

Decision Summary RA22018

This document summarizes my reasons for issuing Approval RA22018 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA22018. 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 December 6, 2017, the NRCB issued Approval RA17025 to Five Star Cattle Co. Ltd. (Five Star). That permit allowed the expansion of the existing dairy CFO from 420 to 650 milking cows (plus associated dries and replacements), and the construction of a livestock barn and an earthen liquid manure storage (EMS). Five Star only constructed the EMS, but not the livestock barn to house the expansion in animal numbers. The permit expired on December 31, 2020 without the increase in animal numbers.

On May 30, 2022, Five Star submitted a Part 1 application to the NRCB to expand the existing dairy CFO; which is the same application as the previous permit (RA17025) that was only partially constructed (only the EMS was constructed) before it expired.

The Part 2 application was submitted on December 2, 2022. On January 5, 2023, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 420 to 650 milking cows (plus associated dries and replacements)
- Constructing dairy freestall barn (72 m x 33) m with an underground manure pit (33.5 m x 3.5 m x 2.2 m deep)
- Constructing an addition to the existing freestall barn 27 m x 33 m (for a total of 78.8 m x 33 m)

a. Location

The existing CFO is located at SE 18-41-25 W4M in Lacombe County, roughly 10 km northeast of the City of Lacombe, Alberta. The topography slopes gently down to the south and southwest.

b. Existing permits

The CFO is currently permitted under Approval RA12020 and Authorization RA17056. Collectively, those permits allow the construction and operation of a 420 milking cow CFO (plus associated dries and replacements).

As indicated in part 1. above, Approval RA17025 permitted the construction of a livestock barn and an EMS and to expand their animal number to 650 milking cows (plus associated dries and replacements). However, Five Star only constructed the EMS before the deadline of December 31, 2020. The CFO's other existing permitted facilities are listed in the appendix to Approval RA22018.

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

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 Lacombe County, which is the municipality where the CFO is located. The CFO is not located within 100 m of the bank of the river, stream or canal.

The NRCB gave notice of the application by public advertisement in the Lacombe Express on January 5, 2023. The full application was made available for viewing during regular business hours, and was posted on the NRCB website for public viewing. As a courtesy, 71 letters were sent to people identified by Lacombe County 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 Protected Areas (EPA), and Alberta Agriculture and Irrigation (AGI).

I also sent a copy of the application to right of ways holder ATCO Gas and Pipelines Ltd.

I only received a response from EPA. Ms. Laura Partridge, a senior water administration officer with EPA, provided information to the applicant to review their existing water licenses to determine if they have enough licensing. In a verbal response, Ms. Partridge indicated that the applicants have enough licensed water for the proposed expansion of the CFO.

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.

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 expansion is consistent with the land use provisions of Lacombe 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 nearby residences, with two exceptions (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owners of those residences have signed written waivers of the MDS requirement to their residences
- 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 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." Lacombe County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Allison Noonan, planning services administrative assistant with Lacombe County, provided a written response on behalf of the county. Ms. Noonan stated that the application is consistent with Lacombe County's municipal development plan (MDP), and that the county has no issues or concerns with the proposal. The application's consistency with Lacombe County's MDP is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received responses from eight parties.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected party (See NRCB Operational Policy 2016-7: Approvals, part 6.2). Rodney & Debbie Salmon, and Debra Barron provided an MDS waiver and are directly affected parties.

All of the people who submitted responses own or reside on land within the 1.5 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected parties raised concerns regarding odours and flies, groundwater quantity and quality, surface water quality, landbase for manure application, and other concerns. These concerns are addressed in Appendix B.

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 and/or groundwater monitoring for the facility. In this case a determination was made, and monitoring is not required.

When reviewing a new approval 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 8.13.

In this case, the risks posed by Five Star's existing CFO facilities were assessed in 2017 using the ERST. According to that assessment, the facilities posed a low potential 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.

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.

Ms. Noonan also noted that the application meets the setbacks required by Lacombe County's land use bylaw (LUB).

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concern submitted under section 73 of the Environmental Protection and Enhancement Act or section 109 of the Water Act in respect of the subject of this application. I received a response from EPA indicating that Five Star has enough licensed water for the proposed CFO expansion. 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 February 21, 2023).

Finally, I considered the effects of the proposed CFO expansion on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from referral agencies and Lacombe County, submissions of other directly affected parties, and my own observations from two site visits.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed.

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 and the directly affected parties' concerns have been addressed.

I also presumed that the proposed CFO 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 Lacombe County's response states that the application is consistent with their MDP.

10. Terms and conditions

Approval RA22018 specifies the cumulative permitted livestock capacity as 650 milking cows (plus associated dries and replacements) and permits the construction of the new freestall dairy barn (with an underground manure pit) and the expansion of the existing freestall barn.

