

In the matter of Requests for Review
under section 25(1) of the
Agricultural Operation Practices Act, RSA 2000, c A-7
of a decision by an Approval Officer set out in
Decision Summary RA21043

SUBMISSION OF THE APPROVAL OFFICER

Fiona N. Vance
Chief Legal Officer – Operations
4th Floor Sterling Place
9940 – 106 Street
Edmonton, AB T5K 2N2
ph: 780-422-1952
e-mail: Fiona.Vance@nrca.ca
On behalf of the Approval Officer

Introduction

1. Seven parties have requested that the Board review the decision of the Approval Officer in file RA21043 (Double T Cattle Co. Ltd.). All parties except Doug Astles (RFR #5) filed a response to the application, and were determined by the Approval Officer to be directly affected by the application.
2. The Approval Officer takes no position on whether the Board should dismiss the applications for review (RFRs), or schedule a review. The Approval Officer also takes no position on what matters should be included in a review, if the Board were to grant a review.
3. Approval officers do not routinely make submissions on RFRs. In this case, some of the issues raised in the RFRs either
 - a. were not raised by that party in their statement of concern to the Approval Officer before he made his decision,
or
 - b. not raised at all by anyone to the Approval Officer before he made the decision.
4. Under section 25(1) of the *Agricultural Operation Practices Act* ("AOPA"), the Board's task includes evaluating whether issues raised in the RFR were adequately dealt with by the Approval Officer in the decision. The object of this submission is to assist the Board in identifying which concerns the Approval Officer had an opportunity to deal with in Decision Summary RA21043, and which concerns he did not.

Background

5. In addition to public notice in the Ponoka News, the NRCB asked the County for a list of landowners within 1.5 miles of the legal land description for the proposed confined feeding operation. The NRCB sent courtesy letters to addresses on this list.

List of Adjacent Landowners, Appendix "A" on page 1 of 3 [redacted for addresses]
6. The response deadline for application RA21043 was March 30, 2022.

Ponoka News notice dated March 2, 2022, Appendix "B"
7. A number of parties who owned land or resided within the notification radius submitted written responses. These parties were considered directly affected parties by the Approval Officer.

Decision Summary RA21043, Appendix B (p 11)

8. Five of the parties submitting RFRs¹ filed their written response with the Approval Officer by the March 30, 2022 deadline. For ease of reference, the following timely written responses to the application are attached [redacted for personal information]:

- a. Appendix "C" : Written response from Sipke and Margreet Dijkstra received by the Approval Officer on March 30, 2022;
- b. Appendix "D" : Written response from Shane Campbell received by the Approval Officer on March 14, 2022;
- c. Appendix "E": Written response from Donald and Monica Brennan received by the Approval Officer on March 17, 2022;
- d. Appendix "F": Written response from Stan and Rose Hand received by the Approval Officer on March 28, 2022; and
- e. Appendix "G": Written response from Douglas Smith and Sandy Wolfe received by the Approval Officer on March 17, 2022.

9. Appendix "H" is the late written response from Dennis and Antoinette Ruter provided to the Approval Officer on April 14, 2022 [redacted for personal information].

10. The Approval Officer takes this opportunity to correct a typographical error in Decision Summary RA21043. In Appendix C under concern group 5 (page 16, first paragraph, last line), the Decision Summary says: "... the Category 1 setback for the proposed 4,500 beef finishers is 633 m." The 633 m is an error, as it should be 659 m as elsewhere in the Decision Summary and in Technical Document RA21043.

New issues raised in the RFRs

11. The Approval Officer takes grave exception to allegations expressed throughout the text of RFR #7 and in the attachments to Revised RFR #1 and RFR #2. The NRCB does not take such accusations against its staff lightly. The allegations touch not only the Approval Officer and our Manager, Science and Technology personally, but also the NRCB as an organization.

12. There is no basis for these allegations and no evidence to support them. As such, there is no need to respond to these allegations in these RFR proceedings. Please note, however, that if the Board schedules a Review on the issue(s) of the allegations, the Approval Officer and NRCB Field Services will engage fully in a defence.

13. The directly affected parties who submitted RFRs to the Board have raised other concerns in their RFR that were not raised in their written responses to the application.

¹ The exceptions are the Ruters, RFR #7 (whose written response was after the deadline), and Doug Astles, RFR #5 (who did not submit a written response to the application at all).

14. Some of these additional concerns, while new from the particular party, were raised by other parties in response to the application. As such, the Approval Officer had an opportunity to address those concerns. As illustration:

- a. In his RFR (#2) as ground 6, Mr. Campbell has added a new concern relating to disposal of dead livestock. The Approval Officer addressed deceased livestock in Decision Summary RA21043 at Appendix C #7 p 18; and
- b. In his RFR (#2) as ground 8, Mr. Campbell has added a new concern relating to air quality and dust. The Approval Officer addressed nuisances including air quality in Decision Summary RA21043 at Appendix C #5 pp 15-17.

15. In contrast, the following concerns have been raised in the RFRs for the first time:

- a. The health of own herd animals (biosecurity; transfer of pathogens) – raised in Sylvanside Dairy Ltd.'s RFR (#1), Mr. Campbell's RFR (#2), and the Brennans' RFR (#3).
- b. Identity of various qualified third parties – raised in Mr. Campbell's RFR (#2) (ground 2, second part; ground 3; ground 4);
- c. Idea of a cost-benefit analysis – raised in the attachments to Sylvanside Dairy Ltd.'s RFR (#1, revised, p 3 of attachment) and Mr. Campbell's RFR (#2, revised, p 2 of last attachment).
- d. History of operator, operation – raised in the attachment to Mr. Campbell's RFR (#2, revised, item 3), and in the Brennans' RFR (#3, p 4/6); and
- e. Allegation that the NRCB is funded by large agricultural organizations that support CFOs – raised in Mr. Campbell's RFR (#2, ground 9).

16. The Approval Officer did not have an opportunity to consider these concerns at all before he made his decision.

17. The Approval Officer brings to the Board's attention the following passage from *Wyntjes*, RFR 2007-10 at p 10 (attached as Appendix "I"):

To ensure a fair and timely process, affected parties cannot wait for an Approval Officer's decision and then appeal it to the Board based on issues that were not first brought before the Approval Officer for consideration. Instead, parties are asked to identify all of their concerns up front, so that relevant issues can be considered as part of the decision-making process and included in the written report. In this case, appeals filed with the Board

brought forth some new issues and concerns that had not been identified in the petition filed for the Approval Officer's consideration.

RESPECTFULLY SUBMITTED THIS 9th DAY OF JUNE, 2022.



