



Decision Summary LA22006

This document summarizes my reasons for issuing Approval LA22006 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22006. 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 an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On January 31, 2022, Cameron Farms Colony Ltd. (Cameron Farms) submitted a Part 1 application to the NRCB to expand an existing multi species CFO by increasing chicken layer numbers from 6,200 to 21,000 chicken layers and constructing a chicken layer barn (103.6 m x 54.9 m).

The Part 2 application was submitted on March 28, 2022. On April 6, 2022, I deemed the application complete.

a. Location

The existing CFO is located at SW 17-11-18 W4M in the Municipal District (M.D.) of Taber, roughly 9 km southeast of the Hamlet of Turin, Alberta. The terrain is flat with relief provided by the old man river located approximately 2.5 km southwest of the CFO.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes M.D. of Taber #50-91, issued July 17, 1991. This deemed approval allows for the construction and operation of a multi-species CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix C, attached. The deemed facilities are listed in the appendix to the Approval LA22006.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are "affected" by an approval 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 person or 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 specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

The CFO is not located within 100 m of a bank of a river, stream, or canal, and therefore no additional municipalities are notified as part of this application.

For the size of this CFO the specified distance is 1.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to M.D. of Taber, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Taber Times on April 6, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 4 letters were sent to people identified by the M.D. of Taber as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

Under section 19 of AOPA, 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 Transportation (AT).

Mr. Danny Lo, executive officer / public health inspector with AHS stated in his response that AHS has no concerns with the application.

Mr. Gutsell stated according to the Alberta Water Well Information Database there appears to be seven water well logs on the quarter section. Mr. Gutsell noted that none of these wells appear to be licensed. Cameron Farms is reminded that they are not authorized to divert water from any of the wells or any other water sources without a licence. Water licensing is not under the jurisdiction of the NRCB and I will therefore not discuss this issue further. Mr. Gutsell also requested Cameron Farms to submit proof that their water needs are met. The response was forwarded to Cameron Farms their information and action.

Ms. Olsen with AT stated in her response that a permit from her department is not required and that there are no concerns with this application.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document’s Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of the M.D. of Taber'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 10, 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." The M.D. of Taber is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Brian Peers, director of lands, planning & development with the M.D. of Taber, provided a written response on behalf of the M.D. of Taber. Mr. Peers stated that the application is consistent with the M.D. of Taber's land use provisions of the municipal development plan. The application's consistency with the M.D. of Taber's municipal development plan is addressed in Appendix A, attached.

No responses were received from any other person, organization, or member of the public.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require surface/groundwater monitoring for the facility. In this case a determination was made and monitoring is not required.

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.)

For the sake of efficiency, I first assessed the CFO's existing lagoon using the ERST. This appears to be the CFO's highest risk facility. The assessment found that this facility poses a low potential risk to groundwater and surface water. Because this is the CFO's highest risk facility, I presume that the CFO's other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is therefore not necessary.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Mr. Brian Peers also listed the setbacks required by the M.D. of Taber's land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments. AEP has not made me aware of statements of concern submitted under section 73 of the Environmental Protection and Enhancement Act / section 109 of the Water Act in respect of the subject of this application. I received a response regarding the application from AEP that addresses water well licencing, furthermore the application meets AOPAs technical requirements.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed June 20, 2022).

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See

NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted, and I note that the MD of Taber's response states the application is consistent with their MDP.

10. Terms and conditions

Approval LA22006 specifies the cumulative permitted livestock capacity as 350 sows (farrow to finish), 100 dairy cows (plus associated dries and replacements), 21,000 layers, 200 ducks, 200 geese, and permits the construction of the layer barn.

Approval LA22006 contains terms that the NRCB generally includes in all AOPA approvals, 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, Approval LA22006 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the municipal development permit #50-91 with Approval LA22006 (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 approval.

11. Conclusion

Approval LA22006 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22006.

Cameron Farms' deemed approval, including municipal development permit #50-91, are therefore superseded, and their content consolidated into this Approval LA22006, unless Approval LA22006 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed approval including the municipal development permit #50-91 will remain in effect.

July 6, 2022

(Original signed)
Julie Wright
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22006
- C. Determination of deemed permit status

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval 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 20(1.1) 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.)

