

Decision Summary RA18090

This document summarizes my reasons for issuing Registration RA18090 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA18090. That document and the full application are available from the decisions search engine on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca. 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.

1. Background

On December 14, 2018, Michael Froese, on behalf of 5 Mile Farms, submitted a Part 1 application to the NRCB to expand an existing poultry confined feeding operation (CFO). The Part 2 application was submitted on December 14, 2018. On January 22, 2019, I deemed the application complete.

The proposed CFO expansion involves:

- Increasing livestock numbers from 20,000 to 20,505 chicken layers (plus associated pullets)
- Constructing a new poultry barn and a manure storage pad (67.1 m x 15.9 m, and 11 m x 11 m)

The purpose of the new poultry barn is to replace an older barn that burned down in the summer of 2018.

Under AOPA, this type of application requires a registration. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The existing CFO is located at NW 26-43-19 W4M in Camrose County, roughly 7.5 km northeast of Meeting Creek, AB. The terrain is slightly undulating, sloping to the east.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Registration RA16010. This registration allows the construction and operation of a 20,000 chicken layers (plus associated pullets). The CFO's existing permitted facilities are listed in an Appendix of Registration RA18090.

2. Notices to affected parties

Under section 21(1) of AOPA, the approval officer must notify all “affected parties” of a registration application. Section 5 of AOPA's Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the existing CFO is located. Camrose County is an affected party under the Part 2 Matters Regulation, because the CFO is located within its borders.

Under section 21(1) of the act, affected parties also include owners and occupants of land that is within the “minimum distance separation” or 0.5 miles from the parcel of land where the CFO is

located, whichever distance is greater. (The NRCB refers to this distance as the “affected party radius.”)

Under section 21(3) of the act, all affected owners and occupants of land are entitled to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (The NRCB interprets this section as implying that it includes municipalities. See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Under section 21(2) of the act, affected municipalities are automatically also considered “directly affected” parties. Under section 21(3), all owners or occupiers of land who are affected parties may apply for a determination as to whether they are directly affected parties. However, under NRCB policy, all affected parties are presumed to be directly affected, if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

All directly affected parties are entitled to request that the NRCB’s board members review the approval officer’s decision on the registration application.

The NRCB published notice of the application in the Camrose Booster on January 22, 2019 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the application to Camrose County, Alberta Health Services (AHS), and Alberta Environment and Parks (AEP). Eight courtesy letters were sent to people identified by Camrose County as owning or residing on land within the affected party radius.

3. Responses from the municipality, referral agencies and other parties

I received responses from the county and AHS. No response was received from AEP.

Ms. Kim MacMurray, a development officer with Camrose County, provided a written response on behalf of the county. As noted in section 2, Camrose County is a directly affected party.

Ms. MacMurray stated that the application complies with the county’s municipal development plan (MDP). Additionally, she indicated that the CFO site, and all lands within 1,600 m of the CFO, are zoned as Agricultural in the county’s land use bylaw (LUB). She also indicated that the CFO meets the municipal setbacks from property lines.

The application’s consistency with Camrose County’s MDP and LUB are addressed in Appendix A, attached.

The NRCB also received a response from an environmental health officer/executive officer with AHS indicating that AHS has no concerns with this application.

The NRCB did not receive any responses from individuals or other non-government parties.

4. Environmental risk screening of existing and proposed facilities

When reviewing a new registration application for an existing CFO, NRCB approval officers normally assess the CFO’s existing buildings, structures, and other facilities, using the NRCB’s environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool 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/Guides 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 done 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 5 Mile Farms' existing CFO facilities were assessed in 2016. According to that assessment, the facilities posed a low 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 existing facilities is not required.

I also assessed the proposed new poultry barn and the manure storage pad, using the NRCB's risk screening tool, and determined that they pose a low risk to groundwater and surface water.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.¹

In addition, the proposed CFO expansion is consistent with the land use provisions of Camrose County's municipal development plan and with its LUB. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed CFO 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 of manure storage facilities

6. Terms and conditions

Registration RA18090 specifies the new permitted livestock capacity as 20,505 chicken layers (plus associated pullets), and permits the construction of a poultry barn and a manure storage pad.

