



BOARD DECISION

RFR 2020-08 / PL20001

In Consideration of Requests for Board Review filed under the *Agricultural Operation Practices Act* in relation to Deemed Permit Determination of Livestock Type PL20001

Rimrock Feeders Ltd.

November 13, 2020

The Board issues this decision document under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of requests for Board review of Grandfathered (Deemed) Permit Determination of Livestock Type PL2001.

Background

On October 8, 2020, Natural Resources Conservation Board (NRCB) Inspector Karl Ivarson issued Grandfathered (Deemed) Permit Determination of Livestock Type PL20001 (Deemed Permit Decision). The Deemed Permit Decision found that the confined feeding operation (CFO) located at Section 5-19-29 W4M in Foothills County and currently owned and operated by Rimrock Feeders Ltd. (Rimrock), was confining and feeding beef finishers on January 1, 2002. The Deemed Permit Decision further found that the CFO has a deemed approval with the capacity for 35,000 beef finishers, and that the CFO had not been abandoned.

A Request for Board review (RFR) of the Deemed Permit Decision was filed by Norman and Janice Denney on October 22, 2020, meeting the Request for Board Review (RFR) deadline of October 29, 2020.

All directly affected parties, as established by the inspector, were notified of the Board's intent to review this request and provided with copies of the RFR. Parties that had an adverse interest to the matters raised in the RFR were given the opportunity to submit a rebuttal. The Board received a rebuttal from Rimrock prior to the November 5, 2020 filing deadline.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (Board) consisting of Peter Woloshyn (chair), Page Stuart, Indra Maharaj, and Earl Graham was established on November 3, 2020. The Board convened to deliberate on the RFRs on November 5, 2020.

Jurisdiction

The Board's process for granting a review of an inspector or approval officer determination under section 18.1 of AOPA, is set out in section 13 of the AOPA Administrative Procedures Regulation (regulation). Neither AOPA nor the regulation establishes the threshold test the Board should apply when considering whether to grant a review; however, the Board finds guidance in section 25 of AOPA which provides that the Board must dismiss a request for review if it determines that the issues raised in the request were adequately dealt with by the inspector or approval officer. The Board also considers that a party requesting a review has the onus of demonstrating that there are sufficient grounds to merit review of the inspector's or approval officer's decision.

Note: The NRCB inspectors and approval officers are cross-appointed. In other words, these staff can, when necessary, act in the capacity of either an inspector or approval officer. In this case, Inspector Karl Ivarson was acting under this dual role. The Board's AOPA Administrative Procedures Regulation and Field Services policies related to grandfathering determinations use both 'inspector' and 'approval officer' which are interchangeable. In this document, the Board uses 'inspector'.

Documents Considered

The Board considered the following information:

- Grandfathered (Deemed) Permit Determination of Livestock Type PL20001 and cover letter, dated October 8, 2020
- RFR filed by Norman and Janice Denney, dated October 22, 2020
- Rebuttal filed by Rimrock Feeders Ltd., dated November 4, 2020
- Submission of the inspector, received November 4, 2020

AOPA deemed permit determinations have two levels of decision-making. In the first level, the approval officer or inspector (NRCB Field Services) initiates a review and publishes notice of the process and determination under consideration, providing the opportunity for interested parties to make a submission to NRCB Field Services. In the second level, directly affected parties who made a submission to NRCB Field Services may initiate or participate in a Board review of the NRCB Field Services grandfathering decision.

Issues raised in the RFR

The RFR asks the Board to review three components of the Deemed Permit Decision. Specifically, the RFR asks the Board to review the decision of the inspector in relation to:

- Abandonment of the CFO
- CFO capacity
- Notice of the deemed permit review

Abandonment Consideration

The RFR asserted that the CFO at Section 5-19-29 W4M was not operating as a CFO from April 2017 until the fall of 2019. The RFR asked the Board to find that the CFO was abandoned and cancel the permit.

In concluding that the CFO was not abandoned, the inspector considered the suspension of operations for the period commencing April 2017 until the fall of 2019. The Deemed Permit Decision canvassed the intent of the operator and the activities that occurred during the period commencing in 2017. In that consideration, the inspector noted the communications that had been ongoing between Western Feedlots Ltd (WFL) and Rimrock with respect to the purchase and sale of the CFO at this time. Both parties reportedly expressed the intention that the CFO would be full of cattle again. There was no information to suggest that Western Feedlots planned on abandoning the operation of the CFO; rather, it appeared to be common ground that operations were temporarily suspended during the negotiations but that operations would resume.

