



BOARD DECISION

RFR 2018-02 / LA17041

In Consideration of two Requests
for Board Review filed under the
Agricultural Operation Practices
Act in relation to Decision
Summary LA17041

Norman and Linda Wever, carrying
on business as Norlin Investments

January 17, 2018

Background

On November 23, 2017, NRCB Approval Officer Joe Sonnenberg issued Decision Summary LA17041 regarding an approval application by Norman and Linda Wever, carrying on business as Norlin Investments (Norlin). The application was to construct and operate a new 9,000 sheep (ewes with lambs) confined feeding operation (CFO). The proposed CFO is located at NE 1-11-7 W4M in Cypress County, roughly five kilometres east of the hamlet of Seven Persons, Alberta. The approval officer approved Norlin's application with conditions.

The Board received two Requests for Board Review (RFRs) that met the 10-day filing deadline pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA). Wanda Berger filed a RFR of Decision Summary LA17041 on December 12, 2017. A second RFR was filed on December 14, 2017 by a group of individuals that included Jeff and Julie Smyth, Wanda Berger, Craig and Amanda Finke, Michael Ost, Roland and Linda Finke, Shelley and Tyler Stenhouse, Kelly Harrold, and Lee and Melissa Waechter.

Following receipt of the RFRs, the Board sent a Notice of Filed Requests for Board Review (the Notice), and copies of the RFRs, to all of the parties found to be directly affected by the approval officer. The Notice advised that any adversely affected parties were being given an opportunity to file a rebuttal submission with the Board, by the deadline of January 2, 2018. Norlin was the only party to file a rebuttal.

The Board met on January 10, 2018 to deliberate on the RFRs and the rebuttal.

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, 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 schedule a review.

The Board considers that a party requesting a review of an approval officer's decision has the onus of demonstrating that there are sufficient grounds to merit a review. The information that must be included in each RFR is described in section 13 of the *Agricultural Operation Practices Act Administrative Procedures Regulation*, and is also set out in the approval officer Decision cover letter dated November 23, 2017.

Documents Considered

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

- Decision Summary LA17041 dated November 23, 2017
- AOPA Application Part 2 - Technical Document LA17041;
- RFR filed by Wanda Berger dated December 12, 2017 (Berger RFR);
- RFR filed by Jeff and Julie Smyth, Wanda Berger, Craig and Amanda Finke, Michael Ost, Roland and Linda Finke, Shelley and Tyler Stenhouse, Kelly Harrold, and Lee and Melissa Waechter dated December 14, 2017 (Group RFR);
- Norlin's Rebuttal Submission to the Board's December 15, 2017 Notice of Filed RFRs; and
- Portions of the public record maintained by the approval officer.

Board Deliberations

The Board is directed by AOPA to dismiss a request for review if, in its opinion, the issues raised in the RFR were adequately dealt with by the approval officer, or the issues are of little merit. The Board has determined that, with one exception, the issues raised by the RFRs were adequately dealt with by the approval officer.

Both RFRs include a statement seeking additional time. The Group RFR asks for 120 days to prioritize and prepare information for a review. The Board has reviewed the application history as well as the issues of concern to the directly affected parties. On September 7, 2017, the approval officer issued notice to directly affected parties that Part 2 of the Norlin CFO application was filed. The notice advised parties that the deadline to file a statement of concern was October 11, 2017. The Board appreciates that parties who participate in AOPA reviews are not familiar with the process; however, the Board believes that the contents and details of this application were circulated to the parties in a timely manner. The Board finds that the timelines provided to the parties are adequate and reasonable. Therefore, there is no basis established for an extension as requested.

The RFRs identify several issues and assert that the approval officer did not adequately investigate or consider the concerns presented. Specifically those issues are:

Issue 1 - Effects on human health, domestic animals and endangered species from ticks

Issue 2 - Setbacks to St. Mary River Irrigation District (SMRID) and Minimum Distance Separation

Issue 3 - Environmental risk screening

Issue 4 - Surface water run-on and runoff control condition

Issue 5 - Noise

Issue 6 - Community effects and land use

Issue 1 – Effects on human health, domestic animals and endangered species from ticks

The Berger RFR states that “there was not enough time for the impact that the huge confined sheep feeding operation will have on the endangered species living close to it”. The Berger RFR further expresses the concern that the increase in tick population will adversely affect human and domestic pet health, and the leopard frog population.

The approval officer stated that he relied on Alberta Health Services to identify human health effects and consider whether the application meets the requirements of the *Alberta Public Health Act*. In doing so, he forwarded the application to Alberta Health Services for review. The approval officer also considered the movement of ticks from a nuisance perspective, noting the buffer provided by the AOPA minimum separation distance (MDS). The Board believes that MDS may assist in reducing this type of nuisance, however, as the receptor for ticks may be livestock and outside domestic animals and the MDS receptor is based on residences, this may be less effective. In any event, the Board finds that the expression of concerns regarding ticks, as outlined in the Berger RFR, absent actual evidence studying and documenting a tick population issue, is without merit.

The approval officer confirmed that the property is not located in any of the prescribed critical habitat areas defined under the *Species at Risk Act*. The approval officer provided a copy of the Norlin application to Alberta Environment and Parks for its review and comment. He received no advisories related to wildlife in return.

Having reviewed the specifics of the tick related issues as raised in the Berger RFR, the approval officer’s decision summary, and the lack of evidence regarding a tick or endangered species issue, the Board is satisfied that the approval officer adequately dealt with this issue. The Board will not be including it as an issue for review.

