

Decision Summary BA23001

This document summarizes my reasons for issuing Authorization BA23001 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA23001. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On January 4, 2023, Kelberal Farms Ltd. submitted a Part 1 application to the NRCB to construct a manure collection areas (MCA) and a manure storage facility (MSF) at an existing poultry CFO.

On June 22, 2022, Kelberal Farms applied for a grandfathering determination. Grandfathering determination PB22001 was issued on January 4, 2023, and issued a deemed registration for 17,408 poultry layers.

The Part 2 application was submitted on January 19, 2023. On February 1, 2023, I deemed the application complete.

The proposed construction involves:

- Constructing a new chicken layer barn – 104 m x 25 m
- Constructing a new compost shed – 18.3 m x 15.24 m
- Decommissioning the existing chicken layer barn to be converted for non-livestock/manure purposes

a. Location

The proposed construction is located at SE 33-61-3 W5M in the County of Barrhead, immediately adjacent to the hamlet of Neerlandia AB. The terrain is relatively flat sloping to the SW towards a seasonal drainage approximately 400 m from the proposed barn.

b. Existing permits

The CFO is already permitted under AOPA, by way of a deemed permit. This deemed registration allows for the operation of a 17,408 chicken layer CFO. The determination of the CFO's deemed permit status and capacity under section 18.1 of AOPA is explained in Grandfathering Determination PB22001.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization

application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

- the municipality where the CFO is located or is to be located
- 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
- any other municipality whose boundary is within a notification distance. In this case, the notification distance is 0.5 mile from the CFO

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

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) and Alberta Environment and Protected Areas (EPA).

I received a response from AHS public health officer Jeff Hammer. Mr. Hammer had no immediate concerns regarding the barn replacement.

I did not receive a response from EPA.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of the County of Barrhead's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

5. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed construction:

- Meets the required AOPA setbacks from all nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). As explained below in Appendix B, MDS does not apply for this application
- 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 and manure collection areas

With the terms and conditions summarized in part 8 and Appendix C, the application meets all relevant AOPA requirements. The inapplicability of MDS requirements is discussed in the following parts of this decision summary and in Appendix B.

6. Response from municipality

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 County of Barrhead is an affected party (and directly affected) because the proposed barn is located within its boundaries.

Ms. Jenny Bruns, a development officer with the County of Barrhead, provided a written response on behalf of the county. Ms. Bruns stated that the application is consistent with the county's land use provisions in their municipal development plan. The application's consistency with the county's municipal development plan is addressed in Appendix A, attached.

Ms. Bruns also identified that there are no intermunicipal development plans or area structure plans that apply to the location.

Ms. Bruns also listed the setbacks required by the county's land use bylaw (LUB). The application meets these setbacks.

7. Environmental risk of facilities

New MSFs 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 monitoring for the facility. In this case a determination was made and groundwater monitoring is not required.

As the existing layer barn is to be decommissioned and no longer used for CFO purposes it was not risk scored.

8. Terms and conditions

Authorization BA23001 permits the construction of the new layer chicken barn and compost shed.

Authorization BA23001 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 BA23001 includes conditions that generally address construction deadlines, document submission, construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix C.

9. MDS

I determined that the proposed chicken layer barn would be located within the minimum distance separation from a several residences. As explained in Appendix B, under the Standards and Administration regulation 3(5)(c)(i) and (ii) MDS does not apply to this application due to the new layer barn being the same (or greater) distance from the residences than the existing barn. Additionally, the applicant is not proposing to increase livestock numbers or manure production.

10. Conclusion

Authorization BA23001 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA23001.

Authorization BA23001 must be read in conjunction with Kelberal Farm's Grandfathering Decision PB22001.

April 18, 2023

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Minimum distance separation
- C. Explanation of conditions in Authorization BA23001

APPENDIX A: Consistency with the municipal development plan

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

Kelberal Farms’ CFO is located in the County of Barrhead and is therefore subject to that county’s MDP. The county adopted the latest revision to this plan on August 17, 2010, under Bylaw No. 4-2010.

Part 3.1.3 of the MDP lists 14 agricultural development policies and includes CFOs as among “primary use[s]” in agricultural use area. The first policy recognizes agriculture as the priority land use in rural areas, supports agricultural diversification, encourages siting agricultural industries in agricultural areas, and discourages non-agricultural land uses in intensive agricultural areas. Of the remaining 13 policies, only 10 and 11 relate specifically to CFOs.

