

## Decision Summary BA23009

This document summarizes my reasons for issuing Approval BA23009 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA23009. 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 June 12, 2023, Hutterian Brethren of New Rockport (New Rockport) submitted a Part 1 application to the NRCB to construct a new multi species CFO.

The Part 2 application was submitted on June 21, 2023. On July 11, 2023, I deemed the application complete.

The proposed CFO involves:

- Permitting the following livestock numbers:
  - 22,000 Turkey toms
  - 1,000 ducks
  - 6,000 broilers
  - 20,000 chicken layers (plus associated pullets)
  - 4 dairy cows
  
- Constructing 3 turkey barns with attached manure pads – 25 m x 141 m (two barns) and 22 m x 130 m (one barn)
- Constructing a chicken layer barn with attached manure pad – 20 m x 95 m (manure pad 20 m x 20 m)
- Constructing a chicken pullet barn with attached manure pad – 14 m x 90 m (manure pad 15 m x 15 m)
- Constructing a mixed livestock barn – 12.5 m x 75 m

#### a. Location

The proposed CFO is located at NW 24-59-2 W5 in the County of Barrhead, roughly 14 km east of the town of Barrhead. The terrain is relatively flat sloping slightly to the NE with a seasonal drainage located 35 m east of the proposed CFO.

### 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 mile. (The NRCB refers to this distance as the “affected party radius.”) The proposed CFO is not located within 100 m of a bank of a river, stream or canal.

A copy of the application was sent to the County of Barrhead, which is the municipality where the CFO is to be located, and to Westlock County which has a boundary within the affected party radius.

The NRCB gave notice of the application by public advertisement in two weekly newspapers in circulation in the community affected by the application. In this case, public advertisement was in the Barrhead Leader, the Westlock News, and in the online Town & Country Today on July 11, 2023. The full application was made available for viewing during regular business hours, and was posted on the NRCB website for public viewing. Eight notification letters were also sent to people identified by the County of Barrhead and Westlock 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 did not receive any response letters from these referral agencies.

I also sent a copy of the application to three right of way holders, ICG Utilities (Alberta) Ltd., Axiom Oil and Gas Inc., and Fortis Alberta. One of these letters was returned and no other responses were received.

### **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 proposed CFO is to be located.

### **5. Municipal Development Plan (MDP) consistency**

I have determined that the proposed CFO 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.)

## 6. AOPA requirements

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

- 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 with the exception of a water well located within 100 m of the proposed turkey barns. The applicant has agreed to decommission this well and therefore a condition will be included to ensure the decommissioning is completed.

## 7. Responses from municipalities 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 County of Barrhead is an affected party (and directly affected) because the proposed CFO 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 land use provisions in the county’s municipal development plan and there is no applicable intermunicipal development plan. The application’s consistency with the county’s municipal development plan is addressed in Appendix A, attached.

Westlock County is also a directly affected party because the proposed CFO’s notification radius falls within the County’s boundary. Ms. Kathleen Deshoux, a development officer with Westlock County provided a response confirming that there is no inter-development plan with the County of Barrhead and that the land zoning adjacent zoning in their County is Agriculture. Ms. Deshoux also provided a written response from Mr. Tony Kulbisky, the Chief Administrative Officer, on behalf of the County raising several concerns. These concerns are addressed below in Appendix D.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received responses from 2 parties.

All of the parties who submitted responses own or reside on land within the 1 mile notification distance for affected persons. Because of their location within this distance, 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 location of the domestic effluent lagoon and manure storages in relation to an unused water well on the neighbouring west property, groundwater usage, groundwater contamination, surface water contamination, manure spreading in a flood plain, and the impacts on wildlife and the overall ecosystem. These concerns are addressed in Appendix C.

## **8. Environmental risk of CFO facilities**

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low potential 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 groundwater, surface water monitoring or an exemption monitoring for a facility. In this case a determination was made and monitoring is not required as the facilities meet AOPA groundwater and surface water protection requirements, and there is no shallow aquifer nearby and no porous subsurface materials.

## **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.

Jenny Bruns listed the setbacks required by the County of Barrhead's land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments (e.g., groundwater or surface water).

I am not aware of any 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 am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed August 25, 2023).

Finally, I considered the effects of the proposed CFO 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 on the environment are acceptable because the application meets all of AOPA's technical requirements. I have considered concerns expressed by directly affected parties related to groundwater quality, manure application, surface water, and wildlife. In my view, as explained in Appendices C and D, the 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. I considered concerns related to water licensing, road use, and nuisances. In my view, for reasons set out in Appendices C and D, 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.

