

Decision Summary RA21004

This document summarizes my reasons for issuing Registration RA21004 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21004. 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 January 14, 2021, Bas and Alicia van Oeveren (the van Oeverens) submitted a Part 1 application to the NRCB to construct a new CFO at an existing grazing sheep farm.

Prior to filing the Part 1 application the van Oeverens sheep farm did not include a CFO component. Their farm operation largely relied on grazing; pens were used for overnighting (protection from predators) and overwintering of the sheep breeding herd. Their barns and related shelters were used for breeding, lambing and protection from poor weather. Their existing facilities were not used to confine or feed livestock outside of the grazing season aside from the above reasons.

The reported plan for the proposed year round indoor sheep facility (I refer to as the sheep barn) is to allow for multiple lambings per year without a rest period. In addition, the barn will be used to confine and feed lambs and feeder sheep that are to be sold at market which are not part of the replacement flock.

Based on the above, I reviewed the NRCB's Sheep Confined Feeding Operation Determinations Guideline (Operational Guideline 2019-1) to determine what is and is not considered to be part of a CFO. Provided that the existing facilities and their associated livestock are operated properly, they are not considered to be part of the CFO. If the operation of the existing facilities should change, the NRCB needs to be contacted to confirm if they require a permit under the AOPA. The proposed sheep barn is a CFO facility under the NRCB's guideline and requires a permit under the AOPA.

The Part 2 application was submitted on February 17, 2021. On March 4, 2021, I deemed the application complete. The Part 2 application propose to construct a sheep barn (19.8 m x 61 m) to house 400 ewes with lambs and 700 feeder sheep.

a. Location

The proposed CFO is located at SW 26-46-27 W4M in Wetaskiwin County, roughly 3.5 km north of Falun, AB. The terrain slopes gently to the northwest towards an intermittent headwater of Falun Creek which is located approximately 45 m from the proposed barn.

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:

- 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
- 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

For the size of this CFO the specified notification distance is ½ mile. (The NRCB refers to this distance as the “affected party radius.”)

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

The NRCB gave notice of the application by public advertisement in the Pipestone Flyer on March 4, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, twelve letters were sent to people identified by Wetaskiwin County 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 Agriculture and Forestry (AF), and Alberta Transportation (AT). I also sent a copy of the application to Apex Utilities Ltd.

Ms. Pamela Kutuadu, an executive officer/public health inspector with AHS, Ms. Laura Partridge, a senior water administration officer with AEP, Mr. Stephan Desilets, manager of the inspection unit with AF and, Ms. Cindy Skjaveland, a development and planning technologist with AT, did not have any objections to the proposed development.

I did not receive a response from Apex Utilities Inc., nor from other persons or organizations.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 22(9) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan. There is no ALSA regional plan for the area where the proposed CFO is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of Wetaskiwin County'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 CFO:

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence
- Meets the required AOPA setbacks from 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

With MDS exemption noted above and one exemption to a water well (discussed in section 9 below), the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

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." Wetaskiwin County is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Mr. Jarvis Grant, a development officer with Wetaskiwin County, provided a written response on behalf of Wetaskiwin County. Mr. Grant stated that the development authority has no concerns with the proposed CFO. The application's consistency with Wetaskiwin County's municipal development plan is addressed in Appendix A, attached.

Mr. Grant also noted that the application meets Wetaskiwin County's land use bylaw setbacks, except for the setbacks noted in sections 9.6.12 and 9.12.2(I). I reviewed those sections of the land use bylaw and note how those sections relate to development towards a CFO, not the development of a CFO. For this reason, the application does not conflict with the land use bylaw.

Apart from municipalities, an owner or occupant of land within the notification distance may request to be considered "directly affected." The NRCB did not receive any responses from individuals or other parties.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who

waives the MDS requirements in writing to be automatically considered a directly affected (see NRCB Operational Policy 2016-7: Approvals, part 6.2). Mr. Brady Zielke provided an MDS waiver and is a directly affected party.

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 proposed barn. 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 proposed barn poses a low potential risk to surface water and groundwater.

As noted in section one (above) there are other facilities at this land location, but they are not considered to be part of the CFO. Based on this, I have not completed an environmental risk screening of those facilities.

9. Exemption

I determined that the proposed sheep barn is located within the required AOPA setback from an existing water well. As explained in Appendix B, an exemption to the 100 m water well setback is warranted as the barn is to be located 80 m from and down gradient from the van Oeveren's water well.

10. Terms and conditions

Registration RA21004 specifies the cumulative AOPA permitted livestock capacity as 400 ewes with lambs and 700 feeder sheep. It also permits the construction of the sheep barn.

Registration RA21004 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 RA21004 includes conditions that generally address a construction deadline, document submission and construction inspection.

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

11. Conclusion

Registration RA21004 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21004.

April 29, 2021

(Original Signed)
Jeff Froese
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Exemption from water and well setback
- C. Explanation of conditions in Registration RA21004

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.)

