

Decision Summary RA22013

This document summarizes my reasons for issuing Registration RA22013 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA22013. 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 February 24, 2022, Peter and Anette Nooijen (the Nooijens) submitted Part 1 and Part 2 applications to the NRCB to change the category and type of livestock at an existing CFO from swine farrow to wean (250) to sheep ewes/rams (738).

On March 17, 2022, I deemed the application complete.

The proposed CFO conversion will include the removal of some of the existing barn's interior walls and replacing with penning suitable for sheep. There are no proposed changes to the liners for the existing barn (62.2 m x 19.5 m) or synthetically lined liquid manure storage (36 m x 39 m x 3.5 m deep).

a. Location

The existing CFO is located at SW 23-38-20 W4M in County of Stettler, roughly 3.5 km south of the Stettler airport. The terrain slopes gently towards a slough located approximately 135 m to the south.

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. That deemed permit includes County of Stettler issued development permit 9897, issued November 10, 1998. This deemed registration allows for the construction and operation of a 240 sow farrow to wean CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Decision Summary RA07012. The deemed facilities are listed in the appendix to the Registration RA22013.

To date, the NRCB has issued Registration RA07102 on August 15, 2007. At the permit holder's request Registration RA07012 was cancelled on December 9, 2010. Despite Registration RA07012 being cancelled, the grandfathering determination in Decision Summary RA07012 still remains valid.

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 from the CFO
- all persons who own or reside on land within the greater of ½ mile 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 185 metres. Therefore, the notification distance is the larger ½ mile. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to the County of Stettler, which is the municipality where the CFO is located. It was not sent to other municipalities as none are located within ½ mile of the CFO. Further, the CFO is not located within 100 m of the bank of a river, stream, or canal.

The NRCB gave notice of the application by public advertisement in the Stettler Independent on March 17, 2022. The full application was made available for public viewing on the NRCB website. As a courtesy, ten letters were sent to people identified by the County of Stettler as owning or residing on land within the affected party radius.

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), and Alberta Environment and Parks (AEP).

I also emailed a copy of the application to AltaGas Utilities Inc. and ATCO Electric Ltd. as they have an interest in the land.

Balraj Deol, a public health inspector/executive officer with AHS, did not raise concerns with the application. His response included general comments related to the protection of groundwater, disposal of deceased livestock and nuisances.

Laura Partridge, a senior water administration officer with AEP, did not raise concerns with the application. She indicated in her response that the existing registration under the Water Act is sufficient for the proposed livestock.

These responses have been forwarded to the Nooijens for their information.

I have not received responses from AltaGas Utilities Inc. or ATCO Electric Ltd.

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 CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed change in livestock at the CFO is consistent with the land use provisions of the County of Stettler'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 CFO modification:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure

This application meets all relevant AOPA requirements.

I note that the barn and synthetically lined liquid manure storage are within 100m of water well 291768. This appears to be contrary to section 7 of the Standards and Administration Regulation, but that section does not apply to existing permitted facilities. The barn, liquid manure storage and water well were all constructed and permitted (from the deemed registration) before AOPA's setback requirement came into effect.

7. Responses from municipality and other 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 Stettler is an affected party (and directly affected) because the CFO is located within its boundaries.

Jacinta Donovan, the director of planning services with the County of Stettler, provided a written response on behalf of the county. Ms. Donovan stated that the application is consistent with the county's municipal development plan. The application's consistency with the County of Stettler's municipal development plan is further discussed in Appendix A, attached.

Ms. Donovan listed the setbacks required by the County of Stettler's land use bylaw (LUB) and noted that the application meets the property boundary setback requirements. She also indicated in her response that the CFO is located adjacent to, but not within the plan boundary for the existing Town of Stettler and County of Stettler Intermunicipal Development Plan (IDP).

Ms. Donovan also indicated that the county and town IDP was under review. She included a map of the proposed CFO exclusion area in the draft IDP. This CFO remains adjacent to, but

not within, the draft IDP plan area as well as the draft IDP CFO exclusion area.

No other responses were received.

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.)

I assessed the CFO's existing barn and synthetically lined liquid manure storage using the ERST. Both pose a low potential risk to groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening results provided by the ERST accurately reflects the level of risk to surface water and groundwater at this CFO.

9. Terms and conditions

Registration RA22013 specifies the permitted livestock capacity as 738 ewes/rams.

Registration RA22013 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.

For clarity, and pursuant to NRCB policy, I consolidated the deemed registration, including the County of Stettler issued development permit 9897, with Registration RA22013 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, 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 B discusses which conditions from the historical permits are or are not carried forward into the new registration.

10. Conclusion

Registration RA22013 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA22013.

The Nooijen's deemed registration, including the County of Stettler issued development permit 9798, is therefore superseded, and its contents consolidated into this Registration RA22013, unless Registration RA22013 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.