Approval RA22018 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 RA22018 includes conditions that generally address construction deadlines, document submission and construction inspections. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval RA22018: Approval RA12020, Authorization RA17056 and parts of Approval RA17025 (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 C discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval RA22018 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA22018.

Approvals RA12020 and RA17025, and Authorization RA17056 are therefore superseded or cancelled, and their content consolidated into this Approval RA22018, unless Approval RA22018 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA12020 and Authorization RA17056 will remain in effect, and Approval RA17025 will be amended to reflect the construction of the EMS.

April 4, 2023

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

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Explanation of conditions in Approval RA22018

APPENDIX A: Consistency with the municipal development plan

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

Five Star’s CFO is located in Lacombe County and is therefore subject to that county’s MDP. Lacombe County adopted the latest revision to this plan on April 8, 2021 (updated on April 14, 2022), under Bylaw 1238/17. As relevant here:

Section 3.3.1 states that “All lands in the County shall be deemed to be agricultural lands unless otherwise designated by the Municipal Development Plan, an approved statutory or non-statutory plan, the Land Use Bylaw, or provincial legislation.”

This provides insight for the interpretation of the remaining portions of the MDP.

Section 3.9.1 of the county’s MDP states that the “County shall provide input on applications for confined feeding operations to the Natural Resources Conservation Board (NRCB) under the *Agricultural Operations Practices Act*. The county’s support is subject to the following:

- a) No new confined feeding operation shall be permitted less than 1.6 kilometres (1 mile) from the boundary of:
 - i) a town, village, summer village or hamlet;
 - ii) an area developed or designated for multi-lot residential use; or
 - iii) a provincial or municipal park or recreation area, or other area used or intended to be used for a recreational facility development,except that where provincial regulations require a larger setback distance, that distance shall apply.

Further restriction on the development of confined feeding operations may apply as directed by an Intermunicipal Development Plan or other local plan approved by Council.”

Five Star’s application is for the expansion of an existing CFO; regardless, the CFO is located outside any of these 1.6 km setbacks.

As for section 3.9.1’s reference to intermunicipal development plans (IDP) or other plans approved by the county’s council, this CFO is not located within land identified as part an IDP or any other plans.

For these reasons, I conclude that the application is consistent with the land use provisions of Lacombe County's MDP. This conclusion is consistent with the county's written response to the application.

APPENDIX B: Concerns raised by directly affected parties

The following individuals qualify for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing (See NRCB Operational Policy 2016:7 – Approvals, part 6.2):

Rodney & Debbie Salmon, and
Debra Barron.

The following individuals qualify for directly affected party status because they submitted a timely response to the application and they own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation (See NRCB Operational Policy 2016:7 – Approvals, part 6.2.)

7D Farms Ltd.
David Law
Doug Law
NW 9-41-25 W4M, SE 5-41-25 W4M, SW 10-41-25 W4M

Jack and Rhonda Handley
8-7-41-25 W4M

Arnold Law
SW 16-41-25 W4M

Kevin Lundie
NW 6-41-25 W4M

Robin and Alissa Lundie
NE 7-41-25 W4M

Keith and Christine Meyers
NW 13-41-26 W4M

Marilyn Moore
NW 7-41-25 W4M

David Saretsky
NW 7-41-25 W4M

Concerns from directly affected parties

Five Star responded to some of the issues raised in the written responses.

The directly affected parties (DAPs) raised the following concerns which are listed and summarized below, together with my analysis and conclusions, as well as parts of the applicant’s response:

1. **Increase in odours and flies** - A couple of the individuals expressed concern about a potential increase in odours and flies with the prevailing winds.

Approval officer's conclusions:

AOPA's minimum distance separation (MDS) is a means for mitigating odours and other nuisance impacts from CFO facilities. Five Star's proposed CFO expansion meets the required AOPA's MDS from nearby residences, with two exceptions. The owners of those residences have signed written waivers of the MDS requirement to their residences. It is presumed that nuisance effects from the CFO facilities are acceptable if the MDS has been met.

It is reasonable to expect that there will be some odour emissions and other potential nuisances when the CFO is expanded.

Operators are expected to control flies at their operation. If necessary, the NRCB can require the operator to adopt a fly control program.

Additionally, a condition from a previous permit will be carried forward stating "the permit holder must maintain at all times high degree of cleanliness in and around the livestock facilities to minimize odour nuisances for neighbouring residents"

Often, any issues that arise relating to the operation of a CFO, and other disagreements, can be resolved through good communication between neighbours and the CFO operator. However, if a member of the public has concerns regarding a CFO, including whether the operation is complying with AOPA, they may contact the NRCB through its toll free reporting line (1-866-383-6722 or 310-0000). An NRCB inspector will investigate the concern.

