

Decision Summary RA23033

This document summarizes my reasons for issuing Registration RA23033 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23033. 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 December 19, 2023, Andrew and Amy Koehn operating as Koehn Farms Ltd. (Koehn Farms) submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on January 9, 2024. On January 17, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 26,208 chicken pullets and 6,912 chicken layers to 26,208 chicken pullets and 12,768 chicken layers
- Constructing a new layer barn – 77.72 m x 15.24 m with attached manure shed – 12.19 m x 6.09 m
- Decommissioning the existing layer barn

a. Location

The existing CFO is located at SE 15-30-25 W4M in Kneehill County, roughly four kilometres southeast of Linden, Alberta. The terrain is slightly undulating with a gentle slope towards the south. The closest common body of water is an unnamed intermittent creek located 270 m to the northeast of the proposed layer barn.

b. Existing permits

The CFO was originally permitted by Kneehill County on August 6, 1997, under development permit #1815-97. This permit allowed the construction and operation of a poultry CFO with the capacity for 6,718 laying hens. The pullet barn burned down in November 2017 and was partially decommissioned. On July 16, 2019, Registration RA19022 was issued which determined the grandfathering capacity to be 6,912 chicken layers and permitted the construction and operation of a new pullet barn, manure shed and increase in livestock capacity to 26,208 chicken layers. The CFO's existing permitted facilities are listed in the appendix to Registration RA23033.

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; and
- 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 MDS for the CFO is 273 metres. Therefore, the notification distance is ½ mile. (The NRCB refers to this distance as the “notification distance”.)

None of the CFO facilities are located within 100 m of a bank of a river, stream, or canal.

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in Three Hills Capital newspaper in circulation in the community affected by the application on January 17, 2024, and
- sending 15 notification letters to people identified by Kneehill County as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours.

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 Protected Areas (EPA).

I also sent a copy of the application to Atco Electric Ltd., Harvest Hills Gas Co-op Ltd., and Ember Resources Inc. as right of way holders.

Ms. Rasheedat Bakare, a public health inspector with AHS, provided a written response including her assessment of the application which addressed water wells at the facility, manure disposal, and disposal of dead animals. Ms. Bakare concluded that there are no objections to the application.

No other responses from any other organization were received.

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 to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Kneehill 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 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

With the terms and conditions summarized in part 9 and in Appendix B, the application meets all relevant AOPA requirements.

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

Ms. Barb Hazelton, manager of planning and development with Kneehill County, provided a written response on behalf of Kneehill County. Ms. Hazelton stated that the application is consistent with the land use provisions of Kneehill County's municipal development plan. The application's consistency with the land use provisions of Kneehill County's municipal development plan, are addressed in Appendix A, attached.

I reviewed the setbacks required by Kneehill County's land use bylaw (LUB) and noted that the application meets these setbacks.

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 responses from any individuals or parties.

8. Environmental risk of CFO facilities

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 9.17.

In this case, the risks posed by Koehn Farms' existing CFO facilities were assessed in 2019 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

9. Terms and conditions

Registration RA23033 specifies the cumulative permitted livestock capacity as 26,208 chicken pullets and 12,768 chicken layers and permits the construction of the new layer barn with attached manure shed as well as the decommissioning of the existing layer barn.

Registration RA23033 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 RA23033 includes conditions that generally address construction deadlines, document submission, construction inspections, and decommissioning of the existing layer barn. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated Registration RA19022 with Registration RA23033 (see NRCB Operational Policy 2016-7: Approvals, part 11.5). 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 RA23033 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23033.

Koehn Farms' previously issued Registration RA19022 is therefore superseded, and its content consolidated into this Registration RA23033, unless Registration RA23033 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Registration RA19022 will remain in effect.

March 26, 2024

(Original signed)
Sarah Neff
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration RA23033

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.

“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 9.2.7.)

Koehn Farms’ CFO is located in Kneehill County and is therefore subject to that county’s MDP. Kneehill County adopted the latest revision to this plan on February 23, 2021, under Bylaw #1829.

As relevant here:

Policy 11 of the MDP under Agriculture, states that “no new or expansions of existing confined feeding operations (CFOs) will be allowed in the following areas:

- (i) In hazard lands or environmentally sensitive lands as defined by the province and the 2010 Summit Report,
- (ii) Within 1.6 kilometres (1 mile) of any hamlet or grouped Country Residential development, or
- (iii) Within 1.6 kilometres (1 mile) of an urban fringe area or an Intermunicipal Development Plan boundary

Koehn Farms’ CFO is not located within any of these setbacks or exclusion zones.

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

APPENDIX B: Explanation of conditions in Registration RA23033

Registration RA23033 includes several conditions, discussed below, and carries forward one condition from Registration RA19022 (see section 2 of this appendix). Construction conditions from historical Registration RA19022 that have been met are identified in the appendix to Registration RA23033.

1. New conditions in Registration RA23033

a. Construction Deadline

Koehn Farms proposes to complete construction of the proposed layer barn with attached manure shed by September 2025. It is my opinion that a longer construction deadline is more reasonable for the proposed scope of work, which will allow for unexpected contractor or supply delays. Therefore, a deadline of September 30, 2026, is included as a condition in Registration RA23033.

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 RA23033 includes conditions requiring:

- i. the concrete used to construct the liner of the manure collection and storage portion of the new layer barn and attached manure shed to 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.” The permit holder shall provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the layer barn with attached manure shed.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Registration RA23033 includes a condition stating that Koehn Farms shall not place livestock or manure in the manure storage or collection portions of the new layer barn or place manure in the manure shed until NRCB personnel have inspected the layer barn and manure shed and confirmed in writing that it meets the registration requirements.

c. Facility decommissioning

As noted in part 1 above, Koehn Farms proposes to decommission the existing layer barn. A condition has been included in Registration RA23033 requiring the existing layer barn to be decommissioned in accordance with Technical Guideline Agdex 096-90, “Closure of Manure Storage Facilities and Manure Collection Areas” and must be decommissioned within 1 year of the birds being removed from the barn.

2. Conditions carried forward and modified from Registration RA19022

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition 7 from RA19022 should be carried forward:

7. **Operating conditions** (carried forward from Kneehill County Development Permit #1815-97). The following manure spreading setbacks shall apply:

- no less than one mile (1.6 km) from the nearest boundary of a multi-parcel country residential or hamlet, or urban municipality
- no less than 400ft. (122 m) from a water course or water body which is not entirely surrounded by the parcel of land, unless written permission is granted by the NRCB.