



BOARD DECISION

RFR 2011-06 / RA10017

In Consideration of Requests for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA10017.

John and Jacquie Campmans

June 10, 2011

Background

On April 28, 2011, NRCB Approval Officer Scott Cunningham issued Decision Summary and Approval RA10017 to John and Jacquie Campmans. The decision approved John and Jacquie Campmans' application to construct and operate a new 80,000 poultry broiler operation to be located at NW 21-33-1-W5 in Mountain View County.

Pursuant to Section 20(5) of the *Agricultural Operation Practices Act (AOPA)*, Requests for Board Review of the Approval Officer's decision were filed by Albert Curtiss and Michael T. Arnold, both of whom were identified as directly affected parties in Decision Summary RA10017. Each request met the 10-day filing deadline established by *AOPA*.

Directly affected parties named in Decision Summary RA10017 were provided a copy of both Requests for Board Review along with notification of their opportunity to file a response by May 30, 2011. Subsequently the Board received a rebuttal submission from the Campmans and a response on behalf of the Approval Officer, each filed on May 30, 2011. The Board convened to deliberate on this matter on June 2, 2011.

Jurisdiction

The Board's authority for considering a request to review 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 board 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 Board Review.

Documents Considered

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

- Decision Summary and Approval RA10017, dated April 28, 2011;
- Request for Board Review filed by Albert Curtiss, dated May 16, 2011;
- Request for Board Review filed by Michael T. Arnold, dated May 15, 2011;
- Response to the Requests for Board Review filed by John Campmans, dated May 30, 2011; and,
- Response to the Requests for Board Review filed by Mike Wenig on behalf of the Approval Officer, dated May 30, 2011.

Board Deliberations

The Board met June 2, 2011 to consider the Requests for Board Review. In its deliberations, the Board observed several issues were raised regarding Decision Summary and Approval RA10017.

Mr. Arnold challenged the accuracy and completeness of information provided to the Approval Officer by the Campmans. In this regard, he contended the topography was incorrectly described, noting runoff from the Campmans' land flows onto his property and into a dugout. He indicated the land base designated for manure spreading was insufficient and the chemical facility and cattle operation on site were not properly accounted for in conjunction with the broiler operation with respect to water consumption and potential for contamination caused by waste products. Mr. Arnold stated that odours, noise and dust from the operation would reduce his quality of life and pose health concerns; he also questioned the proposed method for deadstock management using composting and incineration. Mr. Arnold submitted that contamination of the dugout would affect his cattle's primary water source thus impacting their health and productivity, and he noted the dugout and slough area are also accessed by waterfowl and wildlife.

Similarly, Mr. Curtiss expressed concerns regarding insufficient manure spreading lands, water consumption, odour impacts, and the potential for run-off to contaminate his dugout and water well. He also questioned the location of the barns, noting the possibility for a future bypass route to be built through the proposed barn site. In light of their concerns, both Mr. Curtiss and Mr. Arnold (the requesting parties) asked that the Approval Officer's decision be reversed by the Board.

In reaching its decision, the Board had regard for the May 30, 2011 letter filed with the Board by Mr. Wenig on behalf of the Approval Officer including the two attachments: a Livestock Assembling Station Operator's Licence issued to Cow Cutta Marketing Inc with an expiry date of December 31, 2009 and a letter from Scott Cunningham to Cow Cutta Marketing Inc. dated December 11, 2009. According to a cover memo from Mr. Wenig, the May 30, 2011 letter and attachments were emailed to the applicant and the two parties who submitted requests for review. The Board did not examine any of the other documents, maps or images referenced in Mr. Wenig's May 30, 2011 letter.

As noted earlier in this report, when considering a Request for Board Review, the Board is directed by Section 25(1) of AOPA to "*(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's observations and conclusions are provided below.

1. Odour, Noise and Dust

Mr. Arnold expressed concern that odour, noise and dust impacts would reduce air quality, pose health concerns and reduce his quality of life. Given the positioning of the barns, both requesting parties noted concerns regarding the location of the ventilation fans. With respect to odour mitigation, Mr. Arnold asserted that the referenced "*established tree row*" was a row of *Caragana* and that the new trees were saplings that would therefore not offer odour mitigation.