2. **Groundwater quality** - Several individuals raised concerns of contamination of the aquifer due to the waste (mainly liquid waste) from the CFO's manure storage facilities and manure application.

Approval officer's conclusions:

As noted in the decision summary above, and documented in Technical Document RA22018, the CFO and its new proposed facilities meet all AOPA technical requirements. Several of these requirements are designed to prevent or minimize manure leakage from CFO facilities and thus to prevent manure from reaching and contaminating groundwater.

As noted in section 8 of the decision summary, I assessed the CFO's existing and proposed facilities, using the NRCB's environmental risk screening tool (ERST), in order to determine the level of risk they pose to groundwater. The CFO's facilities pose a low potential risk to groundwater. Therefore, a determination was made and groundwater monitoring is not required.

Additionally, a condition from a previous permit will be carried forward to this approval stating, in part, that the permit holder shall sample and test raw groundwater, yearly, from water well ID# 0291845.

Regulations under AOPA set nutrient application limits to prevent the soils from being overloaded with nitrogen and minimize the potential for groundwater to be impacted by manure. The Standards and Administration Regulation under AOPA also requires operators to test soils on farmland to which manure is applied for salts and nitrogen at least every three years, and to make these records available for inspection by the

NRCB.

3. **Surface water** - The NRCB received a couple of concerns related to the impact of the CFO expansion into surface water, manure runoff, and the increase in water runoff over the years.

Approval officer's conclusions:

AOPA and its regulations contain several requirements to prevent or minimize manure leakage from CFO facilities and thus to prevent CFO manure from reaching and contaminating surface water. Two of these requirements are the setbacks from springs and common bodies of water set out in Section 7(1)(a) and (c) of the Standards and Administration Regulation, which prohibits the construction of a manure storage facility or manure collection area less than 100 m from a spring and 30 m from a common body of water.

During my site visits, I did not note any springs or common bodies of water within 100 m and 30 m, respectively, of the proposed CFO facilities. I also verified these distances by reviewing available air photos. The proposed CFO meets all of these AOPA setback requirements.

As noted in section 8 of the decision summary, I assessed the CFO's existing and proposed facilities, using the NRCB's ERST, in order to determine the level of risk they pose to surface water. The CFO's facilities pose a low risk to surface water.

Sections 24(9) and (10) of the Standards and Administration Regulation, define the setbacks for manure application from a common body of water and water wells, as well as setbacks based on the slope of the terrain to common bodies of water. The operator is responsible to follow these requirements.

Additionally, a condition from a previous permit will be carried forward stating that "any manure contaminated run-off must be fully contained on the owner's property. The permit holder must also ensure that manure stays on lands on which it is spread. Drainage courses or other bodies of water on property and other lands used for spreading must be protected from contamination".

Incidences of non-compliance can be reported to the NRCB's 24 hour a day toll free reporting line 1-866-383-6722 or 310-0000 (toll free line). NRCB inspectors follow up on all complaints.

4. **Groundwater supply** - the potential impact on groundwater quantity was a significant concern for most of the parties. Parties expressed concern that the CFO would remove water from the same aquifer that the surrounding community also uses, with the consequence of depleting the aquifer. Several parties questioned who will provide a remedy if the CFO depletes their wells, as well as having a public record of water consumption.

A couple of the respondents questioned the applicants' claim that they do not require additional water licence, and they listed two *Water Act* licences with a total annual diversion of 18,090 m³ which is not enough for 650 milking cows (plus replacements) which will require 36,173 m³.

Applicant's response:

The applicant indicated that Five Star Cattle Co. currently has four separate water licenses. The licenses and their volumes are outlined below:

1. License No. 00402785-00-00 for 4,710 m³ per year
2. License No. 00200840-00-00 for 12,530 m³ per year
3. License No. 00374013-00-00 for 8,623 m³ per year
4. License No. 00402786-00-00 for 13,380 m³ per year

The four licenses add up to 39,243 m³ per year.

Approval officer's conclusions:

Alberta Environment and Protected Areas (EPA) is responsible for licensing the use of groundwater and surface water in the province. The water licensing process includes an opportunity for neighbours to provide input. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. (This declaration is on page 4 of 28 of Technical Document RA22018.)

EPA indicated in one of their responses to the referral letter that Five Star has sufficient licensed groundwater supply to support the proposed expansion of the CFO.

The monitoring of groundwater levels and usage is regulated by EPA under the *Water Act*.

A copy of this decision will also be forwarded to EPA for its information.

5. **Land base for manure application** - Most of the respondents raised concerns regarding the amount of land for manure application. A couple of the respondents questioned the land use agreement that was signed in 2012.

