

## Decision Summary RA23008

This document summarizes my reasons for issuing Approval RA23008 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23008. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On February 23, 2023, the Hutterian Brethren Church of Alix (Alix Colony) submitted both the Part 1 and Part 2 applications to the NRCB to expand an existing multi-species CFO. The application includes construction of a new layer barn and conversion of an existing layer barn to a pullet barn. The purpose of the expansion is to increase permitted poultry livestock numbers.

On March 16, 2023, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 6,000 to 20,000 chicken layers
- Increasing livestock numbers from zero to 10,000 chicken pullets
- Constructing a new chicken layer barn: overall barn dimensions of 91.4 m x 32.9 m
- Ancillary structure included in chicken layer barn: 16 m x 32.9 m
- Converting an existing chicken layer barn to a chicken pullet barn: 54 m x 12 m

#### a. Location

The existing CFO is located at W ½-17-39-22 W4M in Lacombe County, approximately 4.5 km southeast of the Village of Alix. The topography of the area is rolling to hummocky. The site is approximately 2.8 km north of the Red Deer River.

#### b. Existing permits

To date, the NRCB has issued Approval RA03043, which has been superseded by Approval RA03043A. The CFO has also been issued Authorization RA06011. Collectively, these NRCB permits allow Alix Colony to construct and operate a multi-species CFO, including 600 beef feeders, 600 beef finishers, 105 milking cows, 300 sow farrow to finish, 2050 broiler chickens, 6000 layer chickens, 1050 ducks and geese, and 12 horses. The CFO's existing permitted facilities are listed in the appendix to Approval RA23008.

### 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 100m of a river stream or canal.

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 Lacombe Express on March 16, 2023. The full application was available for viewing at the NRCB’s Red Deer office during regular business hours and was posted on the NRCB website. As a courtesy, 47 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) and Alberta Environment and Protected Areas (EPA).

I also sent a copy of the application to Chain Lakes Gas Co-op Ltd., ATCO Electric Ltd., Fortis Alberta Inc., Ember Resources Inc., and Rahr Malting Canada Ltd. as they hold utility right of ways on the CFO site.

Ms. Laura Partridge, an EPA senior water administration officer, responded to the notice with information regarding how to look up water licenses and calculate water requirement. The applicant is reminded that it is the responsibility of the CFO operator to follow up with EPA and ensure they have access to sufficient licensed water under the *Water Act*.

Ms. Rita Klasson, a senior land administrator at ATCO Electric Ltd., responded to the notice informing that ATCO has no comments or concerns with the application.

Ms. Kristina Croce, an executive officer with AHS, responded to the notice with general information regarding protection of groundwater and dust and odor control.

#### **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 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 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, a planning services administrative assistant with Lacombe County, provided a written response on behalf of Lacombe County. Ms. Noonan stated that the application is consistent with Lacombe County's land use provisions of the municipal development plan. The application's consistency with Lacombe County's municipal development plan 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 one individual.

The one person who submitted a response owns or resides 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 party raised concerns regarding water requirement, odor, brushing of trees, and spreading of manure. These concerns are addressed in Appendix B.

## **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](http://www.nrcb.ca).)

For the sake of efficiency, I first assessed the CFO's existing feedlot, feedlot catch basin, and hog earthen manure storage (EMS) using the ERST. These appear to be the CFO's highest risk facilities, as they are outdoor facilities which store liquid manure and/or runoff or are prone to runoff. The assessment found that these facilities pose a low potential risk to groundwater and surface water. Because these are the CFO's highest risk facilities, 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 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.

Ms. Allison Noonan also listed the setbacks required by Lacombe County'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 any 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 am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed May 10, 2023).

Finally, I considered the effects of the proposed expansion on the environment, the economy, 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 and the directly affected party's 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 party's concerns have been addressed.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of Lacombe County's 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 RA23008 specifies the cumulative permitted livestock capacity as:

- 10,000 chicken pullets,
- 600 beef feeders,
- 600 beef finishers,
- 105 milking cows
- 300 sow farrow to finish,
- 2050 chicken broilers,
- 20,000 chicken layers,
- 1050 ducks and geese,
- 12 horses and permits the construction of the chicken layer barn and conversion of the layer barn to a pullet barn.