Fiona N. Vance
Chief Legal Officer – Operations
NRCB

LIST OF APPENDICES

A	List of Adjacent Landowners
B	Ponoka News notice dated March 2, 2022
C	Written response from Sipke and Margreet Dijkstra received by the Approval Officer on March 30, 2022
D	Written response from Shane Campbell received by the Approval Officer on March 14, 2022
E	Written response from Donald and Monica Brennan received by the Approval Officer on March 17, 2022
F	Written response from Stan and Rose Hand received by the Approval Officer on March 28, 2022
G	Written response from Douglas Smith and Sandy Wolfe received by the Approval Officer on March 17, 2022
H	Written response (late) from Dennis and Antoinette Ruter provided to the Approval Officer on April 14, 2022
I	Board RFR 2007-10 <i>Wyntjes</i> , RA07019

APPENDIX A

RA21043 Adjacent Landowners

Contact Person	Address 1	City	PR	Postal Code
Albers, David R and Robson, Julie Anne	[REDACTED]	Ponoka	AB	T4J 1L4
Albers, Dustin and Samantha	[REDACTED]	Ponoka	AB	T4J 1R3
Alphabow Energy Ltd.			AB	
Astles, Douglas P and Sarah M	[REDACTED]	Ponoka	AB	T4J 1R3
Bajema, Brian and Elaine	[REDACTED]	Lacombe	AB	T4L 2N4
Bednar, Bernard and Margaret	[REDACTED]	Ponoka	AB	T4J 1R3
Bednar, Wesley and Lisa	[REDACTED]	Ponoka	AB	T4J 1R3
Brennan, Christopher	[REDACTED]	Ponoka	AB	T4J 1R1
Brennan, Donald and Monica	[REDACTED]	Ponoka	AB	T4J 1R3
Cameron, Tadd	[REDACTED]	Ponoka	AB	T4J 1R3
Campbell, Shane and Evans-Campbell, Kimberly	[REDACTED]	Ponoka	AB	T4J 1R3
Canadian Natural Resources Ltd.			AB	
Contant, Donna Darlene	[REDACTED]	Ponoka	AB	T4J 1R3
Cook, Donald	[REDACTED]	Ponoka	AB	T4J 1J7
Cook, Loretta	[REDACTED]	Ponoka	AB	T4J 1R3
Daystar Dairy Farm 1999 Inc.	[REDACTED]	Ponoka	AB	T4J 1R3
Demund, Matthew and Maria	[REDACTED]	Ponoka	AB	T4J 1R3
Dick, Brett and Frances	[REDACTED]	Ponoka	AB	T4J 1R3
Duke, Allen	[REDACTED]	Ponoka	AB	T4J 1R3
Dykstra, Barbara	[REDACTED]	Ponoka	AB	T4J 1R1
Fessler, Douglas and Wendy	[REDACTED]	Ponoka	AB	T4J 1R3
Fitzgerald, Shane and Alana	[REDACTED]	Ponoka	AB	T4J 1R3
Franke, Mark	[REDACTED]	Ponoka	AB	T4J 1R1
G & S Cattle Ltd.	[REDACTED]	Ponoka	AB	T4J 1R1
Goelema, Mark and Kjennner, Shania M	[REDACTED]	Ponoka	AB	T4J 1R3
Gooch, Mrs Eileen	[REDACTED]	Ponoka	AB	T4J 1R1
Green, Stefan and Kueber, Brandi	[REDACTED]	Ponoka	AB	T4J 1R3
Groot, Kenneth and Shari Lynn	[REDACTED]	Ponoka	AB	T4J 1R1
Hamm, Larry R	[REDACTED]	Ponoka	AB	T4J 1R3
Hammond, Randy	[REDACTED]	Ponoka	AB	T4J 1R6
Hand, Stanley and Rose	[REDACTED]	Ponoka	AB	T4J 1R3
Hanson, Rick and Tammy	[REDACTED]	Ponoka	AB	T4J 1R3
Henkelman, Ken and Cheryl	[REDACTED]	Ponoka	AB	T4J 1E1
Hesselink, Leonard and Wilhelmina	[REDACTED]	Ponoka	AB	T4J 1R3
Hollman, Henry and Janie	[REDACTED]	Ponoka	AB	T4J 1R3
Hollman, Mark	[REDACTED]	Ponoka	AB	T4J 1R3
Jenkins, Mary Janet	[REDACTED]	Ponoka	AB	T4J 1R3
Johansen, Robert and Irene	[REDACTED]	Ponoka	AB	T4J 1S1
Jones, Harvey L and Beverley J	[REDACTED]	Ponoka	AB	T4J 1R3
Juarez Davila, Manuel	[REDACTED]	Ponoka	AB	T4J 1R3
Kinnaird, Elmer and Eileen	[REDACTED]	Ponoka	AB	T4J 1R1
Kinnaird, Peter and Darlla	[REDACTED]	Ponoka	AB	T4J 1R1
Kocyba, James	[REDACTED]	Red Deer	AB	T4R 3G5

RA21043 Adjacent Landowners

Contact Person	Address 1	City	PR	Postal Code
Kocyba, Stephan	[REDACTED]	Red Deer	AB	T4R 3H9
Landmark, Kenneth and Linda	[REDACTED]	Ponoka	AB	T4J 1R3
Layden, Dale and Katherine	[REDACTED]	Ponoka	AB	T4J 1R3
Lewis, Len and Reed, Monika	[REDACTED]	Ponoka	AB	T4J 1R3
Lindstrom, Linda	[REDACTED]	Bashaw	AB	T0B 0H0
Lynx Energy ULC			AB	
Makkinga, Harold and Elaine	[REDACTED]	Ponoka	AB	T4J 1R3
McArthur, Linda	[REDACTED]	Ponoka	AB	T4J 1R3
McCaughey, Donald	[REDACTED]	Ponoka	AB	T4J 1R1
McCaughey, Helen	[REDACTED]	Ponoka	AB	T4J 1R1
Miller, Keith and Janet	[REDACTED]	Ponoka	AB	T4J 1R3
Mitchell, Scott and Christine	[REDACTED]	Ponoka	AB	T4J 1R3
Morrow, Kent and Meade, Sarah	[REDACTED]	Ponoka	AB	T4J 1R3
Nelson, Lorraine and Dean	[REDACTED]	Ponoka	AB	T4J 1R5
Nesbo Construction Ltd.	[REDACTED]	Ponoka	AB	T4J 1R1
Nickerson, Eric and Amanda	[REDACTED]	Ponoka	AB	T4J 1R3
Oppel, Harald	[REDACTED]	Ponoka	AB	T4J 1R3
Oppel, Harald, Guenther and Herta	[REDACTED]	Ponoka	AB	T4J 1R3
Overeem, Bradley and Sarah	[REDACTED]	Ponoka	AB	T4J 1R2
Phalempin, Steven and Faubert, Carna	[REDACTED]	Ponoka	AB	T4J 1R1
Pieron, Olga	[REDACTED]	Ponoka	AB	T4J 1R1
Prediger, Darren and Alyssa	[REDACTED]	Ponoka	AB	T4J 1R3
Pugh, Joseph and Irma	[REDACTED]	Ponoka	AB	T4J 1R3
Pugh, Timothy	[REDACTED]	Ponoka	AB	T4J 1R3
Reilly, Harold and Peck, Carol Anne	[REDACTED]	Ponoka	AB	T4J 1S4
Roelofsen, Gerrit and Alberta	[REDACTED]	Ponoka	AB	T4J 1R3
Ruter, Dennis	[REDACTED]	Ponoka	AB	T4J 1R3
Schiebelbein, Bradley and Haga, Laura	[REDACTED]	Ponoka	AB	T4J 1R3
Schur, Jamie	[REDACTED]	Ponoka	AB	T4J 1R3
Scott Community Society	[REDACTED]	Ponoka	AB	T4J 1R5
Scova Farms Ltd.	[REDACTED]	Ponoka	AB	T4J 1R1
Seibel, George and Jennie	[REDACTED]	Ponoka	AB	T4J 1S4
Shewchuk, Phyllis	[REDACTED]	Ponoka	AB	T4J 1R7
Shipowick, Darren and Julie	[REDACTED]	Ponoka	AB	T4J 1R3
Smith, Douglas	[REDACTED]	Ponoka	AB	T4J 1R3
Stanford, Gordon and Naomi	[REDACTED]	Ponoka	AB	T4J 1R3
Stang, Leopold and Judith	[REDACTED]	Ponoka	AB	T4J 1R3
Stratton, Shane and Cheryl	[REDACTED]	Whitecourt	AB	T7S 1N7
Stretch, Michael and Wanda	[REDACTED]	Ponoka	AB	T4J 1R1
Sylvanside Dairy Ltd.	[REDACTED]	Ponoka	AB	T4J 1R1
Teering, Gerald and Tina	[REDACTED]	Ponoka	AB	T4J 1R3
Tetz, Christopher and Cari Lyn	[REDACTED]	Ponoka	AB	T4J 1R3
Thomason, Bruce	[REDACTED]	Ponoka	AB	T4J 1R3

