning.

APPENDIX B: Determination of deemed permit status

Quintus claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status. Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO/MSF.

The investigation was to determine if the capacity of the livestock housing facilities that were constructed prior to January 1, 2002 when AOPA came into effect, would have triggered a permit under AOPA.

The CFO is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities were at a size that was at or greater than the permit threshold sizes under AOPA. (See NRCB Operational Policy 2016-6: *Public Notice on Grandfathering Decisions*, part 1.)

To determine whether the CFO meets these two criteria, the NRCB must consider, among other things what facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics.

The NRCB published notice of the grandfathering determination as part of the notice for the proposed new sheep pens application, in the Brooks Bulletin on March 10, 2021.

As seen on aerial photos taken between 1999 and 2003 (Valtus) the following facilities were present:

- Dairy barn (U-shape): 16 m x 46 m + 27 m x 21 m + 27 m x 19 m
- Earthen liquid manure storage (EMS) irregular shape: 49 m x 34 m + 29 m x 20 m with a depth of 3.6 m
- Pen area 1 with shelter: 43 m x 45 m
- Pen area 2 (triangular shape): 61 m x 73 m x 91 m

These facilities have not changed since these photos were taken.

Under section 18.1(2)(a) of AOPA, if a CFO existed on January 1, 2002, the CFO's deemed capacity is its physical capacity to confine livestock on January 1, 2002.

The dairy barn has 70 free stalls. Using Technical Guideline Agdex 096-81 - Calculator for determining livestock capacity of operations as they existed on January 1, 2002, Table 2, the capacity of the barn with 70 free stalls would be 84 head (70 freestalls x 1.2). Quintus' claim to have housed 73 dairy cows is therefore realistic.

The existing pens (triangular shape) are used to house associated livestock. The applicant's claim to have 73 milking cows plus associated dries and replacements is reasonable.

The pen area 1 has a total area of 43 m x 45 m. Using the guideline mentioned above, the space allocation for ewes is 6.5 m² (70 ft²) per animal. Quitus' claim to have housed 35 ewes with lambs is therefore reasonable.

Based on these findings, the CFO is considered to have a deemed registration and a deemed capacity of 73 dairy cows (plus associated dries and replacements) and 35 ewes with lambs.

I did not receive any other comments or submissions relating to this grandfathering determination.

APPENDIX C: Explanation of conditions in Registration LA20034

a. Construction Deadline

Quintus proposes to complete construction of the proposed extension of a sheep pen (north of pen area 2), one pen north of pen area 2, and expansion of one pen in pen area 1 by December 31, 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2023 is included as a condition in Registration LA20034.

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.

Registration LA20034 includes a condition stating that Quintus shall not place livestock or manure in the manure storage or collection portions of the new sheep pens until NRCB personnel have inspected the sheep pens and confirmed in writing that they meet the registration requirements.