Having regard for the available evidence, including the NRCB Operational Policy 2016-7, the Board finds no grounds to revisit the inspector's finding on abandonment.

CFO Capacity

Livestock type is uncontested in the RFR. The Board finds that the inspector provided ample evidence to conclude that WFL was finishing beef cattle between 2000 and 2002.

The RFR stated that the CFO does not have adequate pen size to accommodate 35,000 head of cattle. In the RFR, the Denneys stated that measurements from Google Maps[®], and “confirmed on the ground”, indicated a total pen space of 2,400,000 square feet. The RFR stated that 2,400,000 square feet would support a capacity of 10,666 finishers, based on 5.6 turns per year.

The rebuttal filed by Rimrock calculated a total pen space of 7,900,000 square feet and stated that feedlots turn cattle 1.3 to 1.5 times per year.

The Board did not conduct its own Google Map calculation. However, the Board is familiar with finishing feedlot cattle turn rates in Alberta and that normal practice would yield 1.2 to 2 turns per year. Based on this and the shipping numbers included in the inspector’s decision report, and corroborated by several supporting documents referenced in the inspector’s decision, the Board finds that the inspector’s finding on capacity is supported by the evidence.

By way of example, the inspector’s decision stated that Dr. Booker’s closeout summary for the years 2000 through 2002 indicated that approximately 60,000 beef finishers were shipped from the CFO annually. In the Board’s experience, feedlot turns between 1.2 and 2.0 are relatively common. The information from Dr. Booker would suggest that WFL had a capacity in the range of 30,000 to 35,000 head.

The Board notes that the “Cattle Settlement” record from 2008, in Appendix G of the Deemed Permit Decision, was provided in support of the animal type determination, rather than feedlot capacity. However, this evidence provides the Board with a sample pen capacity, identifying that 252 cattle were shipped to Cargill Foods from pen 508.

It is clear from the provided evidence that the CFO has approximately 126 pens. It is also apparent from the google maps provided in evidence that the pens are roughly the same size. Using information in the Cattle Settlement record, the Board notes that a simple calculation multiplying 252 head of cattle by 126 pens, affirms a potential feedlot capacity exceeding 30,000 head of cattle. Further, the Board notes that the CFO would need only 277 cattle per pen to achieve a capacity of 35,000 head. The Board recognizes that pen occupancy is a variable number; however, this sample pen calculation supports a capacity substantially closer to 35,000 head, than to 10,666 finishers, as asserted in the RFR.

The Board also notes that the Deemed Permit Decision does not approve the construction of any additional pen space. It is the Board’s decision that the capacity at Rimrock is limited by the physical capacity to enclose animals. The current facility capacity will ultimately determine the maximum number of finisher beef animals that can be confined. Should the current pens not provide space for 35,000 head, a new permit application would be required for an expansion.

The Board recognizes that grandfathered determinations are often challenging with the passage of time. The Board concludes that the inspector's finding regarding the CFO capacity is supported by evidence from the period before and after the implementation of AOPA legislation, and that there is insufficient evidence to the contrary. The Board finds the inspector followed NRCB policy related to grandfathered determinations, and weighed the evidence before him fairly and appropriately to support the conclusion that the CFO has a capacity of 35,000 beef finishers.

Notice of the Deemed Permit Review

The information reviewed by the Board demonstrates that the inspector sought, and followed, the advice of the municipal authority in selecting an appropriate newspaper in which to publish notice. The Board finds that it is a reasonable assumption that the affected municipality is in the best position to determine the most appropriate newspaper for notice. The Board notes that the applicants for the RFR, Norman and Janice Denney, did receive the notice.

Decision

As a result of its deliberations, the Board has determined that a review of the Grandfathered (Deemed) Permit Determination of Livestock Type is not warranted.

DATED at EDMONTON, ALBERTA, this 13th day of November, 2020.

Original signed by:

Peter Woloshyn

L. Page Stuart

Indra L. Maharaj

Earl Graham

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Copies of the *Agricultural Operation Practices Act* can be obtained from the Queen's Printer at www.qp.gov.ab.ca or through the NRCB website.