## 10. Terms and conditions

Approval BA23009 specifies the cumulative permitted livestock capacity as:

- Permitting the following livestock numbers:
  - 22,000 Turkey toms
  - 1,000 ducks
  - 6,000 broilers
  - 20,000 chicken layers (plus associated pullets)
  - 4 dairy cows (for personal consumption)

and permits the construction of the following:

- 3 turkey barns with attached manure pads – 25 m x 141 m (two barns) and 22 m x 130 m (one barn)
- chicken layer barn with attached manure pad – 20 m x 95 m (manure pad 20 m x 20 m)
- chicken pullet barn with attached manure pad – 14 m x 90 m (manure pad 15 m x 15 m)
- mixed livestock barn – 12.5 m x 75 m

Approval BA23009 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 BA23009 includes conditions that generally address construction deadlines, document submission, construction inspection, and decommissioning and reclaiming of a water well. For an explanation of the reasons for these conditions, see Appendix F.

## 11. Conclusion

Approval BA23009 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA23009.

September 13, 2023

(Original signed)

Nathan Shirley  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Responses from Westlock County
- E. Explanation of conditions in Approval BA23009

## **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.)

New Rockport’s 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 20(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. The CFO facilities meet AOPA’s MDS requirements.

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

There is no Intermunicipal Development Plan between the County of Barrhead and Westlock County.

## **APPENDIX B: Determining directly affected party status**

The following individuals qualify 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:

- Carina and Peter Sturkenboom  
NW 19-59-1 W5M  
SW 19-59-1 W5M  
SE 24-59-2 W5M  
SW 24-59-2 W5M
- William Stephani  
NE 24-59-2 W5M

NRCB Operational Policy 2016:7 – Approvals, part 6.2.



## **APPENDIX C: Concerns raised by directly affected parties**

**Groundwater usage and licensing** – concern over the volume of water required by the applicant and the loss of groundwater for neighbouring landowners.

**Approval officer's conclusion:**

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 receiving AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form.

New Rockport chose the declaration indicating that they are applying for a water license separate from the AOPA process. However, by signing the declaration it acknowledges that its receipt of an AOPA approval will not improve or influence its ability to obtain a water licence, and that any construction it conducts under an AOPA approval is at its own risk if EPA denies a water licence application. The applicant is reminded that it is their responsibility to secure access to sufficient licensed water.

**Groundwater quality** – concern regarding groundwater contamination from manure storage facilities, domestic effluent lagoon, and the location of a neighbouring land's water well.

**Approval officer's conclusion:**

In the decision summary and in Technical Document BA23009, the proposed CFO 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 above, because the proposed CFO facilities meet or exceed the AOPA requirements, I concluded that the proposed facilities pose a low potential risk to groundwater.

One of the responses indicated a water well is located on their vacant yard located to the west of the proposed CFO (shared property line). EPA's water well information database does not show a water well for this location but is likely located in the main vacant yard. However, given the location of the yard all manure facilities are at least 100 m away from the main yard area which is the AOPA required setback from a water well. Additionally, I am including a condition to decommission an existing water well located on New Rockport's land and within 100 m of the some of the proposed barns. Also, as noted the facilities meet AOPA and are constructed with concrete liners as well as either with roofs or will have pony walls constructed to control runoff. The response also referenced the location in regards to the domestic effluent lagoon, this is discussed below.

**Manure application** – concern was raised regarding manure spreading, including runoff concerns (surface water from the river is used for drinking water), nutrient loading, and the location of spreading lands in a flood plain.

**Approval officer's conclusion:**

Manure application is addressed in sections 24 and 25 of the Standards and Administration Regulation. Section 24(1) requires manure to be incorporated within 48 hours of application when it is applied to cultivated land.

The manure must be applied at least 150 m from any residence and must meet the requirement of at least 30 m to a common body of water.

AOPA has requirements to protect the soil, groundwater, and surface water from excessive application of manure nutrients. 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 and must provide them to the NRCB upon request.

The County of Barrhead's map indicates a 1:100 year flood plain where the majority of the spreading lands are indicated. AOPA does not prohibit manure spreading on lands within a flood plain.

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

**Surface water** – concern was raised regarding the potential for contamination of surface water by manure runoff from the CFO facilities.

