

Decision Summary RA22004

This document summarizes my reasons for issuing Registration RA22004 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA22004. 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 20, 2022, Weinans Poultry Farm Ltd., and Gerard & Rineke Weinans (Weinans Poultry) submitted a Part 1 application to the NRCB to convert livestock category at an existing beef CFO. The application is to convert the existing permitted 500 feeder calf CFO into a 41,000 chicken broiler CFO. The Part 2 application was submitted on February 4, 2022. On February 15, 2022, I deemed the application complete.

The proposed modification involves converting the existing beef (calf) barn into a poultry barn by upgrading its existing clay liner to a concrete liner (84 m x 24 m)

The application also notified the NRCB of the proposed construction of an addition to the existing equipment room of 12.2 m x 11.3 m for a total of 24.4 m x 22.6 m. This facility is an “ancillary structure,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure does not need to be permitted under the act.

a. Location

The existing CFO is located at SE 6-33-27 W4M in Mountain View County, approximately 19 km east of Olds, Alberta. The terrain is nearly level with a general slope towards a slough to the east.

b. Existing permits

To date, the CFO has been permitted under NRCB Registration RA20037. That permit allowed the construction and operation of a beef CFO with 500 feeder calves. The CFO’s existing permitted facilities are listed in the appendix to Registration RA22004.

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

The land zoning on which the CFO is located would require a minimum distance separation of 180 metres. Therefore, the notification distance is 0.5 metres. (The NRCB refers to this distance as the “affected party radius.”) CFO is not within 100m of the bank of a river, stream or canal.

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

The NRCB gave notice of the application by public advertisement in The Albertan on February 15, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, twelve letters were sent to people identified by Mountain View 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), and Alberta Transportation (AT).

I only received a response from AT.

Ms. Charlene Johnson, a development and planning technologist with AT, indicated that AT offers no objections to this proposal.

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 conversion is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO conversion is consistent with the land use provisions of Mountain View County’s MDP. (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 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 springs, and common bodies of water
 - Has sufficient means to control surface runoff
 - 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 the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements. The exemption that are required to address the AOPA requirements around the water well setback is discussed in the following parts of this decision summary.

7. Responses from the 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.” Mountain View County is an affected party (and directly affected) because the proposed CFO conversion is located within its boundaries.

Ms. Peggy Grochmal, a permitting and development officer, provided a written response on behalf of Mountain View County.

Ms. Grochmal stated that the application to convert the existing beef CFO into a poultry 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). The application’s consistency with Mountain View County’s MDP is addressed in Appendix A, attached.

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.

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

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require surface and/or groundwater monitoring for the facility. In this case a determination was made and monitoring is not required.

When reviewing a new registration application for an existing CFO, NRCB approval officers assess the CFO’s existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB’s environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST 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 supported 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 using the ERST. According to that assessment, the facilities posed a low potential 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 facilities is not required.

9. Exemptions

I determined that the proposed converted barn is located within the required AOPA setback from a water well. As explained in Appendix B, an exemption to the 100 metre water well setback is warranted due to the construction of the water well, and the barn having walls, roof and concrete floor.

10. Terms and conditions

Registration RA22004 specifies the cumulative permitted livestock capacity as 41,000 chicken broilers and permits the conversion of the beef (calf) barn into a poultry barn.

Registration RA22004 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 RA22004 includes conditions that generally address a construction deadline, document submission and a construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Registration RA22004: Registration RA20037 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the co-permit holders, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. 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. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix C discusses which conditions from the historical permits are or are not carried forward into the new registration.

11. Conclusion

Registration RA22004 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA22004.

NRCB issued Registration RA20037 is therefore superseded, and its content consolidated into this Registration RA22004, unless Registration RA22004 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Registration RA20037 will remain in effect.

March 30, 2022

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

Appendices:

- A. Consistency with the municipal development plan
- B. Exemption from water well setback
- C. Explanation of conditions in Registration RA22004

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for 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.)

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 October 13, 2021, under Bylaw #25/21.

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 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 # 21/21 (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 9.6 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 9.6.1 (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 9.6.1 (b)(ii) relates to MDS requirements in AOPA. As noted in Part 6 of this Decision Summary, the CFO meets the MDS requirements.

APPENDIX B: Exemption from natural water well setbacks

Water Well Considerations

The proposed barn conversion is located less than 100 m from a water well. I have confirmed during a site visit that one water well is located approximately 40 m from it. This is in conflict with the section 7(1)(b) of the *Standards and Administration Regulation (SAR)* under AOPA.

Section 7(2), however, 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), and, if required, a groundwater monitoring program is implemented.

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 40 m south of the barn to be converted into a poultry barn is likely AEP water well ID # 2090971. This well is reported to have been installed in 2020 and has a perforated or screened zone from 29 m to 44.2 m below ground level across stratigraphy. This well is used for non-domestic purposes. The well's log identifies a protective layer or layers from ground surface to 19.2 m below ground level. The well has a bentonite seal from ground surface to 27.4 m below ground level. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage. The well is cross-gradient of the CFO and MSF.

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

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

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document RA22004.

APPENDIX C: Explanation of conditions in Registration RA22004

Approval RA22004 includes several conditions, discussed below. Construction conditions from historical Registration RA20037 that have been met are identified in the appendix to Registration RA22004.

a. Construction Deadline

Weinans Poultry proposes to complete construction of the proposed conversion of the beef (calf) barn into a poultry barn by December 31, 2022. In my experience, a time frame allowing two full construction seasons may be more appropriate to allow for unexpected construction delays. The deadline of November 30, 2023 is included as a condition in Registration RA22004.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Registration RA22004 includes a condition requiring the concrete used to construct the liner of the manure collection and storage portion for the conversion of the beef (calf) barn into a poultry barn shall meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas." Weinans Poultry shall 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 RA22004 includes a condition stating that Weinans Poultry shall not place livestock or manure in the manure storage or collection portions of the converted beef (calf) barn into a poultry barn until NRCB personnel have inspected it and confirmed in writing that it meets the registration requirements.