RA21043 Adjacent Landowners

Contact Person	Address 1	City	PR	Postal Code
Tofsrud, John and Ida	[REDACTED]	Ponoka	AB	T4J 1R3
Tonneson, Curtis and Lorraine	[REDACTED]	Ponoka	AB	T4J 1R3
Troitsky, Adam G and Justine M	[REDACTED]	Ponoka	AB	T4J 1R3
Uebelhardt, Georges and Kasey	[REDACTED]	Ponoka	AB	T4J 1R1
Vander Ploeg, Harold and Helena	[REDACTED]	Ponoka	AB	T4J 1R3
Vanderburg, Andrew J, Andy J and Carla	[REDACTED]	Ponoka	AB	T4J 1R3
Vandermolen, Klaas and Chantal	[REDACTED]	Ponoka	AB	T4J 1R1
Vold, Philip	[REDACTED]	Ponoka	AB	T4J 1R3
Wall, Derek and Kailey	[REDACTED]	Ponoka	AB	T4J 1R3
Westcoast Holsteins Ltd.	[REDACTED]	Chilliwack	BC	V2P 6H3
Whitecotton, Steven and Susan	[REDACTED]	Ponoka	AB	T4J 1R3
Wiebe, Brian, Eva and Samantha	[REDACTED]	Ponoka	AB	T4J 0A1
William, Rodney T	[REDACTED]	Ponoka	AB	T4J 1R1
Wilson, Robert and Debbie	[REDACTED]	Ponoka	AB	T4J 1R3
Woelfing, William	[REDACTED]	Ponoka	AB	T4J 1R1
Yeomans, Jason and Life, Suzanne	[REDACTED]	Ponoka	AB	T4J 1R3

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Public Notice

Notice of Application
Confined Feeding Operation

Morris Thalen and Double T Cattle Co. Ltd. have filed application RA21043 with the Natural Resources Conservation Board (NRCB) to obtain an approval to expand an existing confined feeding operation (CFO) on the NE 15-42-25 W4M in Ponoka County, Alberta. The application is to remove all swine livestock from site and to permit 4,500 beef finishers. It also proposes to construct a series of feedlot pens and a catch basin.

Filing a Statement

Any person who is directly affected by the application may submit a statement to the NRCB. The statement must be received by the NRCB on or before March 30, 2022. Submissions must be made to the NRCB email address provided below. A copy of the response will be sent to the applicant for review and comment. Statements submitted regarding the application are public records and are non-confidential.

Your statement should include your name, the legal land description of your residence or landholdings, mailing address, phone number, email address, and a detailed summary that describes how you would be directly affected by this application. For further information please refer to the fact sheet "The Permitting Process for Confined Feeding Operations in Alberta" at www.nrcb.ca (under Confined Feeding Operations / Notice of Applications). You may also file an application for directly affected party status at this time. Additional information related to directly affected party status is available on the NRCB website.

Failure to submit a statement may affect your rights to apply for an NRCB review.

Viewing the Application

A complete copy of the application and supporting documents submitted by the applicant under the *Agricultural Operation Practices Act* may be viewed **only** on the NRCB website at www.nrcb.ca (under Confined Feeding Operations / Public Notice of Applications) until March 30, 2022. Until further notice, the application will **not** be available for in-person viewing as the Red Deer office of the NRCB is closed to the public due to COVID-19. If you require further information, please contact the approval officer listed below.

Jeff Froese, Approval Officer
Jeff.Froese@nrcb.ca
T: 403-340-5795

The closing date for submissions:
March 30, 2022

Dated at Red Deer AB, on March 2, 2022

www.nrcb.ca



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APPENDIX C

From: sylvanside@xplornet.com
Sent: Wednesday, March 30, 2022 3:40 PM
To: Jeff Froese
Subject: Application RA21043

From:

Sipke and Margreet Dijkstra

Sylvanside Dairy LTD.

Legal land description: NE-22-42-25-W4

[REDACTED]
Ponoka, AB

T4J 1R1, Canada

Phone/fax number: [REDACTED]

Email address: sylvanside@xplornet.com

To whoever this may concern,

We would like to express our concern regarding Application RA21043.

In the Notice it stated that Morris Thalen and Double T Cattle Co. have requested NRCB authorization to expand a confined feeding operation, remove all swine livestock from site and obtain a permit for 4500 beef finishers. It is our understanding that the pigs were removed in 2013 when the barns were closed, When The Thalens originally purchased the operation.

With the original NRCB permit as a hog operation not being used as is since 2013, the original well license would no longer be sufficient for the new intensive operation and could provide additional risk to both our family and livestock. The original hog operators, Van de Pols hauled their liquid feed in 2 times a day from Red Deer which limited their reliance on the areas water for their CFO and that they were required to provide monthly testing of the water level in the well to see if the water level would not be changing.

Our concern for our water is huge. We are talking 4500 beef finishers here! We are concerned that the new operation will not be needing to do the water testing and other important steps that goes with new CFO's. This can cause a huge strain on our water supply. We also are concerned about the quality of the water. Can we hold the NRCB and the County of Ponoka responsible if our well traps out? How can you guarantee that our water is not affected? Since 2013 a lot of things have changed in this area. In this small area there are some huge farms already, we are in the middle of Scova farms (biggest dairy farm in Alberta) and West Coast Holsteins, on top of that there have been a lot of acreages added in this area over the last couple years.

How would this 4500 beef finishers CFO affect the delicate Chain Lakes Ecosystem?

Other concerns are:

- Potential runoff to Chain Lakes
- Noise pollution from animals and machinery
- The amount of traffic and with that road conditions
- Smell pollution (way worse than pigs)
- Dust control
- Too close proximity to a lot of acreages
- Too close proximity to town
- Too close to other existing CFO's, lots of animals in this area already.
- The 4500 beef finishers CFO is incomparable to the 400 sow farrow to finish CFO
- This CFO if allowed, will bring our property value down and also all surrounding properties

We thank you for listening to our concerns,

With kind regards,

Sipke and Margreet,

Sharissa, Randall and Amber Dijkstra

Sylvanside Dairy LTD

APPENDIX D

March 14, 2022

To: Jeff Froese, Approval Officer, Natural Resources Conservation Board

From: Shane Campbell, SE 10-42-25-W4, [REDACTED], Box [REDACTED] Ponoka, AB, T4J 1R3,

Phone: [REDACTED], email: [REDACTED]

Re: Application RA21043 – Letter of Concern

Regarding the above CFO application, I have several concerns that I wish to address.