Policy 10 states “input shall be provided to the NRCB in responding to applications for new or expanded CFOs based on the technical and locational merits of each application.” This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see NRCB Operational Policy 2016-7, Approvals 8.2.4). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(2.1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA.

Policy 11 states that “minimum distance separations shall conform to standards set out in the Agricultural Operation Practices Act.” “Minimum distance separations” appears to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. MDP policy 11 is not a valid land use provision because it adopts AOPA’s MDS requirements. (See NRCB Operational Policy 2016-7, Approvals, part 8.2.5). That said, the CFOs MDS does not apply to this application and is therefore consistent with this MDP policy.

I conclude that the application is consistent with the relevant land use provisions of the County of Barrhead’s MDP.

Appendix B: Minimum distance separation requirement

The proposed construction is located within the MDS to several category 4 residences (the required MDS for Category 4 is 750 m). The existing barn is 160 m from the closest category 4 residence and the proposed construction is 167 m from this residence. Due to this proximity, the applicant's proposed construction does not meet the minimum distance separation (MDS). However, the Standards and Administration Regulation 3(5)(c)(i) and (ii) provides approval officers authority to issue an authorization without adhering to MDS in certain circumstances. (Part 1 Standards and Administration Regulation 3(5)(c)(i) and (ii)).

Under part 1 of the Standards and Administration Regulation, section 3(5)(c)(i) and (ii), an approval officer may issue an authorization without adhering to MDS if the applicant is applying to build a new building to replace an existing building OR is applying to build an additional building on the site of the CFO and the amount of manure, composting materials and compost produced annually will not increase. This application is to replace the existing liquid manure layer barn with a new solid manure layer barn at the site of the existing CFO, without increasing the amount of manure produced annually.

Kelberal is proposing to replace the existing liquid manure layer barn with a new solid manure layer barn. This will allow the operation to meet the new housing requirements for animal husbandry as well as not require them to winter spread liquid manure (current barn has approximately 8 weeks of liquid manure storage). Kelberal Farms has applied for facilities to store solid manure indoors before being removed and stored or spread in spreading locations.

Kelberal Farms are not proposing to increase livestock numbers beyond their grandfathered numbers, and they will not be increasing the annual amount of manure the CFO will produce. Additionally, the layer barn will not be moving any closer to the nearest residence and will in fact be moving further away from all other residences in Neerlandia and converting to solid manure which has a lower technology factor and livestock siting unit compared to liquid manure.

As context, the County of Barrhead's submission to this application does not object to the replacement of the existing barn with a new barn in the proposed location. Additionally, a full public grandfathering investigation (including courtesy letters to surrounding residences and landowners within 0.5 mile) was completed recently (January 7, 2023) for the CFO and only 1 submission was received. Finally, it is noted that to date the NRCB has not received any complaints regarding this operation which has been in operation for several decades.

Considering each of these factors, I have concluded that MDS does not apply for this application.

APPENDIX C: Explanation of conditions in Authorization BA23001

Authorization BA23001 includes several conditions, discussed below:

a. Construction Deadline

Kelberal Farms proposes to complete construction of the proposed new chicken layer barn and compost shed by end of 2026. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2026 is included as a condition in Authorization BA23001.

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 BA23001 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portions of the chicken layer barn and compost shed 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. Kelberal to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the facilities.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their permit. 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. Authorization BA23001 includes a condition stating that the co-permit holders shall not place livestock or manure in the manure storage or collection portions of the new chicken layer barn or manure in the compost shed until NRCB personnel have inspected each facility and confirmed in writing that they meet the authorization requirements.

c. No change in livestock numbers

As noted in Appendix B above, Kelberal Farms has proposed to replace their old chicken layer barn. However, Kelberal Farms has not requested to increase their permitted (grandfathered) livestock capacity. To ensure that Kelberal Farms does not exceed the current permitted capacity, a condition is included in Authorization BA23001 stating that Kelberal Farms must keep a monthly record of the number and type of livestock on site and provide that record to the NRCB upon request. All records must be kept for a period of two years.

d. Decommissioning

Kelberal Farms' has proposed to decommission the existing chicken layer barn. This means the existing barn will no longer hold an AOPA permit, as decommissioning a facility shows intent to abandon it permanently. Therefore, a condition will be included requiring this be completed. This decommissioning must be completed in accordance with Technical Guideline Agdex 096-90, “Closure of Manure Storage Facilities and Manure Collection Areas.”