

Decision Summary RA21013

This document summarizes my reasons for issuing Registration RA21013 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21013. 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 1, 2021, James and Gail Cowan (the Cowans) submitted a Part 1 application to the NRCB to expand an existing dairy CFO.

The Part 2 application was submitted on March 22, 2021. On April 13, 2021, I deemed the application complete.

The proposed CFO expansion involves:

- Increasing livestock numbers to 120 milking cows (plus associated dry cows and replacements)
- Constructing a robot barn (94.5 m x 33.5 m)
- Constructing a manure storage pad (9.2 m x 18.3 m)

The application also notified the NRCB of the proposed construction of a building for a milk house and office (12.2 m x 9.8 m) and a building for sawdust storage (9.2 m x 12.2 m). These facilities are “ancillary structures,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because they will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, these structures do not require a permit under the act.

a. Location

The existing CFO is located at SW 25-44-21 W4M in Camrose County, roughly five kilometres northeast of the hamlet of Ferintosh Alberta. The terrain gently slopes to the northwest towards Frankhanel Slough which is located approximately 30 m from the CFO.

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. The deemed registration allows for the construction and operation of a 52 milking cow dairy (plus associated dry cows and replacements) CFO. The determination of the CFO’s deemed permit status under section 18.1 of AOPA is explained in Appendix A. The deemed facilities are listed in the appendix to the Registration RA21013.

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 0.5 miles from the CFO
- all persons who own or reside on land within the greater of 0.5 miles or the minimum distance separation for the land on which the CFO is located

In this case the notification distance is 0.5 miles.

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

The NRCB gave notice of the application by public advertisement in the Camrose Booster on April 13, 2021. The full application was made available for viewing on the NRCB website for public viewing. As a courtesy, five letters were sent to people identified by Camrose 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 Agriculture and Forestry (AF). I also sent a copy of the application to Battle River Gas Coop Ltd.

Mr. Wayne Button, an environmental health officer/executive officer with AHS, stated that he had no concerns with this application.

Ms. Laura Partridge, a senior water administration officer with AEP, indicated that additional water licensing would be required. She did not raise any concerns with the application. This response was forwarded to the applicant.

Mr. J.D. Presley, an inspector with AF, did not express concerns with this application.

A response was not received from the Battle River Gas Coop 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 CFO expansion is consistent with the land use provisions of Camrose County's municipal development plan. (See Appendix B 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 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 and manure collection areas

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

7. Responses from 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." Camrose County is an affected party (and directly affected) because the CFO is located within its boundaries.

Ms. Kim Hunter, a development officer with Camrose County, provided a written response on behalf of the county. Ms. Hunter stated that the application is consistent with the county's municipal development plan. The application's consistency with the county's municipal development plan, is addressed in Appendix B, attached.

Ms. Hunter also listed the setbacks required by Camrose County's land use bylaw (LUB). I reviewed those setbacks and note that the application meets these setbacks.

Aside from the county and referral responses noted in part three, no other responses were received to this application.

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.)

The ERST indicated that the existing cow yard (a large pen) poses a moderate potential risk to surface water and a low risk to groundwater. I consulted with Mike Iwanyshyn, the chair of the of the NRCB's Monitoring Review Team, for ideas to address the potential risk from the cow yard. In my view, taking the ERST results together with other information pertaining to the site and facilities, the risk posed by this facility will be addressed by the operating condition explained in Appendix C.

I also assessed the risk posed by the calf pens. Those pens pose a low potential risk to groundwater and surface water. I assessed the potential risk posed by the calf pens which are presumed to be the next highest risk existing facility (after the cow yard). They pose a low potential risk to surface water and groundwater. Considering this, all of the other CFO's facilities are presumed to pose a low potential risk to surface water and groundwater. The results of the risk assessment are documented in Technical Document RA21013.

I also assessed the potential risk posed by the proposed robot barn and manure storage pad using the ERST. They both pose a low potential risk to surface water and groundwater.