1. Manure Management – what guarantees will be put in place that contamination will not impact the Chain Lakes system, the Battle River watershed, or ground water?
2. Well Water Impacts – how much water will 4500 head of cattle require daily? Who is responsible for ensuring that my existing well is not impacted?
3. Increased Traffic on County Roads – how will increased traffic impact County roads? Will my taxes increase to help offset County Road maintenance, due to increased traffic?

I have reviewed the application and find no Environmental Protection Plan within the document. A CFO of this size can be described as industrial, so can the applicant guarantee the community that there will be no environmental impacts to the Chain Lakes, the Battle River watershed and ground water. Who will conduct monitoring or inspections to ensure that the proposed manure handling system is working as planned? What mitigations have the applicant proposed if there are environmental issues?

The application contains some Water Well Test Reports, for wells on the CFO property, but no reports for neighbouring wells. If there is no background info on neighbouring wells, what process is in place to ensure that we will continue to have sufficient water and of the quality that we presently have?

Some of our County roads have not been constructed to withstand the use by large equipment and trucks. How will the applicant ensure that roads remain usable by all vehicles? Can the County ensure the community that taxes will not be increased to help cover increased maintenance costs?

What is the benefit of the Neighbor Plan (page 33 of the application), when my home and several other neighboring homes, are not identified?

I would like to offer some mitigation ideas relating to my concerns.

1. Manure Management - has the applicant researched the development of a Bio-Digester to reduce the amount of manure that will be spread on the land? Have the Battle River Watershed Alliance conduct runoff assessments prior to and after development, to determine if there are any impacts to the Battle River and Chain Lakes system.
2. Water Well Impacts – water wells in the community should be tested, prior to development, to establish a background for continued quantity and quality.
3. Increased Traffic on County Roads – if the applicant constructs an access road west to Hwy 815, that will reduce truck traffic and eventual maintenance on County roads.

Thank-you,

Shane Campbell

Cc: Sarah Skinner, Watershed Planner, Battle River Watershed Alliance

Peter Hall, Ponoka County Development and Utilities Officer

APPENDIX E

TO: Jeff.Froese@nrcb.ca

FROM: Donald and Monica Brennan

[REDACTED]
Ponoka, AB. T4J 1R3

Phone numbers: Don [REDACTED]

Monica [REDACTED]

Michael [REDACTED]

Chris [REDACTED]

Legal land description NW-14-42-25-W4

NE-14-42-25-W4

e-mail [REDACTED]

Re: Application submitted by Morris Thalen and Double T Cattle Co. Ltd

We are very much opposed to the application submitted by Morris Thalen and/or Double T Cattle Co.Ltd.,application RA21043, NE-15-42-25-W4. In the application RA21043, it states that this is an existing feeding operation. However, the feeding barns were torn down, the lagoon filled in and the hogs sold years ago by the former owner VandePol. I don't understand how this constitutes an existing feeding operation. Also, setbacks permitted for the hog operation were 792 meters from our home and wells and the new application has the setbacks to our home and wells at 633.33 meters.

We are genuinely concerned with our water wells re: volume, quality and bacteria.

Since the previous permit for the 700 hog farrow to finish was built, there has been one large dairy plus expansion to same, two other dairy expansions, and one feedlot expansion within a two mile radius. It implies in this new application that a 700 farrow to finish hog operation equates to a 4,500 head of beef finishing feedlot. I say as a beef cow/calf producer, 4,500 head of beef cattle use a substantial increase in the amount of water usage than the previous 700 hog farrow finish operation. We believe with the four existing CFO's as mentioned and an additional 4,500 head feedlot, the increase use of all this water will have a definite adverse effect on our wells. Also on the application re: technical requirements , drilling reports were done in 1997/11/06, 2006/07/26 and 2009/01/27. The water licence application we believe, should be coupled with the AOPA permit on the Water Act Licence.

It states in the application that the shortest distance from the manure collection or storage facility is 2,630 meters to a body of water. On our quarter of land, NW-14-42-25-W4, we have six bodies of water and a creek. Three of those bodies of water and the creek are 60 meters or less from the manure holding site. Also there is a year round body of water in SE-22-42-W4 directly north of the proposed lagoon collection site approximately 30 meters. The runoff water from NE-15-42-25-W4 and SE-15-42-25-W4 drains directly into and throughout our land and our creek. It flows through our NW-14-42-25-W4 and into SW-23-42-25-W4 and into a large year round slough. From there it eventually ends up in the Chain Lakes due to the natural elevation. None of these bodies of water were mentioned on the application. With a heavy rain and a large volume of spring runoff there is a huge potential for manure and liquid manure runoff directly onto our land creating risk to ground water, surface water, and our crops. Also in the application the depth of the ground water is not stated. The water table rises when

there is a sizable rain. Years ago when Specht farms put in weeping tile as the water table was so high. It has been removed but the water table remains. I know we have had many dry years lately but that doesn't guarantee we will not have many years of wet conditions.

Has the manure allocation on the application been allocated to any other CFO operation?

In closing, we as a small family farm believe if you approve this application, it will have an environmental impact on our land and our health and the many surrounding residences. The increased runoff, increased traffic to our already poor quality roads with all the other CFO,s in the area, flies, dust,and odor (since most of the trees in the area have been removed) will impact our water and air quality.

Thank you,
Don and Monica Brennan



APPENDIX F

From: [REDACTED]
Sent: Monday, March 28, 2022 4:22 PM
To: Jeff Froese
Subject: Fwd: Re: Application RA212043 Morris Thalen and Double T Cattle Co. Ltd

----- Original Message -----

Subject: Re: Application RA212043 Morris Thalen and Double T Cattle Co. Ltd
Date: 2022-03-28 16:01
From: [REDACTED]
To: Jeff <Froese@nrcb.ca>

Attention Jeff Froese

Dear sir;

Regarding the application for a Confined Feeding Operation on the NE15-42-25-w4 in the County of Ponoka by Morris Thalen. We live and own the NE-10-42-25-w4, which is one half mile south of the proposed development. We have lived here since 1994. In that time we lived with the former hog operation on NE of 15 which severely impacted our quality of life. This section was largely very wet in previous years with areas of peat moss. The county drilled test holes to see if the land was suitable as a possible landfill location and was found not to be. The former owner in the 1970s and 1980s drained the land and installed weeping tile, which the hog operation tried to remove, but it just broke off. Our main concern however is that this area has an abundance of CFOs already. There are 6 large dairies within a 3 mile radius of this location now and we feel there is a real concern as far as the amount of potable water available. This area is very heavily manured already. Where the catch basin is planned for this feedlot is directly in the spring run off area to first Chain Lake. The rest of the section drains to the Battle river. We feel an environmental study should be done prior to an operation like this being considered. There is a lot of acreages in this area and we are also on a gravel haul road so the pressure on the local roads is large with heavy traffic. Mr. Thalen also has personal family or business interests in several of the other CFOs in the immediate area. This proposed operation is also within 6 miles of the town of Ponoka and could also impact others.

We strongly oppose this development in this location.

Yours truly, Stanley Hand and Rose Hand

APPENDIX G

From: Sandy Wolfe <[REDACTED]>
Sent: Thursday, March 17, 2022 9:51 AM
To: Jeff Froese
Subject: Re: Application RA21043

I am writing to voice our concerns about the construction of a confined feeding operation of 4500, beef feeders. First point the application states removal of all swine, there has been no swine to my knowledge for 8 or 9 years since barn collapsed under snow load. This statement is irrelevant to this application.