Applicant's response:

On March 7, 2023, Five Star provided an updated and current land use agreement.

Approval officer's conclusion:

Manure application is regulated under sections 24 and 25 of the Standards and Administration Regulation.

Under section 24(3)(d) of the regulation, one option for manure application is for a permit applicant to satisfy an approval officer that they have access to sufficient land base to apply their manure for the first year following the granting of the application.

For this proposal, 603 hectares of land in the black soil zone are required for manure spreading. Five Star has secured 659 hectares of land for manure spreading. Therefore, the application meets the land base requirement in section 24(3)(d) of the regulation.

The Standards and Administration Regulation has other requirements to protect the soil, groundwater, and surface water from excessive application of manure (sections 25 and 28). These include soil testing requirements, soil salinity limits, nitrate-nitrogen limits, setbacks based on the slope of the terrain to common bodies of water, and setbacks to

water wells and residences. Under the Regulation, the operator must also keep manure spreading and soil sampling records for five years and provide those records to the NRCB upon request.

Sections 24(9) and (10) of the Standards and Administration Regulation, define the setbacks for manure application from a common body of water and water wells, as well as setbacks based on the slope of the terrain to common bodies of water. The operator is responsible to follow these requirements.

When followed, all of these AOPA requirements will provide protection to neighbours from manure runoff, nutrient leaching, and nuisances from manure spreading. It will also minimize impacts of manure spreading on runoff and waterfowl habitat.

Complaints about CFO-related issues can be reported to the NRCB's 24 hour toll free reporting line (1-866-383-6722) and will be followed up on by an NRCB inspector within 24 hours. Neighbours can also call any NRCB office during regular business hours if they have questions about permit conditions or ongoing AOPA operational requirements.

Other concerns: One respondent asked about an emergency order issued against Five Star. The same responder asked how many complaints Five Star has received. One of the letters, included issues that are not directly applicable to the application. Another respondent questioned why the operation is expanding again.

Approval officer's conclusion:

The NRCB has never issued an emergency or enforcement order against Five Star Cattle Co. Ltd. There is a beef CFO in Fort Macleod, Alberta, with a similar name that recently received an emergency order.

The NRCB has received 10 non-compliance complaints about the operation since 2002. The NRCB has responded to all of these complaints, and they have all been adequately resolved by the compliance department of the NRCB.

One of the responses included issues and concerns inapplicable to the application, or outside the NRCB's mandate, or an attack to the NRCB and the legislation. None of these issues assist me in determining the effects of the expansion on neighbour; and therefore, I will not address them.

As indicated in section 1 of the decision summary, Approval RA17025 permitted the construction of a livestock barn and an EMS and to expand their animal number to 650 milking cows (plus associated dries and replacements). However, Five Star only constructed the EMS before the deadline of December 31, 2020, and that permit expired. The applicant is applying again for the same expansion submitted in 2017.

APPENDIX C: Explanation of conditions in Approval RA22018

Approval RA22018 includes several conditions, discussed below, and carries forward a number of conditions from Approval RA12020, Authorization RA17056 and Approval RA17025 (see sections 2 and 3). Construction conditions from historical Approval RA12020, Authorization RA17056 and Approval RA17025 that have been met are identified in the appendix to Approval RA22018.

1. New conditions in Approval RA22018

a. Construction Deadline

Five Star proposes to complete construction of the proposed new freestall barn (with a manure pit) and the expansion of the existing freestall barn by September 30, 2023, within the same construction season as when the approval is issued. It is my opinion that a longer construction deadline is more reasonable for the proposed scope of work. The deadline of November 30, 2026 is included as a condition in Approval RA22018.

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 RA22018 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the expansion of the existing freestall barn and the new freestall barn (with a manure pit) to meet the specification for category C (solid manure – wet) and category B (liquid manure shallow pits), respectively, in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.” Five Star shall provide evidence or written confirmation from a qualified third party 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, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval RA22018 includes condition stating that Five Star shall not place livestock or manure in the manure storage or collection portions of the new freestall barn (with a manure pit) and the expansion of the existing freestall barn until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

2. Conditions carried forward from Approval RA12020

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that operating conditions 9 and 13 from Approval RA12020 should be updated to reflect current drafting of conditions.

3. Conditions not carried forward from Approval RA17025

Approval RA22018 includes the terms and conditions in Approval RA17025, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions 1 and 2 from Approval RA17025 should be deleted and therefore are not carried

forward to Approval RA22018. My reason for deleting these conditions is that they refer to the construction of a livestock barn (77 m x 37.5 m) with an underground pit (37.5 m x 3.7 m x 2.4 m deep) that was not built.