



## **BOARD DECISION**

### **RFR 2017-06 / RA16062**

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA16062

Northwest Poultry Farms Ltd.

June 13, 2017

## Background

On May 10, 2017, NRCB Approval Officer Jeff Froese issued Decision Summary RA16062 regarding Northwest Poultry Farms Ltd.'s (Northwest Poultry) application. The application was for a confined feeding operation (CFO), located at NE 33-42-27 W4M (lot 1, block 2, plan 0124674) in Ponoka County, roughly 13 kilometres west of Ponoka. Northwest Poultry applied to construct and operate a new CFO that would include two broiler chicken barns, with a combined capacity of 60,000 broiler chickens. The approval officer approved Northwest Poultry's application.

A Request for an NRCB Board Review of Decision Summary RA16062 (the RFR) was filed by Mr. Doug Weir on May 24, 2017. The RFR filing met the 10-day deadline pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA). The RFR asked the board to require Northwest Poultry to construct a surface water control system on the CFO lands. Included with the RFR was a request by Mr. Weir that the board first review his status and determine him a directly affected party in relation to the Northwest Poultry application.

Following receipt of the RFR, the board sent a letter to all interested parties on June 1, 2017. That letter invited further input on three questions to assist the board in determining whether it has the statutory authority to consider the request by Mr. Weir to be found a directly affected party and, following that, to consider the substantive issues raised in the RFR. Written responses were submitted by the approval officer, Mr. Weir, and Northwest Poultry.

The Board met on June 7, 2017 to deliberate on the RFR and the responses.

## Documents Considered

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

- Decision Summary RA16062 dated May 10, 2017 and its companion technical document (Part 2 Technical Requirements)
- Request for Board Review filed by Mr. Doug Weir, dated May 24, 2017
- Responses to the board's June 1, 2017 letter:
  - June 2, 2017 letter from NRCB Approval Officer Jeff Froese
  - June 2, 2017 email from Northwest Poultry Farms Ltd.
  - June 3, 2017 letter from Mr. Doug Weir

## Jurisdiction

AOPA establishes two levels of decision-making relating to approvals. In the first level, the approval officer receives and reviews an application, publishes notice of the application, considers statements of concern, and renders a decision. This gives interested parties an opportunity to make a submission so that the approval officer may determine whether they are directly affected and, if found to be so, the approval officer must then have regard for that submission.

In the second level of decision-making, after the approval officer has made a decision, AOPA provides an opportunity for a further review by the board. AOPA establishes the board's review mandate by setting out who may request a review, and the timelines within which such a request must be filed. The board may only consider requests for review filed by parties who the approval officer has already determined to be directly affected. Parties who filed a statement of concern with the approval officer, but who were found not directly affected, may file a request with the board to review their directly affected party status. If the board determines that the party is in fact directly affected, it may then consider the merits of the request for review.

In summary, AOPA does not give the board authority to consider requests for review filed by a party other than a directly affected party, nor does it provide for considering requests by parties who had not filed a statement of concern with the approval officer during the application review process.

## Discussion

In its June 1, 2017 letter, the board asked for further details from the approval officer and Mr. Weir, as it wanted to understand whether there were any circumstances that could result in a finding by the board that the application notice was not sufficient, or Mr. Weir's contact with the approval officer during the application review process was equivalent to the filing of a statement of concern.

In his response to the board's June 1, 2017 letter, the approval officer advised that he had published notice of application on February 16, 2017 in *Central Alberta Life*. The notice provided a description of the CFO facilities proposed, the location of those facilities, and provided for a March 17, 2017 deadline to file a statement of concern. The notice also stated that, "Failure to submit a statement of concern may affect your rights to apply for an NRCB review."

In his response to the board's letter, Mr. Weir stated that *Central Alberta Life* is no longer delivered to rural mailboxes. While it is unfortunate that Mr. Weir did not see the published notice, it was prominently displayed and described the nature of the proposed CFO and how to engage the NRCB application process in adequate detail. The NRCB's established practice is to publish notices of application in newspapers that are circulated within the affected community.

Mr. Weir's first contact with the approval officer was in a telephone conversation on May 2, 2017, approximately six weeks after the deadline for statements of concern set out in the application notice.

The approval officer followed up with Mr. Weir by email on that same date. He attached some NRCB information guides, including one that described the NRCB application and review process. That guide sets out the need to file a statement of concern with the approval officer in order to have issues considered in the initial review, and to preserve the opportunity to request a board review in future.

The board is satisfied that the approval officer's decision to move forward with the finalization and release of his decision was appropriate. Specifically, the board finds that the absence of any reference to his contact with Mr. Weir in the decision summary was appropriate, as the contact that occurred was neither timely nor sufficient to be recognized as a statement of concern by a directly affected party.

AOPA limits the board's power to review approval officer decisions to those instances where a request to review has been filed by a party that participated in the approval officer's application review process.

Having regard for all of the submissions and materials reviewed, the Board finds that it has no authority to consider Mr. Weir's request to find him a directly affected party entitled to file a request for board review. Having determined that it has no jurisdiction to consider Mr. Weir's request, the RFR is declined.

## **Decision**

As a result of the Board's deliberations, it has determined that it has no statutory authority for conducting a review based on the RFR filed. The RFR is denied.

DATED at EDMONTON, ALBERTA, this 13<sup>th</sup> day of June, 2017.

*Original signed by:*

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Vern Hartwell

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Glenn Selland