Approval RA23008 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 RA23008 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 RA23008: Authorization RA06011 and Approval RA03043A. Permit consolidation helps the permit holder, municipality, neighbors, 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. Construction conditions completed are included in the back of the permit.

## 11. Conclusion

Approval RA23008 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23008.

NRCB-issued Authorization RA06011 and Approval RA03043A are therefore superseded, and their content consolidated into this Approval RA23008, unless Approval RA23008 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Authorization RA06011 and Approval RA03043A will remain in effect.

May 23, 2023

(Original signed)  
Sarah Neff, BSc. BEH(AD)  
Approval Officer

### Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Explanation of conditions in Approval RA23008

## 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 for a CFO or manure storage facility, nor any provisions respecting the 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.)

Alix Colony’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.

Additionally, further restriction on the development of confined feeding operations may apply as directed by an Intermunicipal Development Plan (IDP) or other local plan approved by Council.”

Alix Colony’s application is for an existing CFO; regardless, the CFO is located outside all the aforementioned setbacks.

Regarding section 3.9.1’s reference to IDP’s 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 individual qualifies for directly affected party status because they submitted a 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):

Bob Kullman  
NW-6-39-22-W4

### Concerns from directly affected parties

Alix Colony responded to the following concern raised by the directly affected party.

The directly affected party (DAP) 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. **Groundwater supply** – Concern was expressed regarding the water requirement necessary for increased livestock and the potential impact on the aquifer.

#### **Applicant’s response:**

The applicant indicated that Alix Colony will be drawing water used for livestock from the river, in which the colony is licenced for, and not from the aquifer.

#### **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 the technical document).

The monitoring of groundwater and surface water levels and usage is regulated by EPA under the Water Act. Additionally, it is the responsibility of the applicant to ensure they have access to sufficient licensed water.

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

2. **Increase in odours** – Concerns were raised regarding the potential odour of the new layer barn, as well as odour caused by spreading manure.

#### **Applicant’s response:**

The applicant indicated that Alix Colony only spreads manure in accordance with NRCB regulations.

#### **Approval officer’s conclusions:**

AOPA’s minimum distance separation (MDS) is a means for mitigating odours and other nuisance impacts from CFO facilities. Alix Colony’s proposed CFO expansion meets the required AOPA’s MDS from nearby 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 a slight increase in potential nuisances, such as odours, when the CFO is expanded.

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 follow up on the concern.

- 3. Land base for manure spreading and brushing of trees –** Concerns were raised regarding the spreading of manure and brushing of trees on land near the respondent.

**Applicants' response:**

Alix Colony indicated that the spreading of manure and brushing of trees at the legal land referred to, was a neighbouring landowner and not Alix Colony.

**Approval officer's conclusions:**

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, 974 acres of land in the black soil zone are required for manure spreading. Alix Colony has over 2500 acres available for manure spreading. Therefore, the application meets the land base requirement in section 24(3)(d) of the regulation.

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 these AOPA requirements will provide protection to neighbours from manure runoff, nutrient leaching, and nuisances from manure spreading.

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.

The brushing of trees is not within AOPA legislation and is therefore outside of my jurisdiction.

## **APPENDIX C: Explanation of conditions in Approval RA23008**

Approval RA23008 includes several conditions, discussed below, and carries forward a number of conditions from RA03043A. Construction conditions from historical Approval RA03043A and Authorization RA06011 that have been met are identified in the appendix to Approval RA23008.

### **1. New conditions in Approval RA23008**

#### **a. Construction Deadline**

Alix Colony proposes to complete construction of the proposed new chicken layer barn by September 30, 2023. It is my opinion that a longer construction deadline is more reasonable for the proposed scope of work; allowing for two full construction seasons allows for unexpected contractor or supply delays. Therefore, the deadline of November 30, 2025 is included as a condition in Approval RA23008.

#### **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 RA23008 includes conditions requiring:

- a. The concrete used to construct the liner of the manure collection and storage portion of the new 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.” The permit holder shall 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 RA23008 includes a condition stating that Alix Colony 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.