9. Terms and conditions

Registration RA21013 specifies the cumulative permitted livestock capacity as 120 milking cows (plus associated dry cows and replacements). It also permits the construction of the robot barn and the manure storage pad.

Registration RA21013 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 RA21013 includes a condition that addresses the risk the cow yard poses to surface water. It also includes conditions that generally address a construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the deemed registration into Registration RA21013 (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. The deemed registration did not include any conditions so there are none to address here.

10. Conclusion

Registration RA21013 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21013.

James & Gail Cowan's deemed registration is therefore cancelled and consolidated into this

Registration RA21013, unless Registration RA21013 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 19, 2021

(Original Signed)
Jeff Froese
Approval Officer

Appendices:

- A. Determination of deemed permit status
- B. Consistency with the municipal development plan
- C. Explanation of conditions in Registration RA21013

APPENDIX A: Determination of deemed permit status

The Cowans claim that their CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA, with the capacity for 52 milking cows (plus dry cows and replacements). I am treating that as a request for a determination of deemed permit status. Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO.

The investigation was to determine the capacity of the CFO that was in place on January 1, 2002.

I am not aware of the CFO being covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities were at a size that was at or greater than the permit threshold sizes under AOPA. (See NRCB Operational Policy 2016-6: *Public Notice on Grandfathering Decisions*, part 1.)

To determine whether the CFO meets these two criteria, the NRCB must consider, among other things:

- a. What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics
- b. How each of those facilities was being used on January 1, 2002

The NRCB’s consideration of facility usage includes the number and type of livestock in each facility and the purpose for the livestock’s placement in each facility. In addition, our consideration of a facility’s usage includes how the facility was intended to be used through an entire livestock management period or cycle that included January 1, 2002. Evidence as to how the facilities were used in 2001 and previous years, and in the months and years following January 1, 2002, may be relevant to the two determinations listed above.

Under section 11(2) of the Administrative Procedures Regulation, I provided notice to those parties who would be entitled to notice if this were an application for a new registration for 120 milking cows. In this case, that included land owners and occupants identified by the county within 0.5 miles of the CFO. I also published notice of the deemed permit determination as part of the notice for the proposed CFO expansion application, in the Camrose Booster on April 13, 2021.

I did not receive any submissions relating to grandfathering at this CFO.

I have completed a site inspection and reviewed available air photos of the farm around 2002 (from between 1999 and 2003 from Vaultus) and more recently (from Google Earth dated 2018). Based on my observations and review of air photos the following facilities are part of the dairy’s deemed permit, that is they existed on or before 2002 and were used to confine or feed livestock:

dairy barn (24 m x 10 m), calf barn (8 m x 7 m), calf pens (16 m x 30 m),
cattle shed (16 m x 10 m), and cow yard (a pen, 105 m x 65 m)

The dimensions of these facilities have not changed nor has their apparent use as part of a dairy CFO changed when the air photos and my site observations are compared.

I have reviewed available files for this CFO and note the presence of a certificate of compliance from 1983. There was also a portion of an application for a water license (a traditional agricultural operation) from 2002, both relate to a dairy CFO. Based on these documents, and the above noted air photos and site observations, the CFO never ceased operation or was abandoned.

I did not consider the livestock numbers stated in the certificate of compliance as part of the grandfathering determination as they were from approximately twenty years before 2002. The livestock numbers stated in the water license application are discussed below.

Under section 18.1(2)(a) of AOPA, if a CFO existed on January 1, 2002, the CFO's deemed capacity is its physical capacity to confine livestock on January 1, 2002.

In the Cowan's Part 2 application, they indicated that their main dairy barn has 38 stanchions and that the calf barn used to contain an additional six (for a total of 44 stanchions or tie stalls). When I inspected these two barns it was clear that the main dairy barn still had the claimed stations. The calf barn was operational and in good repair, but no longer contained the stanchions. It was clear to me though that it once had a space allocated for the six claimed stanchions.

The Cowans added in their Part 2 application that when they ceased milking in the calf barn they transferred those animals to the main dairy barn and double shifted stalls (used stalls for more than one cow per milking).