The construction of this feed lot will effect us in the following ways:

TRAFFIC:

- Employees
- Cattle liners
- Equipment
- Manure hauling
- Feed hauling

Need better dust control other than calcium.

SMELL:

This feedlot is directly North of us, and the prevailing winds come straight to us.

The barn to West of us already prohibits us from opening windows on hot days, or being able to line dry my clothes. This greatly effects our quality of life, and feel this operation would also affect us.

Another concern is the disposal of dead animals, which bring predators to our property and our animals.

We are also concerned with the increased water consumption.

Since the hog farm ceased to exist, there has been other development in this area as well as expansions to existing CFO's. We want to be guaranteed there will be no shortage of ground water.

This area is saturated with large operations now, and further development in this area, will effect our property value, enjoyment of our property and affect our right to fresh air, and quiet living.

Sincerely,

Douglas Smith
Sandy Wolfe

[REDACTED]

Ponoka, Ab
T4J1R3

[REDACTED]

APPENDIX H

From: Dennis Ruter [REDACTED] >
Sent: Thursday, April 14, 2022 8:23 AM
To: Jeff Froese
Subject: Application RA21043, Morris Thalen and Double T Cattle Co. LTD.

Good morning Mr. Froese,

We are emailing you in regards to the above application for the build of a beef finishing operation. We live within 1.5 miles from there (2.01 km to be exact) and are concerned about what this will do with the value and living comfort of our property.

I understand that I'm emailing after the closing date of March 30, 2022 but have been out of town a lot lately, my eye didn't catch this letter sooner.

We live on an acreage on the intersection of Range Road 252 and Township Road 424 on NW-23-42-25-W4. Blue sign number [REDACTED]

We hope that you will still accept this email with our concern in the consideration of permitting this operation. Thank you for your time to read this and have a blessed day.

Thank you,

Dennis and Antoinette Ruter
Cell: [REDACTED]

Home address:
[REDACTED]
Ponoka, Alberta

APPENDIX I



BOARD DECISION

RFR 2007-10 / RA07019

In Consideration of Requests for Board Review
filed under the *Agricultural Operation Practices
Act* in relation to Decision Summary and
Registration RA07019

William C. Wyntjes

October 17, 2007

Background

On August 31, 2007, NRCB Approval Officer, Scott Cunningham, issued Decision Summary RA07019 to William C. Wyntjes. The Decision granted William C. Wyntjes a registration permit to construct and operate a new 100-milking cow dairy operation at NE 18-37-27 W4 in Red Deer County.

Pursuant to Section 22(4) of the *Agricultural Operation Practices Act* ("AOPA"), Requests for Board Review were filed by Greg and Dena Linnell, Yvonne Szakacs and Bruce Bothwell. Mr. Bothwell's request was filed on behalf of several parties: Leora Clutton, John Clutton, Marge Clutton, Dave Clutton, Graham Moore, Bill Reid, Liz Reid, Ian Sudlow, Doug Szakacs and Alex Richard. All Requests for Board Review met the 10-day filing deadline established by AOPA.

The Board provided directly affected parties and parties requesting status reconsideration with a copy of the filed requests for review and an opportunity for rebuttal. William C. Wyntjes provided a rebuttal submission October 2, 2007.

The Board convened to deliberate on this matter October 4, 2007 and reconvened October 9, 2007.

Jurisdiction

The Board's authority for granting a review of an Approval Officer's decision is found in Section 25(1) of AOPA, which states:

- 25(1) The Board must, within 10 working days of receiving an application under section 20(5), 22(4) or 23(3) and within 10 working days of the Board's determination under section 20(8) that a person or organization is a directly affected party,*
- (a) dismiss the application for review, if in the opinion of the Board, the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit, or*
- (b) schedule a review.*

The Board considers that a party requesting a review has the onus of demonstrating that there are sufficient grounds to merit review of the Approval Officer's decision. Section 14 of the *Board Administrative Procedures Regulation* describes the information that must be included in each request for a review.

Documents considered

The Board considered the following information in arriving at its decision:

- Decision Summary and Registration RA07019, dated August 31, 2007;
- Request for Board Review filed by Greg and Dena Linnell, dated September 21, 2007, requesting status reconsideration;
- Request for Board Review filed by Bruce Bothwell, dated September 21, 2007, filed on behalf of Leora Clutton, John Clutton, Marge Clutton, Dave Clutton, Graham Moore, Bill Reid, Liz Reid, Ian Sudlow, Doug Szakacs and Alex Richard;
- Request for Board Review filed by Yvonne Szakacs, dated September 21, 2007;
- Rebuttal submission from William C. Wyntjes, received October 2, 2007;
- Public documents from the Approval Officer's file records (i.e. application materials, Red Deer County's current Municipal Development Plan and correspondence).

Status Reconsideration

For registration applications, Approval Officers make a determination of party status under Section 21 of *AOPA*. Section 21 of *AOPA* identifies parties to be notified of applications as owners or occupants within the greater of ½ mile or the minimum distance separation of the land where the confined feeding operation is to be located. These parties are considered to be *affected* parties who may file a statement of concern with the Approval Officer providing written reasons for the Approval Officer to find them to be *directly affected*. In this case, parties would need to be owners or occupants of land within ½ mile of the boundary of the parcel of land on which Mr. Wyntjes' proposed dairy operation is to be located in order to establish directly affected status (½ mile is greater than the required minimum distance separation for this facility).

AOPA gives the Board the authority to consider Requests for Board Review filed by directly affected parties. Parties without directly affected status also have the right to request that the Board reconsider their status. If the Board finds adequate reason to change a party's status from not directly affected to directly affected, it can then consider the merits of that party's Request for Board Review.

Greg and Dena Linnell, Doug Szakacs, Yvonne Szakacs, Ian Sudlow, Leora Clutton, Marge Clutton, and Alex Richard are not listed as directly affected parties in the Approval Officer's Decision Summary. The Board addressed these parties' requests for status reconsideration and provides its findings below.

Greg and Dena Linnell have requested the Board reconsider their status as they were not listed as directly affected in Decision Summary RA07019. In their request for board review, the Linnells stated that according to Red Deer County's new area structure plan, they are within the limits of the dairy and are thus affected. The Board observes that for this registration-sized operation, directly affected status applies only to owners or occupants of land within ½ mile of the boundary of the parcel of land on which the proposed operation is located. This determination is made under *AOPA*, not by the County's area structure plan. As the Linnells are not owners or occupants within ½ mile of the proposed dairy, the Board finds that they retain their status as not directly affected. Regardless of this finding, the Board noted that the Linnells' key issues were duplicated in other requests for review filed by directly affected parties; such overlapping issues are therefore addressed later in this report.

Yvonne Szakacs (self-represented) and Doug Szakacs (represented by legal counsel) are not explicitly listed as directly affected parties in the Approval Officer's original decision, however, their son Clayton is recognized as a directly affected party. Clayton's name appeared on the petition originally filed with the Approval Officer and was therefore considered by the Approval Officer when he was determining party status. The relationship between Yvonne, Doug and Clayton was clarified by Yvonne who advised that her son, Clayton, had signed the petition on behalf of Yvonne and Doug who were away at the time. Supported by the fact that Section 21(1) of *AOPA* defines directly affected parties as "...owners or occupants of land within the greater of ½ mile or the minimum distance separation...", the Board has agreed to extend directly affected status to both Yvonne and Doug on the basis that they are, in fact, owners or occupants of land within ½ mile of the operation.