The Board observes the Approval Officer considered odour concerns by examining whether the operation met the prescribed minimum distance separation (MDS) requirement in the legislation. The Approval Officer described the use of MDS as "*...a means of mitigating the odour nuisance impact of confined feeding operations on neighbouring residential land uses.*" While his decision includes comment from the applicant that "*... the barn is to be situated near*

an established tree row and new trees have also been planted, which will help reduce odour and distribution of dust particles,” the Board notes this was not included as a condition of the Approval. On Page 10 of his report, the Approval Officer indicated several factors that could influence the level of odours that neighbours experience, citing ammonia levels and “...*topography, screening, climate, season, temperature and wind effects, the frequency, intensity, duration and offensiveness of the odours, the sensitivity of the neighbour’s sense of smell and previous odour experiences of the neighbour at this (or other) locations*”; however, he ultimately concluded that since the operation met or exceeded the MDS requirements, odour effects were presumed to be within acceptable limits. Therefore, according to the Approval Officer, the approval permit did not require further mitigative measures.

On review of Decision Summary RA10017, the Board is satisfied the Approval Officer considered the separation distances between the proposed operation and the neighbouring residences and correctly concluded the project met MDS requirements of the *Standards and Administration Regulation*. Accordingly, the Board is satisfied that potential odour impacts were adequately considered by the Approval Officer.

Noise and dust impacts were discussed on pages 15 and 16 of Decision Summary RA10017. The Approval Officer pointed out that although *AOPA* does not contain specific criteria regarding noise, there is a process administered by the Farmers Advocate office for addressing noise complaints should they arise. *AOPA* Section 3(1) reads, “*A person who is aggrieved by, or an owner or operator who is aware that a person is aggrieved by, any odour, noise, dust, smoke or other disturbance resulting from an agricultural operation may apply in writing to the Minister to request consideration of whether the disturbance results from a generally accepted practice.*” Additionally, Decision Summary RA10017 explains that noise complaints regarding CFOs may be investigated by NRCB inspectors who can then determine whether an inappropriate disturbance is being caused, and if so, decide whether remedial action is warranted. The NRCB maintains a 24 hour complaint line (1-866-383-6722) to respond to public noise and odour concerns associated with confined feeding operations.

Regarding dust impacts, the Approval Officer noted that CFOs are required to control manure dust to the satisfaction of the NRCB; however, he further stated that “*the potential effect of dust on neighbouring residents is beyond the jurisdiction of the NRCB.*” Should dust be determined an issue, the Approval Officer indicated that operators can be required to follow a specific dust control plan. In light of the nuisance mitigation provided by the operation’s compliance with the MDS requirements, and given the speculative nature of the concerns for potential noise and dust impacts, the Board is satisfied these matters were adequately addressed and do not warrant Board review.

2. Water Supply

Issues were raised by both requesting parties regarding the operation’s water consumption needs and the potential impacts on neighbouring residences. Mr. Arnold asserted that an appropriate evaluation of the water consumption should have taken into account the cattle operation and chemical manufacturing facility on site. Both requesting parties expressed concern for future groundwater shortages.

The Board notes that the Campmans’ application to the NRCB was not coupled with an application for a water licence under Alberta Environment (AENV). Given this, the Board observes that the Approval Officer correctly noted that groundwater usage is regulated by AENV and forwarded the department a copy of his decision. Nonetheless, the Approval Officer followed up with the Operator seeking further information to respond to the issues raised in the

neighbours' statements of concern. In response, the Campmans identified a sufficient water supply noting their current licence is for 1.8 million gallons per annum, of which the broiler operation would require approximately 1 million gallons per annum. They also indicated they had drilled two new wells on their property, had lots of water (three times the amount needed for an 80,000 broiler operation), and a long term water management plan in alignment with Alberta Agriculture and Rural Development's guidelines.

The Board concludes that the Approval Officer more than adequately addressed the requesting parties' concerns regarding water consumption. The Board also notes that the Campmans' May 30, 2011 response may provide some relief to the requesting parties regarding water consumption as it informs, "*on March 1, 2011 we have closed out our Cattle Assembly Station and have no cattle on the premises*" and the other facility on site "*...makes two products of a food grade biodegradable soap and a milk stone remover both of which have no bi-products produced and water consumption is no more than 4000L per month.*" The Board finds that the Approval Officer correctly pointed to AENV's regulatory authority for groundwater usage in Alberta; this, as well as with the information that the Campmans' application did not include a water licence application, satisfies the Board that water consumption is not an issue for Board review.

