

Decision Summary RA20031

This document summarizes my reasons for issuing Authorization RA20031 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20031. 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.

1. Background

On June 3, 2020, Dalys and Karen Thiessen, and Thiessen Farms Ltd. (Thiessen Farms Ltd.) submitted a Part 1 application to the NRCB to construct a new manure collection pad (18.3 m x 9.1 m + 9.1 m x 9.1 m), which is an expansion portion of an existing pad, at an existing poultry CFO. The Part 2 application was submitted on June 19, 2020. On June 22, 2020, I deemed the application complete.

There is no proposed increase in livestock.

Under AOPA, this type of application requires an authorization. (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 SE 7-55-4 W4M in the County of Vermilion River, roughly 16 km northwest of Dewberry, Alberta. The terrain is gently rolling with a general down slope to the northeast.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Registration RA18047. This registration allows the construction and operation of a 52,400 chicken broiler CFO. The CFO's existing permitted facilities are listed in Registration RA18047.

2. Notices to affected parties

Under section 21 of AOPA, notice of an authorization application must be provided to municipalities that are “affected” by the 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. Under section 21(2) of the act, all affected municipalities are automatically also “directly affected” parties. The NRCB interprets section 21(3) as allowing affected municipalities to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

The County of Vermilion River is both an affected and directly affected party because the proposed facility is located within its boundaries.

On June 22, 2020, the NRCB emailed referral letters and a copy of the application to the County of Vermilion River, Alberta Health Services (AHS), and Alberta Environment and Parks (AEP).

3. Responses from the municipality and referral agencies

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

Mr. Roger Garnett, the director of planning and development with the County of Vermilion River, provided a verbal response on behalf of the county. As noted in section 2, the County of Vermilion River is a directly affected party.

Mr. Garnett stated that the application is consistent with the County of Vermilion River's municipal development plan and all lands within 1,600 m of the CFO are zoned Agricultural.

The application's consistency with the County of Vermilion River's municipal development plan, is addressed in appendix A, attached.

Ms. Laura Partridge, a senior water administrator officer at AEP sent an email, to the applicant and the NRCB, with information related to water licencing under the *Water Act*. The applicant is reminded that they need to update their water usage on their water licenses in accordance with the *Water Act*.

4. Environmental risk screening of existing and proposed facilities

When reviewing a new authorization 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/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 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 Thiessen Farms Ltd.'s existing CFO facilities were assessed in 2015 and 2018. According to those assessments, the facilities posed a low risk to surface water and groundwater.

The circumstances have not changed since those assessments were 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 manure storage pad, using the NRCB's risk screening tool, and determined that it poses 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.

In addition, the proposed construction is consistent with the land use provisions of the County of Vermilion River's municipal development plan and with its land use bylaw. (See Appendix A for

a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed construction:

- 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 groundwater protection requirements for the design of floors and liners of manure storage facilities

6. Terms and conditions

Authorization permits the construction of the manure storage pad.

Authorization RA20031 also contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization RA20031 includes conditions that:

- Set a deadline of November 30, 2022 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the manure storage pad to meet the specification for category C (solid manure – wet) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas"
- Require written confirmation from a qualified third party, or other proof, that the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Thiessen Farms Ltd. from placing manure on the manure storage pad until the facility has been inspected by the NRCB following its construction

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

7. Conclusion

Authorization RA20031 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA20031.

Authorization RA20031 should be read in conjunction with previously issued Registration RA18047, which remains in effect.

July 29, 2020

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

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA20031

APPENDIX A: Consistency with the municipal development plan

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

Thiessen Farms Ltd.’s CFO is located in the County of Vermilion River and is therefore subject to that county’s MDP. The County of Vermilion River adopted the latest revision to this plan on January 2020, under Bylaw 19-3.

Part 5.9 of the MDP states the goal to conserve agricultural land. This part includes the objectives and policies to protect and enhance the agri-based economy and rural life.

Policies 5.9.2 b), c), d), e) and f) of the MDP relate specifically to CFOs.

Policy 5.9.2. b) of the MDP states that the county’s response to a CFO application will be based on the “technical and locational merits of each application.” As this provision is directed specifically at the county’s response, it likely is not directly relevant to the NRCB’s own “MDP consistency” determination. In addition, the provision is not a “land use provision” because it calls for a discretionary judgment regarding the merits of each application. For these reasons, I conclude that this provision is not relevant to my MDP consistency determination. At any rate, as noted in part 5 above, the application meets the requirements in AOPA’s regulation, so the application is arguably consistent with this MDP policy.

This policy also state that CFOs must “fully satisfy all the requirements and regulations” under AOPA, specifically the minimum distance separation requirements and the land base requirements.” Policy 5.9.2 c) echoes this policy somewhat by stating that “[m]inimum distance separations for CFOs shall conform to standards set out in” AOPA. These two policies likely are not relevant “land use provisions.” At any rate, the application meets the MDS and all other AOPA requirements, so it is consistent with these policies.

Policy 5.9.2 d) states that in addition to the MDS requirement, CFOs shall not be allowed within several areas specified in that policy. This CFO is not located in any of those areas. Also, this policy references Map 1 of the MDP, and this CFO is not located in any of the areas shown on Map 1 where new or expanded CFOs are excluded.

Policy 5.9.2 e) states that “CFO’s will be discouraged from locating in environmentally sensitive areas where slope instability and or groundwater contamination may be of concern” This policy is likely not a “land use provision,” because it calls for a discretionary judgment regarding the

merits of each application, therefore, it is not relevant to my MDP consistency determination. At any rate, the CFO site is not an area where slope instability is a concern, and as previously noted in section 4 of this decision summary, the CFO's proposed manure storage facility poses a low potential risk to groundwater. The application meets the requirements in AOPA's regulation, so the application is consistent with this MDP policy.

Policy 5.9.2 f) requires that in addition to meeting the requirements of AOPA and the County's MDP, the application must meet the County's Area Structural Plan. The land where Thiessen Farms' CFO is located, is not part of an Area Structural Plan or an Inter Municipal Development Plan.

Based on my independent review of the county's MDP, I conclude that the application is consistent with the land use provisions in the county's MDP. This conclusion is supported by the county's response to the application which, as noted previously, stated the application meets the county's MDP.

In my view, the MDP clearly intends to incorporate Vermilion River County's Land Use Bylaw (LUB) 19-02 (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3). The latest revision to this planning document was ratified in February 2020. Accordingly, I considered the LUB. Under the LUB the subject land is currently zoned as Agricultural. Under the County's LUB, a CFO ...“requires either a registration or an approval under Part 2 of the Agricultural Operations Practices Act”. As mentioned in the decision summary above, Registration RA18047 was issued in 2018, and Authorization RA20031 will be issued for this application. Therefore, the proposed construction is not inconsistent with the LUB.

APPENDIX B: Explanation of conditions in Authorization RA20031

Authorization RA20031 includes several conditions, discussed below:

a. Construction Deadline

Thiessen Farms Ltd. proposes to complete construction of the proposed new manure storage pad by November 30, 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2022 is included as a condition in Authorization RA20031.

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, Authorization RA20031 includes a condition requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the manure storage pad to meet the specification for category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.” Thiessen Farms Ltd. Shall provide written confirmation, signed by a qualified third party, or other written proof, 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, these inspections must occur before livestock or manure are placed in the newly constructed facilities.

Authorization RA20031 includes a condition stating that Thiessen Farms Ltd. shall not place manure on the manure storage portions of the new manure storage pad until NRCB personnel have inspected the facility and confirmed in writing that it meets the authorization requirements.