Ian Sudlow, represented by legal counsel, also requested his status be reconsidered. Legal counsel stated that his clients were "*people within the new MDP and as such we fall within the category of directly affected persons*". Further, Mr. Bothwell asserted that "*The decision of the Approval Officer to use the boundaries as set out in the Old MDP has denied us our right to be heard.*" As noted above, directly affected status is determined by *AOPA*; it is not determined through a municipal development plan. (The Board also notes that Mr. Bothwell incorrectly asserted that the old MDP was the document used by the Approval Officer at the time he issued his decision. This is clarified on Page 3 of the Decision Summary, where the Approval Officer identifies that the MDP passed by Red Deer County on August 7, 2007 is the applicable MDP in effect for the application, even though the application was filed under a previous MDP).

Mr. Sudlow does not live within the required ½ mile distance of the boundary of the parcel of land containing the proposed dairy as outlined above and therefore the Board finds that Mr. Sudlow shall retain his status as not directly affected. Notably, Mr. Sudlow is one party named in a joint submission filed by several parties, some of whom do have directly affected status. As a result, all of the issues raised in the joint request for review are addressed in this report.

Leora Clutton, Marge Clutton and Alex Richard are all identified as parties requesting board review, represented by Mr. Bothwell. However, none are explicitly identified as directly affected parties in the Approval Officer's decision report. The Board reviewed the addresses and telephone numbers in the petition and determined that each appears to reside at the same address as others who are explicitly identified as directly affected parties. The Board believes each of these people resides within ½ mile of Mr. Wyntjes proposed operation. Leora Clutton resides at the same address as John Clutton; Marge Clutton resides at the same address as Dave Clutton and Alex Richard resides at the same address as Alison Richard. The Board is extending the directly affected status to each of these parties. It is understood that parties may have signed the petition on behalf of themselves and their family members.

Of the parties who requested status reconsideration, the Board has extended directly affected status to the following parties who have requested a review: Yvonne and Doug Szakacs, Leora Clutton and Marge Clutton. Ian Sudlow and Greg and Dena Linnell will retain status as not directly affected, with reasons described above. All parties with directly affected status in Decision Summary RA07019 retain their status as directly affected, whether or not they have filed a Request for Board Review. Participation of all directly affected parties is encouraged during Board Reviews. Notably, Counties are always considered a directly affected party, whether or not they file an appeal with the Board. As a result of the Board's decision, the following parties have directly affected status:

- William C. Wyntjes
- County of Red Deer
- Kenneth and Bonnie Hayward
- Ross Drummond
- Jim Marshall
- Clayton Szakacs
- Yvonne Szakacs
- Doug Szakacs
- Alison Richard
- Alex Richard
- John Clutton
- Leora Clutton
- Dave Clutton
- Marge Clutton
- Graham Moore
- Bill and Liz Reid

Board Deliberations Result in Granting a Limited Review

The Board determined that the Approval Officer adequately addressed all but one issue that was raised in the petition provided to him as a joint statement of concern (each issue is discussed later in this report). Parties who requested a board review challenged the Approval Officer's finding with respect to the application's consistency with the MDP. Specifically, Mr. Bothwell stated that *"The Approval Officer was wrong in his interpretation of the County MDP when he found that the MDP was attempting to modify the MDS requirements of the AOPA and did not create an exclusion zone around confined feeding operations."*

This is the only issue for which the Board requires input from directly affected parties in order to determine whether or not matters relating to the land use provisions of the MDP were adequately addressed by the Approval Officer. Specifically, the Board finds that Decision Summary RA07019 provides incomplete justification for the Approval Officer's finding that, in his view, the Registration application was consistent with the Municipal Development Plan. The Board is therefore granting a written review in order to address this one specific issue. An explanation of the reviewable issue and the additional input sought by the Board is detailed later in this report (see "Interpretation of Consistency with the MDP").

Clarifying the Differences between Registrations and Approvals

The Board noted that filing parties mischaracterized the subject application as an approval rather than a registration. There is an important distinction to be made between approval applications and registration applications. Under *AOPA*, different requirements apply, depending on the type of application made. Notably, Approval Officers are more limited in what they can consider for registration applications. Sections 20 and 22 describe the Approval Officer's considerations for approvals and registrations respectively.

Differences in the legislative requirements for approvals versus registrations are intended to address the dissimilarities in the size and scope of such developments. Section 22 of *AOPA* provides that when considering an application for a registration, an Approval Officer must consider whether the applicant meets the requirements of Part 2 of *AOPA* and the regulations (regulatory requirements) and whether the application is consistent with the Municipal Development Plan's land use provisions (municipal requirements).

In contrast, additional considerations associated with approval applications include the effects of the project on the environment, the economy and the community and the appropriate use of land. These considerations do not apply in the case of a registration-sized operation. The Board believes the legislators made this distinction as they determined the requirements in *AOPA* and its regulations are sufficient to address most concerns relating to registration-sized projects given their smaller size and limited scope. Simply put, the relative risks associated with a registration-sized facility are measurably less than that of a larger approval-sized facility.

Board Deliberations Regarding Issues Raised

The parties requesting Board review expressed concern over a number of issues, including:

- Interpretation of consistency with the MDP
- Impact on future development
- Waste management
- Odours
- Water supply
- Subsoil contamination (potential impact to aquifer)
- Insects and flies
- Property values
- Noise
- Vehicle traffic
- Fencing of lands

The Board's findings on each of these issues are provided within this report.

Interpretation of Consistency with the MDP

As previously stated, Mr. Bothwell's request for review asserted that "*The Approval Officer was wrong in his interpretation of the County MDP when he found that the MDP was attempting to modify the MDS requirements of AOPA and did not create an exclusion zone around confined*

feeding operations.” He further referenced that AOPA requires an Approval Officer to deny an application where it is inconsistent with the land use provisions of a MDP.

In Decision Summary RA07019, the Approval Officer considered whether the proposed operation is consistent with subsections 3.22 (iii) and (vi) of the Red Deer County MDP on pages one through four. Those subsections read as follows:

- 3.22 *The criteria used in responding to applications for new or expanded CFOs are: ...*
- (iii) *Minimum Distance Separation (MDS) as determined by the Agricultural Operations Practices Act;...*
- (vi) *The County supports CFOs where the MDS does not encroach into an urban fringe area or an intermunicipal development plan boundary, or into an area that is defined by a 1 mile (1.6 km) setback from the nearest boundary of an existing or approved residential subdivision situated within the county or an adjacent municipality;*

The Approval Officer also considered the following written comments from Red Deer County:

“At the time the application was made through the NRCB the application was consistent with the minimum distance separation within the County’s Municipal Development Plan. However, on August 7, 2007 County Council adopted a new Municipal Development Plan in which the minimum distance setback requirements from a residential subdivision to an intensive livestock operation were increased from 0.8km to 1.6km. As there is a residential subdivision within 1.6 km of the application, it does not meet the policies set out in the current Municipal Development Plan.”