Cameron Farms’ CFO is located in the Municipal District (M.D.) of Taber and is therefore subject to that county’s MDP. The M.D. of Taber adopted the latest revision to this plan on September 28, 2021 under Bylaw #1980.

Sections 5.1.13 – 5.1.15 of the MDP provide policies “related to confined feeding operations.” The stated purposes of these policies include providing the NRCB with “requirements that the council of the M.D. of Taber wish to have considered when applications for CFOs are evaluated for approval....”

The text in sections 5.1.13-5.1.15 is not clear as to whether these policies were intended to apply to applications for both new CFOs and for expansions of existing CFOs. However, a broad reading of these provisions suggests that they were meant to cover new CFOs as well as CFO expansions. Therefore, I presume these sections apply to the application.

Each of the applicable sections are discussed below.

Section 5.1.13

This section states that CFOs should be discouraged in the areas shown in Map 2 as “restricted”. This exclusion zone is a land use provision. Cameron Farms’ CFO is not located within the “CFO restricted area” and the application is therefore consistent with this provision.

Sections 5.1.14(a)-(d)

These sections list setbacks for CFOs from roads and property lines. Cameron Farms’ CFO is not within any of these setbacks.

Section 5.1.15

Under this section, the Municipal District requests that the NRCB consider the four following items:

- a) the proximity of the operation to open bodies of water and the topography of the surrounding lands in order to minimize any negative impacts to drinking water

- supplies;
- b) the cumulative effect of a new approval on any area near other existing confined feeding operations;
- c) environmentally sensitive areas shown in the report, Municipal District of Taber Environmentally Sensitive Areas in the Oldman River Region;
- d) give[ing] notice to adjacent landowners even in the case of applications for registration or authorization.

Neither (a) or (b) are likely “land use provisions,” as they call for site-specific judgements about the acceptability of an individual operation in light of certain criteria (“proximity,” magnitude and nature of cumulative effect, effect on environmentally sensitive areas). As such, these two MDP policies are not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.).

At any rate, Cameron Farms’ CFO meets requirements related to item (a), which refers to the impact of the operation on drinking water supplies. Several of the requirements under AOPA and its regulations are designed to prevent or minimize leakage from CFO facilities and thus to prevent manure from reaching and contaminating surface water and groundwater. Because the application meets these requirements, this expansion would not pose a material risk to surface water or groundwater (and therefore potential drinking water supplies).

Subsection (b) refers to cumulative effects of CFOs. AOPA does not expressly require approval officers to consider the cumulative effects of proposed developments together with those of other existing CFOs or other activities in the area. Further, the NRCB’s Board members have directed approval officers not to consider cumulative effects in their permitting decisions. In a 2011 decision, the Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

The CFO is not located in an environmentally sensitive area as indicated in item 5.1.15(c) above.

Policy 5.1.15(d) is a procedural requirement so it is likely not a “land use provision.” Therefore, it is not relevant to my MDP consistency determination. At any rate, as explained above, in addition to notifying the Municipal District of Taber and several referral agencies, the NRCB also published official notice of the application in the Taber Times, and sent courtesy letters to landowners and residents within a 1.5 mile radius as identified by the MD of Taber (see also Operational Policy 2016-7: Approvals, part 7.4). The notification requirements under AOPA have been met.

For these reasons, I conclude that the proposed CFO expansion is consistent with the land use provisions of the Municipal District of Taber’s MDP. The Municipal District’s response supports my conclusion.

APPENDIX B: Explanation of conditions in Approval LA22006

Approval LA22006 includes several conditions, discussed below, and carries forward a number of conditions from municipal development permit #50-91 (see sections 2 and 3 of this appendix). Construction conditions from historical municipal development permit #50-91 that have been met are identified in the appendix to Approval LA22006.

1. New conditions in Approval LA22006

a. Construction Deadline

Cameron Farms proposes to complete construction of the proposed new layer barn by November 30, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2024 is included as a condition in Approval LA22006.

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, Approval LA22006 includes a condition requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the layer barn 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.”
- b. Cameron Farms to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the layer barn.

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. Approval LA22006 includes a condition stating that Cameron Farms shall not place livestock or manure in the manure storage or collection portions of the new layer barn until NRCB personnel have inspected the layer barn and confirmed in writing that it meets the approval requirements.