3. Water Quality

The requesting parties raised concern for the potential contamination of surface water and groundwater resources suggesting potential negative impacts to human and animal health. The Board recognizes that under *AOPA*, surface water and groundwater quality matters are dealt with through defined regulatory standards for manure storage and handling.

Specifically, the Board recognizes that manure storage facilities must be constructed at least one metre above the water table; and observes that the Approval Officer added a condition to the permit that, "*If the water table is encountered and causes or creates construction problems or delays during construction of the new poultry broiler barns, construction must cease in the problem construction area and the NRCB must be notified immediately.*" The Board accepts this as an appropriate measure. The Board also accepts the Approval Officer's assessment that the "*proposed concrete floor of the new broiler barns provides equivalent or greater protection to the groundwater resource than that required by the regulations.*"

The Board notes both Mr. Arnold and Mr. Curtiss asserted that their properties currently receive runoff from the Campmans' lands. *AOPA* and its regulations include specific nutrient management requirements. In this case, the Approval Officer determined the Campmans' response to concerns regarding manure spreading was acceptable and that the manure application regulations were met. The Board recognizes that CFO operators are required to ensure that contaminated runoff does not leave their property. The Board accepts the Approval Officer's finding that the proposed operation meets or exceeds the regulatory requirements. That said, should any contaminated runoff be observed to leave the property, an NRCB Inspector may be contacted so the matter can be addressed as a compliance issue.

The Board observes the Approval Officer considered Alberta Health Services' recommendation for water quality testing (bacterial contamination, twice yearly) given the proximity of one water well to the proposed broiler barns; however he chose not to include the testing as a condition of the Approval. The Approval Officer provided reasons for this decision on page 12 of his report, citing that the water well's location uphill and south of the proposed barn and its annular seal satisfied him that, "*...it is unlikely that the aquifer that is the source of water for this well will be contaminated via this water well.*" The Board accepts this as reasonable.

The Board is satisfied that the Approval Officer adequately considered water quality issues pertaining to the Campmans' proposal; it does not find this matter warrants Board review.

4. Manure Spreading Lands

According to the Approval Officer the proposed operation requires 162 hectares (401 acres) of manure spreading land and the operator identified availability of 169 hectares (417 acres) in his application. The requesting parties challenged the adequacy of the manure spreading lands, stating that the proposed land base did not account for other operations on site.

The Board accepts the Approval Officer's finding of fact that the land base is sufficient to accommodate the operation's nutrient management plan. The Board notes that for the purposes of permitting an operation, an operator must demonstrate the availability of adequate spreading lands when applying to the NRCB, however, spreading lands may change over time without further notification or application to the NRCB. The requesting parties may be further assured by the Campmans' response to the requests for review where they established that they had secured additional spreading lands through a separate manure application agreement for another 150 acres of land at SW 28-3-1-W5. The Board accepts that this issue was adequately addressed and does not warrant Board Review.

5. Other issues

Mr. Arnold questioned the proposed methods for managing dead animals through composting and incineration. While the Approval Officer indicated that dead animal disposal falls under the purview of Alberta Agriculture and Rural Development's Inspection and Investigation Branch, he noted that both proposed disposal methods were potentially acceptable. Mr. Curtiss suggested that an Alberta Transportation study proposed four alternative routes for the north Olds bypass route, two of which he asserted would pass through the proposed barn locations. The Board observes this issue was not advanced by the municipality and is purely speculative in nature. The Board does not find that either of these matters merit Board review.

As a result of its deliberations, the Board concluded that the Approval Officer adequately addressed the issues raised in the Requests for Board Review. The Board therefore finds that a review is not warranted.

Decision

The Board determined the Approval Officer adequately addressed the relevant issues raised in the Requests for Board Review; the review requests are therefore denied.

DATED at CALGARY, ALBERTA, this 10th day of June, 2011.

Original signed by:

Vern Hartwell
Panel Chair

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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.