Subsection 22(1) of AOPA describes how an Approval Officer must assess an application for a registration or amendment to a registration and reads as follows:

- 22(1) *In considering an application for a registration or an amendment of a registration, the approval officer must determine whether the applicant meets the requirements of this Part and the regulations and whether the application is inconsistent with the municipal development plan land use provisions, and if, in the opinion of the approval officer,*
- (a) *the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application, or*
- (b) *the requirements are met and there is no inconsistency with the municipal development plan land use provisions, the approval officer may grant a registration or an amendment of a registration and may impose terms and conditions on the registration or amendment, including the terms and conditions that a municipality could impose if the municipality were issuing a development permit.*

On page 3 of the Decision Summary the Approval Officer determined that *“the reference in criterion vi) of the current MDP is an attempt to modify the minimum distance separation requirements of the Agricultural Operation Practices Act and its regulations, not a confined feeding operation exclusion zone”*. The Approval Officer concluded that *“Red Deer County is not allowed to specify MDS distances or where MDS is to be measured to or from”*. Based on these findings and a review of the Red Deer County Intermunicipal Development Plan, the Approval Officer concluded that the application was consistent with the MDP and the IDP.

Section 22(1)(a) states that where an application for a proposed project is inconsistent with the land use provisions of a MDP, that application must be denied. While the Approval Officer provided his conclusions on why the Wyntjes application was consistent with the MDP, the Board requires input from directly affected parties in order to determine whether or not matters relating to the land use provisions of the MDP were adequately addressed.

The Board therefore directs that a written review hearing be granted to consider the following three questions:

1. Did Red Deer County attempt to modify the MDS requirements established by *AOPA* and its regulations by enacting Criteria (vi)?
2. What requirements or limitations does criterion (vi) create for CFOs?
3. Is the Wyntjes application consistent with the land use provisions of the new MDP?

It is important to note that the Board has a wider jurisdiction than the Approval Officer. Pursuant to Section 25(4)(g) of *AOPA*, upon review of an Approval Officer's decision, the Board must have regard to, but is not bound by, the MDP.

The Board has determined that clarification of the land use provisions of the new MDP and the proposed operation's consistency with these provisions is the only reviewable matter. Board deliberations regarding other issues raised continues below.

Impact on Future Development

This issue was raised on the petition. Mr. Bothwell's submission also expressed concern relating to significant population growth in the area, as described in the Area Structure Plan, in relation to Springbrook and Gasoline Alley. Mr. Bothwell noted that the concerns raised would impact additional people and that a more isolated area would be a better choice for the applicant's proposal.

The Board finds that this issue deals primarily with municipal development planning. Municipalities control future development through land use bylaws and municipal development plans that, in essence, dictate what types of developments can occur.

Red Deer County's Municipal Development Plan, as it relates to this project, is further discussed in this report under "Interpretation of Consistency with the MDP". Notably, the Board is granting a written review to address questions relating to land use provisions of the County's Municipal Development Plan as it pertains to confined feeding operations. This is to ensure proper interpretation of the MDP as it applies to the case of Mr. Wyntjes' Registration.

Waste Management

Parties identified concerns with respect to waste management at the facility. This issue was identified on the petition without further detail. In response, the Approval Officer's decision describes how Mr. Wyntjes' proposed operation demonstrated that it met the required manure spreading land base. Page 8 specifies the lands designated for spreading and indicates that sufficient lands exist.

No information was provided to demonstrate that the information provided was in any way incorrect. Ms. Szakacs identified concerns that the spreading lands may change over time, without application to the NRCB and suggested that spreading could occur on lands designated to meet the minimum distance separation.

The Board notes that, consistent with the legislation, spreading lands may, in fact, change over time. Further, the minimum distance separation is defined in the *Standards and Administration*

Regulation under Section 2: “The MDS is measured from the outside walls of neighbouring residences (not property line) to the point closest to manure storage facilities or manure collection areas.”

Ms. Szakacs expressed concern that “Mr. Wyntjes could procure, without application to the NRCB, additional land in the area known as the ‘minimum distance separation’ area and use this land for waste management.” For clarification purposes, the Board notes that lands required to meet MDS requirements are not exempt from being potential spreading lands as long as manure management practices comply with *AOPA’s Standards and Administration Regulations*.

The Board finds that the Approval Officer adequately addressed this issue. The Board accepts that adequate spreading lands are available and notes that Mr. Wyntjes is bound to meet the legislated requirements with respect to manure management; compliance with this legislation is regulated by the NRCB Compliance and Enforcement Division.

Odours

Issues relating to odours were raised by all of the requesting parties. In this regard, parties advanced the view that the operation’s associated odours (from manure storage and spreading) would negatively impact their own property enjoyment.

The Approval Officer’s Decision Summary addresses odour issues on pages 6 – 8, discussing MDS, Nutrient Management and Nutrient Application Method(s). He further states that “*The use of the minimum distance separation (MDS) is a means of mitigating the nuisance impact of confined feeding operations on neighbouring land uses (residential, commercial, or recreational). Separation between confined feeding operations and neighbouring residences can compensate for normal odour production, thereby reducing potential nuisance conflicts.*”

The Board notes that it is expected that there will be some odours when residing in an agricultural area. That said, requirements to address odour impacts are addressed in *AOPA* through meeting the minimum distance setback. MDS is calculated using set formulas, with the intention of keeping confined feeding operations a fair distance from outlying residences, thus mitigating nuisance issues (including odours) as much as possible.

Meeting the MDS is one of the fundamental requirements that must be met before an Approval Officer can issue a registration. In this case, the Approval Officer described the MDS requirements on Pages 6 and 7 of his Decision Report. The Board notes that the MDS as calculated by the Approval Officer is actually greater than is required since it appears he used the factors that apply for liquid manure rather than for solid manure which was specified in the Wyntjes’ application. The Board finds that with respect to MDS, even though Mr. Wyntjes’ has committed to use a solid manure system, his proposed development was determined to easily meet not only the regulatory requirements for solid manure, but also the greater distance that is required by *AOPA* for liquid manure.

The Board agrees that by meeting the regulatory requirements regarding MDS, nuisances such as odours are appropriately mitigated. If, however, unreasonable odours were to occur, neighbours have the opportunity to address it through the NRCB’s Compliance and Enforcement Division.

Water Supply

Requesting parties suggested that the water supply could be adversely affected by Mr. Wyntjes’ dairy operation.

As noted on page 5 of Decision Summary RA07019, the applicant decoupled his water licence application from his registration application under *AOPA*. This means Mr. Wyntjes will need to

separately pursue his water license from Alberta Environment (outside of the NRCB's decision-making process).

The Board notes that since the applicant's water licence application was separated from this process, the Board does not maintain jurisdiction to address this issue.

The Board notes that Alberta Environment is the governing body responsible for issuance of water licenses. Further, a qualified party who disagrees with a decision made by Alberta Environment to issue a water license may pursue an appeal of the license through the Environmental Appeal Board.

Insects and Flies

Requesting parties brought forth concerns that Mr. Wyntjes' operation would cause an increase to insects, specific concerns primarily related to an increase to fly populations. Given that the proposed dairy is to be organic, without use of herbicides and pesticides, Ms. Szakacs questioned how Mr. Wyntjes' proposed operation could meet the legislated requirement to control flies.

The Approval Officer referenced concerns regarding flies in his Decision Report, noting the requirement that "*All confined feeding operation owners and operators must control the level of flies at a site.*"

The Board notes that the *Standards and Administration Regulation* creates an obligation for owners or operators to control the infestation level of flies. Section 20 specifies:

- 20 (1) The owner or operator of a confined feeding operation or a manure storage facility must employ reasonable measures to control the level of infestation of flies at a location occupied by the operation, facility or site.*
- (2) An approval officer, and inspector or the Board may require an owner or operator of a confined feeding operation or a manure storage facility to use a specific dust or fly control program at a location occupied by the operation, facility or site.*

The Board recognizes that there are methods for handling fly populations without the need to use pesticides. Although the Registration granted to Mr. Wyntjes does not specify how flies will be managed, the Board finds that the legislation requires that flies must be controlled regardless of whether it is an organic operation or not. Should flies from this operation pose any ongoing nuisance concerns, this would more appropriately be dealt with through the NRCB's Compliance and Enforcement Division.