The van Oeveren’s CFO is located in Wetaskiwin County and is therefore subject to that county’s MDP. Wetaskiwin County adopted the latest revision to this plan in 2020 under Bylaw 2020/58.

As relevant here, Objective 1.4 of the MDP aims to “minimiz[e] ... land use conflict” between CFOs and “surrounding land uses.” Following this statement, the MDP notes that, while CFOs are under provincial jurisdiction, it is the county’s intent to “minimiz[e]” the “negative effect” of CFOs. The MDP also reports the county’s view that, the *Municipal Government Act* “requires” the county to identify where new CFOs may be located.

These statements are likely not “land use provisions” by themselves, but they provide context for considering five policies listed under Objective 1.4.

The first of five policies in Objective 1.4 states that the “minimum distance setback of Alberta Agriculture Code of Practice, as amended, should be maintained.” It is unclear whether this policy was meant to apply to only new or expanding CFOs and/or to CFOs that are now permitted by the NRCB rather than the county.

In addition:

- the code of practice referenced in this policy was effectively replaced by AOPA, for NRCB-permitted CFOs. Thus, the reference to the Code’s MDS provisions “as amended” likely now refers to the MDS requirements in the Standards and Administration Regulation under AOPA.
- NRCB policy is clear that approval officers should not consider MDP provisions that are based on or modify the MDS requirement under AOPA. See NRCB Operational Policy 2016-7: *Approvals*, part. 8.2.5.

At any rate, as noted in Technical Document RA21004, the proposed CFO meets the MDS requirements under AOPA to all surrounding residences with one exception. The owner of that residence has provided the van Oeverens a MDS waiver.

The second policy in objective 1.4 does not apply to this application as it relates to “intensive livestock operations” that are still permitted by the county.

The third policy lists setbacks for new CFOs. The proposed CFO meets the specified 2.4 km setback to urban developments schools and hospitals, the 1.6 km setback to specified lakes and the AOPA setback (30 m) to non-specified lakes, wetlands and water courses (common bodies of water).

Neither of the two remaining three policies under Objective 1.4 apply to this application as 1.4.4 and 1.4.5 relate to the siting of new residences in the county and those near the Millet-Wetaskiwin Acreage Study Area. This application is for the construction of a CFO, not a residence and these sections are not applicable to this application.

For the above reasons, I consider the application to be consistent with the land use provisions of the County’s MDP. The county’s response to the application confirms this conclusion.

APPENDIX B: Exemption from water well setback

The proposed sheep barn is to be located less than 100 m from a water well. I have confirmed that one water well are located approximately 80 m from it during a site visit and through review of scaled air photos. This is in conflict with the section 7(1)(b) of the Standards and Administration Regulation (SAR). Section 7(2) allows for exemptions if, before construction, the applicant can demonstrate that the aquifer into which the water well is drilled is not likely to be contaminated by the manure storage facility (MSF)/manure collection area (MCA), or if required by an approval officer a groundwater monitoring program is implemented.

Under the regulation, one basis for granting an exemption is if the approval officer implements a groundwater monitoring program of the water well(s) in question. Another basis for granting an exemption is if the “aquifer into which the well is drilled is not likely to be contaminated” by the proposed MSF or MCA.

The potential risks of direct aquifer contamination from the MSF/MCA are presumed to be low if the applicant’s proposed MSF/MCA meets AOPA’s technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. The distance between the well and the proposed MSF/MCA
- d. Whether the well is up- or down-gradient from the MSF/MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 8.7.1.

The water well:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 80 m southwest of the sheep barn is likely AEP water well ID #2088658. This well is reported to have been installed in 2014 and has a perforated or screened zone from 31.4 m to 36.6 m below ground level across sandstone. It was installed with a casing that extends above ground level and is used for domestic and non-domestic purposes. The well’s log identifies a protective layer of clay and rocks from ground surface to 7.3 m below ground level. The well has a bentonite seal from ground surface to 24.4 m below ground level across the clay and rock layer and subsequent layers. The well appeared to be in good condition at the time of my site inspection. The well is up-gradient of the proposed CFO.

The NRCB has developed a “water well exemption screening tool,” based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well.¹

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document RA21004. Based on the above, I am prepared to grant an exemption to the 100 m water well setback requirement for the sheep barn.

1. A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.

APPENDIX C: Explanation of conditions in Registration RA21004

Registration RA21004 includes several conditions, discussed below:

a. Construction Deadline

The van Oeverens proposes to complete construction of the proposed new sheep barn by January 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 22, 2023 is included as a condition in Registration RA21004.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new permits to ensure that the new facilities are constructed according to the required design specifications. Accordingly, Registration RA21004 includes a condition requiring the concrete used to construct the liner of the manure collection and storage portion of the sheep barn to be sulphate resistant and have a minimum 28-day compressive strength of 25 MPa. The van Oeverens need to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Registration RA21004 includes a condition stating that van Oeverens shall not place livestock or manure in the manure storage or collection portions of the new sheep barn until NRCB personnel have inspected it and confirmed in writing that it meets the registration requirements.