May 4, 2022

(Original Signed)
Jeff Froese
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration RA22013

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 Nooijens’ CFO is located in the County of Stettler and is therefore subject to that county’s MDP. The County of Stettler adopted the latest revision to this plan on June 25, 2014, under Bylaw 1529-14. The MDP sections relevant to this application are discussed below.

Subsection 4.15(a) states that “the county supports any application for CFO development and/or expansion if it complies with the AOPA regulations...”. While I am of the opinion that this subsection is not a land use provision, it still provides an insight into the interpretation of the remaining portions of the MDP.

Subsection 4.15(d) states that the CFO site “must be located” in either the Agricultural District or the Agricultural Preserve District under the county’s land use bylaw, otherwise the county will ask the NRCB to include a condition in the permit requiring the applicant to obtain rezoning from the county. This CFO is located within the Agricultural District. Therefore, this application is consistent with this MDP policy.

Subsection 4.15(e) states that the “proposed location of a CFO structure must comply with the minimum front, side and rear yard setbacks for farm buildings as described in the land use bylaw.” This is likely not a land use provision as it calls for site specific information. I am of the opinion that this subsection is a test or condition and as noted above is not considered as part of my MDP consistency analysis. Regardless, the existing manure collection areas and manure storage facility meet the setback requirements in the county’s land use bylaw.

Subsection 4.15(f) states that the county may request that the NRCB include a condition in the permit requiring the applicant to enter into a road use agreement with the county. This is likely not a land use provision. Nevertheless, the county has made no such request in the case of this application. Further, NRCB policy is not to use AOPA permit conditions to require applicants to enter into road use agreements. (See NRCB Operational Policy 2016-7: Approvals, part 8.9.)

Subsections 4.15(h) and (i) preclude new or expanding CFOs within any exclusion zones identified in an intermunicipal development plan or in any area structure, concept and outline plans listed in those subsections. This CFO is adjacent to the plan boundary of the Town of

Stettler and County of Stettler Intermunicipal Development Plan, but not within it or any of the other stated exclusion zones.

For these reasons, I conclude that the application is consistent with the land use provisions of the County of Stettler's MDP that I may consider.

In my view, the text of the County of Stettler's MDP also provides a clear intent to adopt provisions from the land use bylaw (LUB), in sections 1.0, 3.6, 4.1, 4.7, 4.15, and 4.16. Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also considered the County of Stettler's Land Use Bylaw #1602-18 (most recently amended on September 8, 2021). Under that bylaw, the subject land is currently zoned as Agricultural District.

CFOs are not listed as permitted or discretionary land uses within the Agricultural District. The LUB provides further direction on this in section 8.1 where CFOs are exempted from the definition of agricultural operations. However, section 91.14 of the bylaw states that the county "supports the location" of CFOs in the Agricultural District, if they "comply with the relevant policies" in the county's MDP, particularly, the exclusion zones cross-referenced in the inter-municipal development plans, and around approved area structure plans, concept plans and outline plans.

In light of the above, I am of the opinion that the CFO does not conflict with the LUB.

APPENDIX B: Explanation of conditions in Registration RA22013

As this application does not propose the construction of any new manure collection areas or manure storage facilities, and the existing ones do not warrant the inclusion of new conditions, there are no new conditions to discuss.

Registration RA22013 carries forward the three conditions from the deemed permit, including the County of Stettler issued development permit 9897. Those conditions are:

1. Concrete manure storage to be large enough to contain at least one year of manure.
2. Dead animals are to be taken to a rendering plant.
3. Sealing of manure tank to be certified by a qualified consultant to the satisfaction of the County of Stettler No. 6.

There is evidence in the NRCB file that the synthetically lined liquid manure storage was inspected by an engineer in 1999, well before AOPA came into effect. Considering how the CFO, including the barn and the synthetically lined liquid manure storage, has been operational since before AOPA came into effect and after the county issued development permit 9897, I am of the opinion that conditions one and three are construction conditions that are already met. These conditions will be carried forward, but be noted as already being met and be located in the appendix to Registration RA22013.

NRCB-issued permits generally do not include conditions relating to dead animal disposal because this activity is regulated directly by Alberta Agriculture, Forestry and Rural Economic Development's Inspection and Investigation Branch, under the *Animal Health Act*. (See Operational Policy 2016-7: Approvals.)

Despite this, the above condition is more stringent than the requirements of the *Animal Health Act*. NRCB Operational Policy 2016-1: Amending Municipal Permit Conditions states at part 2.2.4 that approval officers will not, on their own motion, delete or amend a municipal permit condition relating to dead animal disposal that is more stringent than the *Animal Health Act*. For this reason, I am carrying this condition forward into Registration RA22013.