Property Values

Parties advanced their views that property values would be negatively impacted by Mr. Wyntjes' operation. This issue was first raised on the petition and was also addressed in Ms. Szakacs' submission. Ms. Szakacs submitted that she consulted a realtor to inquire whether proximity to the dairy would negatively impact their property's value; the realtor's response was that their property would devalue by 10 – 20%.

Also, Mr. Bothwell submitted that the Approval Officer had not adequately considered Section 20(1)(b) which addresses the effect of a proposed approval on the economy and the community, however, the Board notes that Mr. Bothwell's reference to the requirements of Section 20(1)(b) of *AOPA* is incorrect since this section applies to an approval-sized, rather than a registration-sized, operation. The Approval Officer addresses this concern in his Decision Summary, stating that, "*AOPA and the Regulations do not specify or contain requirements relating to the issue of the value of nearby property.*"

The Board agrees with the Approval Officer's interpretation and finds that, for registration-sized projects, *AOPA* precludes consideration of issues relating to property values. The Board therefore finds that this is not a reviewable issue.

Although not a reviewable issue here, the Board wishes to provide further comment as this issue is often raised by neighbours appealing confined feeding operations that are located in areas that are zoned for agriculture. The Board believes that property values are inherently subject to fluctuations of market values and are location specific. Citizens have the opportunity for input into the zoning of lands within their municipality at the time municipal development plans and land use bylaws are developed or amended. Municipal development plans are an important part of the *AOPA* process, and municipalities have been encouraged to designate any applicable areas in consultation with their citizens, where confined feeding operations are not an appropriate use of land. Accordingly, the Board is granting a limited written review to specifically clarify the interpretation of the current MDP with regard to the Wyntjes' registration-sized application.

Additional Issues

During the Approval Officer's decision-making process, affected parties were invited to identify their concerns in writing, to have them addressed prior to the issuance of his decision. Under Section 21(3)(b) of *AOPA*, affected parties may, within 10 working days of being notified of a confined feeding operation application, "*make written submissions to an approval officer respecting whether the application meets the requirements of the regulations*". This is usually done by filing statements of concern; however, in this case, parties filed a petition identifying matters of concern regarding Mr. Wyntjes' application.

To ensure a fair and timely process, affected parties cannot wait for an Approval Officer's decision and then appeal it to the Board based on issues that were not first brought before the Approval Officer for consideration. Instead, parties are asked to identify all of their concerns up front, so that relevant issues can be considered as part of the decision-making process and included in the written report. In this case, appeals filed with the Board brought forth some new issues and concerns that had not been identified in the petition filed for the Approval Officer's consideration.

Since these issues had not been explicitly raised with the Approval Officer, they were not individually addressed in his Decision Report. On Page 6 of Decision Summary RA07019 (Technical Issues), the Approval Officer states that "*All of the relevant criteria from AOPA and its regulations were considered for this application. Only those that did not clearly meet or exceed the requirements or standards, and those that were raised as issues by directly affected parties, will be dealt with in more detail in this section.*"

The Board finds that the legislated requirements do offer adequate protections. That said, the Board will address these 'additional issues' to provide parties with some additional clarity. These issues include: subsoil contamination (potential impact to aquifer), fencing of lands, noise and vehicle traffic.

Subsoil Contamination (potential impact to aquifer)

Ms. Szakacs submitted that subsoil contamination was not given adequate consideration in the Approval Officer's Decision Report. Notably, this specific issue was not previously raised for the Approval Officer's consideration. As mentioned, if specific issues are not raised when public input is requested, the resulting Decision Summary cannot be expected to address each technical requirement. Approval Officers do not typically speak to every legislated requirement under *AOPA* or the applicable standards and regulations. Nevertheless the standards and regulations still apply and Approval Officers are required to ensure that they are met.

Decision Summary RA07019 refers to Nutrient Management and Nutrient Application methods on page 8. For reference purposes, Soil Protection is addressed in Section 25 of the *Standards and Administration Regulation (Soil Protection)*.

The Board notes that in Mr. Bothwell's submission, the issue was raised regarding the potential for the operation contaminating McKenzie Subdivision through diverted groundwater flow as a result of filling in the slough on the NE corner of the Applicant's land. The Board finds that this issue was not identified in the statements of concern, that no evidence was provided to substantiate how such potential groundwater contamination could occur, and that no information was provided to confirm what plans, if any, were in place to have the slough area filled.

The Board notes that issues related to subsoil contamination are more likely to arise in relation to earthen manure storages or other liquid manure storages, however, the Board notes that this application involves above ground solid manure storage. The Board is confident that manure management practices that respect the legislated requirements provide adequate protection. Ms. Szakacs has not provided any information to suggest how or if the legislated requirements are in any way inadequate for the purposes of addressing her related concerns on this point. Given that this issue was not raised with the Approval Officer previously, the Board finds that he adequately addressed this matter in his report, by identifying that the application meets the requirements as established in the regulations. This is not a reviewable issue.

Fencing of Land

Mr. Bothwell submitted that fencing the lands would adversely affect recreational use of lands in the area. This issue was not raised previously for the Approval Officer's consideration. The Board finds this is not a reviewable issue. In the Board's view, the land is also privately owned and, therefore, can be fenced at the owners' discretion.

Noise and Vehicle Traffic

Mr. Bothwell submitted that daily heavy truck traffic on the county roads would cause road damage and significant noise. These issues were not raised previously for the Approval Officer's consideration; however, even if they had been raised, given that the application was for a registration and not an approval, such considerations would not be applicable. As noted earlier, Approval Officer considerations are limited when considering registration-sized applications. The Board finds that these issues are not reviewable.

Decision

The Board hereby grants a written review to address the issue and questions raised regarding this registration-sized application's consistency with the land use provisions of the Municipal Development Plan. The Board finds that the Approval Officer adequately addressed all other issues that the legislation allowed him to address.

To address the reviewable issue, the Board requests that directly affected parties who wish to participate in the Board Review, as well as the Approval Officer, respond in writing to the following questions:

1. Did Red Deer County attempt to modify the MDS requirements established by *AOPA* and its regulations by enacting Criteria (vi)?
2. What requirements or limitations does Criteria (vi) create for CFOs?
3. Is the Wyntjes application consistent with the land use provisions of the MDP?

Review Process

The Board has decided to convene a written hearing pursuant to section 25 of the *Board Administrative Procedures Regulation*. The Board finds a written process will provide parties with a fair and appropriate opportunity to address the issue set for written review. **The Board wishes to emphasize that this is the only matter it intends to consider in the course of its review; the Board will not consider submissions relating to any other issues.**

The scheduled deadlines for the written process are as follows:

- November 6, 2007:** All directly affected parties and the Approval Officer file their submissions addressing the three questions. (Review staff will ensure that all submissions received by November 6 will be circulated to the directly affected parties or their counsel, if represented.
- November 20, 2007:** All directly affected parties and the Approval Officer file reply submissions.

DATED at CALGARY, ALBERTA, this 17th day of October, 2007.

Original signed by:

Vern Hartwell, Chair

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