Registration RA18090 also 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 RA18090 includes conditions that:

- Set a deadline of November 30, 2020 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage

1. For a summary of these requirements, please see the [2008 AOPA Reference Guide](http://www.nrcb.ca/Guides), available on the NRCB website at www.nrcb.ca/Guides.

portion of the poultry barn, and the manure storage pad to meet the specification for category D (solid manure – dry), and category C (solid manure – wet), respectively, in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas”

- Require written confirmation from a qualified third party that the concrete used for the manure collection and storage areas meets the required specifications
- Prohibit 5 Mile Farms from placing manure or livestock in the new poultry barn, or manure on the manure storage pad until the facilities have been inspected by the NRCB following their construction

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

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated previously approved Registration RA16010 with Registration RA18090 (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). 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, and then cancelling all existing permits once the new permit is issued. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

Therefore, in addition to containing the new terms and conditions summarized above, Registration RA18090 includes all existing terms and conditions from Registration RA16010. Construction conditions that have been met are identified and included in an appendix to Registration RA18090.

7. Conclusion

Registration RA18090 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA18090.

NRCB-issued Registration RA16010 is therefore cancelled, unless Registration RA18090 is held invalid following a review and decision by the NRCB’s board members or by a court, in which case Registration RA16010 will remain in effect.

March 22, 2019

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

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration RA18090

APPENDIX A: Consistency with the municipal development plan

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

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

5 Mile Farms’ CFO is located in Camrose County and is therefore subject to that county’s MDP. Camrose County adopted the latest revision to this plan on April 12, 2016, under Bylaw 1372.

As relevant here:

Policy 4.3.7 of the MDP states: “applications for new or expanding CFOs shall meet the Agricultural Operations Practices Act.” As discussed in section 5 above, the application meets all relevant AOPA requirements.

Policy 4.3.8 states: “At the discretion of County Council, large CFOs shall be prohibited in the County.” This policy likely is not a “land use provision” because it calls for discretionary judgements about the size of the CFO.

Policy 4.3.9 states: “Development of new or expanding CFOs shall not be supported within 3,219 m (2 miles) of the City of Camrose, 3,219 m (2 miles) from any recreational lake, or 1,610 m (1 mile) from any other urban municipality or hamlet as outlined in the IDP.” 5 mile Farms’ CFO is not within either of these setbacks.

For these reasons, I determined that the application is consistent with the land use provisions of Camrose County’s MDP. The response from the development officer, on behalf of Camrose County, supports my conclusion.

In my view, the MDP clearly intends to incorporate Camrose County’s Land Use Bylaw (LUB) # 1373 (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3), section 1.5 of the MDP states that “the County’s LUB serves as the regulatory document for making all land use related discussions”. Accordingly, I considered the LUB. Under the LUB, the subject land is currently zoned Agricultural (A) District. Under section 702.2 of the bylaw, CFOs are included in a list of “discretionary” land uses for that zoning category. NRCB policy states that approval officers will presume that an application is consistent with a LUB if the bylaw lists the proposed development as either a permitted or discretionary use (See Operational Policy 2016-7: *Approvals*, part 8.3).

APPENDIX B: Explanation of conditions in Registration RA18090

Registration RA18090 includes several conditions, discussed below:

a. Construction Deadline

5 Mile Farms proposes to complete construction of the proposed new poultry barn and manure storage pad by December 1, 2019, within the same construction season as the date when the registration is issued. In my opinion, a construction schedule that allows at least two construction seasons is more practical and realistic for the proposed development. Therefore, Registration RA18090 includes a condition stating a deadline of November 30, 2020.

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 RA18090 includes conditions requiring that:

- the concrete used to construct the liner of the manure collection and storage portion of the poultry barn, and the manure storage pad meet the specification for category D (solid manure – dry), and category C (solid manure – wet), respectively, in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas."
- 5 Mile Farms shall provide written confirmation, signed by a qualified third party, that the concrete used for the manure collection and storage areas of the poultry barn and the manure storage pad, 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, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Registration RA18090 includes conditions stating that 5 Mile Farms shall not place livestock or manure in the manure storage portions of the new poultry barn, or manure on the new manure storage pad, until NRCB personnel have inspected the facilities and confirmed in writing that they meet the registration requirements.