2. Conditions carried forward from municipal development permit #50-91

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #3 from municipal development permit #50-91 should be modified.

- 3. Liquid manure waste to be shanked into the land and not “sprinkled on”.*

This condition is more restrictive than the AOPA requirement. Therefore, this condition will be carried forward and rewritten to reflect present NRCB policies and procedures.

3. Conditions not carried forward from municipal development permit #50-91

Approval LA22006 includes the terms and conditions in municipal development permit #50-91, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #2, 4, 5, and 7 from municipal development permit #50-91 should be deleted and

therefore are not carried forward to Approval LA22006. My reasons for deleting these conditions:

2. Animal manure waste management program to be implemented in conjunction with Barons Eureka Health Unit and Alberta Environment.

AOPA has requirements to protect soil, groundwater, and surface water from excessive application of manure. These include soil testing requirements, soil salinity limits, nitrate-nitrogen limits, and setbacks from water bodies, water wells, and residences. Operators are required to keep manure spreading and soil sampling records for five years and must provide them to the NRCB upon request.

Due to the vagueness of this recommendation, this condition is considered less stringent and therefore will not be carried forward.

4. Carcasses (animals and birds) from the operation of the facility must be disposed of by a rendering service. If not, animals must be buried within forty-eight (48) hours. Location of pit and disposal to be approved in accordance with local Board of Health regulations.

The disposal of dead animals is regulated by Alberta Agriculture, Forestry and Rural Economic Development (AFRED)'s Regulatory Services Branch under the Animal Health Act. Given AFRED's regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistency with AFRED's requirements. Therefore, this condition will be deleted and not carried forward into the new approval.

5. All run-off of manure contaminated liquid is to be contained within the owners property.

This condition is contained in the opening paragraph of this permit (Approval LA22006) that states that the permit holder shall adhere to AOPA and its regulations. The requirement for runoff control is stated in section 6 Standards and Administration Regulation. This condition is therefore redundant and will not be carried forward.

7. All water courses traversing this property and the property used for disposal of manure are protected from contamination by the manure.

This condition will be replaced by the condition stated in the opening paragraph of this permit that says that the permit holder shall adhere to AOPA and its regulations. In this case, I would draw particular attention to sections 23-27 of the Standards and Administration Regulation that lay out manure application limits, setbacks, soil protection, and record keeping and section 6 in terms of runoff controls.

APPENDIX C: Determination of deemed permit status

Cameron Farms claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. 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.

The CFO was originally permitted by the M.D. of Taber on July 17, 1991 under development permit #50-91. This development permit allowed the construction of three hog facilities. This permit does not specifically address any other livestock or facilities which existed at the site at the time this permit was issued.

To determine whether the CFO holds a deemed permit and, if so, its deemed capacity, I 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

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.

The following facilities were identified as existing on or before January 1, 2002, based on site visits, discussions with applicant, and aerial photos:

- Feeder barn – 68 m x 23 m
- Feeder barn – 64 m x 19 m
- Farrowing barn – 88 m x 14 m
- Layer barn – 62 m x 9 m x 4 m
- Dairy barn – 83 m x 13 m x 6 m
- Broiler/duck and goose barn – 42 m x 11 m
- Lagoon - 100 m x 57 m x 5 m
- Dairy pens (irregular shape) – 114 m x 76 m
- Calf shed – 34 m x 8 m
- Dry cow shed – 39 m x 12 m

To determine the capacity of the existing livestock housing facilities, I consulted standards from Technical Guideline Agdex 096-81: Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2022. My assessment has found that all the applicant's claimed livestock numbers are reasonable.

Based on these findings, the CFO is considered to have a deemed approval and a deemed capacity of:

- 350 sows (farrow to finish),
- 100 dairy cows (plus associated dries and replacements),
- 6,200 layers,
- 200 ducks, and
- 200 geese.

It should be noted no responses to the application notice disputed this capacity or provided any information relevant to the grandfathered status of Cameron Farms CFO.

Based on the size of the other facilities, and the fact there has been no expansion of any CFO facilities identified since 2002, I have determined the claimed capacity of the CFO to be reasonable. As such, the grandfathered portion of the capacity of the CFO will be stated on Approval LA22006.