**Approval officer's conclusion:**

As noted in the decision summary above, and further documented in Technical Document BA23009, the CFO would meet all AOPA technical requirements. Several of these requirements are designed to protect ground and surface water, and thus to prevent CFO manure from reaching and contaminating surface water. Because the proposed CFO meets these requirements, it would not pose a material risk to surface water.

As noted above, the proposed facilities were assessed as a new CFO and meet AOPA's groundwater and surface water requirements.

**Wildlife** – concern was raised that the proposed CFO, will have a detrimental effect on wildlife and the overall ecosystem.

**Approval officer's conclusion:**

Effects of an application on the environment in general are considered under Section 20(1)(ix) of AOPA. The land proposed for the application (including proposed spreading lands) is currently in-use for extensive agriculture and a portion is to be used for CFO facilities. As with all development, disturbances are possible. However, no specific information was provided in the response which shows how or what the detrimental effect on wildlife or the ecosystem might be. Because of this it is not possible for me to further evaluate or comment on the concern nor does it merit a condition. AOPA addresses surface water, groundwater, and soil nutrient levels, as discussed above, and the application meets these requirements.

**Location and risk of the domestic effluent lagoon** – concern was raised regarding New Rockport's domestic effluent lagoon's location and the risk of the facility on the neighbouring yard.

**Approval officer's conclusion:**

The county has jurisdiction regarding the permitting the non-CFO facilities and I understand they have already issued a permit for the development of the non-agricultural aspects of this new colony development. This facility is outside of the AOPA scope however New Rockport is reminded that they must adhere to their development permit issued by the County.

## **APPENDIX D: Responses from Westlock County**

Westlock County's boundary falls within the notification radius for this application and therefore they are considered a directly affected party. Westlock County submitted a response to the application raising several concerns discussed and addressed below.

Westlock County raised concern regarding the potential water license from Alberta Environment to use water from the Pembina River and the cumulative impact this may have on the Westlock Regional Water Service Commission license for residents in their County.

Water licensing is permitted by Alberta Environment and Protected Areas under the Water Act and therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when receiving AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. Signing a declaration requires an applicant not only to put their mind to water licensing, but also requires to acknowledge their risk if they choose to construct the CFO before they have access to water.

Concern was raised regarding potential contamination due to manure being applied to arable land located on the flood plain. AOPA does not prohibit the land application of manure on arable land located within a flood plain. The applicant is required to still follow all applicable manure spreading and storage requirements set out in the AOPA regulations as well as their AOPA permit.

Westlock County would like a road use agreement put in place. AOPA permits focus on the site where the CFO is to be located. The NRCB does not require applicants to enter into road use agreements with counties or municipalities. However, the county may require that agreement, on its own.

The County asks that approved mitigation plans be put in place for noise, odour, dust, and vibration for the CFO. The application meets all technical requirements including AOPA's minimum distance separation (MDS) for minimizing odours, flies and other nuisance impacts from CFOs. The proposed CFO meets the MDS requirement to all neighbouring residences.

Finally, Westlock County asks that a proper emergency and fire management plan be put in place. I believe this was largely related to the application for the construction of the housing and other associated buildings at the location. It is expected that the applicant will meet all requirements regarding that County development permit. Although this falls outside of AOPA requirements, it is encouraged that the applicant communicate with the County of Barrhead in this regard.

## **APPENDIX E: Explanation of conditions in Approval BA23009**

Approval BA23009 includes several conditions, discussed below:

### **a. Construction Deadline**

New Rockport proposes to complete construction of the proposed turkey barns and manure pads by December 1, 2024. This time-frame is not considered to be reasonable for the proposed scope of work. Given the number of barns to be constructed a longer construction timeline is to be expected, therefore 4 construction seasons would be a more reasonable time frame. The deadline of December 1, 2027 is included as a condition in Approval BA23009.

### **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 facilities are constructed according to the required design specifications. Accordingly, Approval BA23009 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the manure pads and barns to meet the specification for category C (solid manure – wet); category D (solid manure – dry) (respectively) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. New Rockport to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the barns and manure pads.

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 BA23009 includes conditions stating that New Rockport shall not place livestock or manure in the manure storage or collection portions of the new barns and manure pads until NRCB personnel have inspected each facility and confirmed in writing that they meet the approval requirements.

### **c. Decommissioning and reclamation of water well**

New Rockport has proposed to decommission water well ID 340964 which is located within 100 m of the proposed CFO facilities. A condition will be included requiring New Rockport to decommission and reclaim this water well prior to operation of the proposed facilities.