In the above noted water license application, the stated livestock capacity of the dairy was 45 milking cows plus dry cows and replacements. It also states that water was used for pesticide, milk house wash water, and a small number of steer calves associated with the dairy.

I discussed this matter with the Cowans and learned that the dairy no longer keeps their steers. Further, the reported number of milking cows are low in the application as the farm was drying off cows prematurely due to seasonal fluctuations and due to a lack of feed for the winter. Because of this, I relied on the Calculator for Determining Livestock Capacity of Operations as they Existed on January 1, 2002 (Agdex 096-81) to determine the CFO's capacity. In that calculator, a tie stall dairy's capacity is calculated by multiplying the number of stalls by 1.1. Forty-four stalls multiplied by 1.1 equals approximately 49 stalls. The calculated value is within ten percent of the claimed capacity which is often applied by NRCB staff to account to variances between operators. Because of this, and due to the above noted matters, I am of the opinion that the claimed capacity is reasonable.

Based on these findings, the CFO is considered to have a deemed registration with a deemed capacity of 52 milking cows (plus associated dry cows and replacements).

APPENDIX B: 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.)

This 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. The portions of the MDP relevant to this application are discussed below:

Policy 4.3.7 of the MDP states that applications for new or expanding CFOs shall meet the *Agricultural Operations Practices Act*.

This is not a land use provision. I note that, as discussed elsewhere in this decision summary, this application meets all relevant AOPA requirements.

Policy 4.3.8 states that 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 (by Council) about the size of the CFO. The MDP does not define what qualifies as a large CFO. Further, section 8.2.5 of the NRCB’s Approvals Policy (Policy 2016-7) and section 22(2.1) of AOPA prohibit me from considering this policy as part of this MDP consistency determination.

Policy 4.3.9 states that 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 (defined in the MDP as Miquelon Lake, Little Beaver Lake, Bittern Lake, Red Deer Lake, Buffalo Lake, and Dried Meat Lake) or 1,610 m (1 mile) from any other urban municipality or hamlet as outlined in an [intermunicipal development plan] IDP.

This CFO is not located within any of the above stated setbacks and is beyond the extents of Camrose County’s IDPs.

For the above reasons, I have determined that this application is consistent with the land use provisions of Camrose County’s MDP. As noted in part seven of this decision summary, a development officer with Camrose County has indicated that this application is consistent with the county’s MDP, which supports my conclusion.

APPENDIX C: Explanation of conditions in Registration RA21013

Registration RA21013 includes several conditions, discussed below:

a. Addressing potential risk from the cow yard to surface water

As noted in this decision summary and Technical Document RA21013, the cow yard poses a moderate potential risk to surface water that warrants actions being taken. For this reason, and consistent with NRCB practice, it is necessary for the co-permit holders to address this risk. Therefore, a condition is included in Approval RA21013 requiring the co-permit holder to submit a written plan to the NRCB within six months of the issuance of this permit that will address that risk within a three year timeline and detail how and when this will be done. That plan and any actions resulting from that plan must be approved by the NRCB in writing. Once the plan is approved by the NRCB in writing, it must be implemented, unless otherwise directed by the NRCB in writing.

b. Construction Deadline

James & Gail Cowan proposes to complete construction of the proposed new facilities by October 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of October 31, 2024 is included as a condition in Registration RA21013.

c. Post-construction inspection and review

The NRCB's general practice is to include conditions in new permits to ensure that the new facilities are constructed according to the required design specifications. Accordingly, Registration RA21013 includes conditions requiring the concrete used to construct the liner of the manure collection and storage portion of the robot barn to meet the requirements of category D (solid manure – dry), and the concrete for the manure storage pad to meet category C (solid manure – wet); in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas." The co-permit holders are to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of these facilities.

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 RA21013 includes conditions stating that the co-permit holders shall not place livestock or manure in the manure storage or collection portions of the new facilities until NRCB personnel have inspected them and confirmed in writing that they meet the registration requirements.