Issue 2 – Setbacks to SMRID and Minimum Distance Separation

The Group RFR expresses concern that the CFO will not meet the property line setbacks and

AOPA minimum distance separation (MDS). During the course of reviewing the Norlin application, the approval officer required more detailed drawings to indicate how the application may satisfy the setbacks and MDS.

The approval officer included a condition in the approval that Norlin provide written confirmation from a professional surveyor that any constructed facilities exceed the MDS to neighbouring residences, and that the setbacks to property lines be met. With this condition in place, the Board is satisfied that the approval officer adequately dealt with this issue and therefore it will not be included as a review issue.

Issue 3 - Environmental risk screening

The Group RFR questions the approval officer's statement that a risk screening of the site concluded that the risk was "LOW". After reviewing the application file, the Board is satisfied the approval officer's site risk assessment was done based on the inclusion of the approved facilities in compliance with all approval conditions. The low risk finding is therefore dependent on the completion and installation of an appropriate surface water run-on and runoff control system as required by condition 1 in the approval. The Board believes that an assessment based on this future event would benefit from a clear statement of what the approval officer is assessing. Given the specific characteristics of this parcel, the risk assessment conclusion could be quite different if it were based on the use of the site without a surface water control system in place.

The Board does not believe this issue warrants review at a hearing. As stated under "Issue 4", the related issue on the design and maintenance of a surface water control system is a matter that does merit further consideration.

Issue 4 - Surface water run-on and runoff control condition

The Group RFR questions the appropriateness of the approval officer finding the Norlin application complete without the surface water control system design filed and available for review and comment.

Section 20(1)(b)(iii) of AOPA requires the approval officer to give directly affected parties a reasonable opportunity to review the information relevant to the application and a reasonable opportunity to furnish evidence and written submissions relevant to the application. The approval officer reached the conclusion that a surface water control system is required for the Norlin CFO. AOPA requires that directly affected parties have the opportunity to review and state their concerns with "information relevant to the application". As the surface water control system is a key design element of the proposed CFO, the Board finds that the failure to have that system design substantially complete and

available for the review of directly affected parties falls short of the approval officer obligations under Section 20(1)(b)(iii) of AOPA.

Upon reviewing the submissions from all parties, the Board finds that a review is warranted to consider Norlin's design and maintenance plan for a surface water run-on and runoff control system.

Issue 5 – Noise

The Group RFR states that the MDS setbacks are insufficient to adequately mitigate noise. The approval officer considered this issue, concluding that MDS is the tool established by the province to provide adequate mitigation for noise and odour. The approval officer also referenced the AOPA provisions to respond to unacceptable nuisances through the NRCB's complaint line. The Board finds that the approval officer adequately dealt with this issue.

The Board does not believe this issue warrants review at a hearing.

Issue 6 - Community effects and land use

The Group RFR states that approving the Norlin CFO will have adverse effects on future land use and land value as odour, dust, light pollution, and flies will discourage acreage development. Odour, dust, light pollution and flies are all nuisances that can be associated with confined feeding operations. The regulation of development, including confined feeding operations, is in part a planning matter governed by municipal planning. Confined feeding operations are described as intensive agricultural uses which are excluded in certain areas under the Cypress County Municipal Development Plan (i.e. Figure 2 and section 3.2).

The Board finds that a review of the County's Municipal Development Plan confirms that the Norlin CFO is consistent with the land use provisions of the County's Municipal Development Plan. It is not located in any of the exclusion areas described under the County's Municipal Development Plan. September 19, 2017 correspondence from the County confirms the consistency but still describes opposition to the Norlin CFO because of distance separation concerns between the CFO and established residences and dust and road maintenance concerns. The Board finds that the distance separation concerns are without merit as property line setbacks and MDS are satisfied as discussed above, under Issue 2. Road maintenance concerns are solely within Cypress County's jurisdiction to address under section 18 of the *Municipal Government Act*. Other than road maintenance and road dust, AOPA does provide response tools to these nuisances if they are unreasonable. The NRCB maintains and manages compliance review and response through the NRCB complaint line, inspections and enforcement action.

The Board is satisfied that the approval officer adequately dealt with this issue and it will not be included as a review issue.

Documents provided by directly affected parties after December 14, 2017

On January 9, 2018, the Board received documents from the coordinator of the Group RFR, by email, describing the director of Foremost Hildebrand Farms Ltd. It was submitted that since the individual signing a manure receiving form was not a director of Foremost Hildebrand Farms Ltd., that there was a shortfall in the requires acres for manure spreading and therefore the application for approval was incomplete. The Board finds that this argument is without merit for two reasons. Firstly, the Group RFR did not provide its evidence and documentation on this point within the time frames mandated by the Board (by close of business on December 14, 2017). Secondly, signing authority within a corporate body is a matter of a corporate authority. The fact that a director does not sign a document is not compelling or conclusive evidence that the corporation is not bound by the document or that it did not authorize the document or transaction, as signing authority can be delegated to various individuals, as described under section 25(4) of the *Business Corporations Act*.

Decision

Upon reviewing the submissions from all parties, the Board finds that a review is warranted to consider Norlin's design and maintenance plan for a surface water run-on and runoff control system. The *Agricultural Operation Practices Act Administrative Procedures Regulation* (Procedures Regulation) states that, unless otherwise authorized by an approval officer, an application must contain:

- Construction plans for surface water control systems [s.2(3)(a)(iii)]
- A site plan showing the location of all surface water control systems (if required by the approval officer) [s.2(3)(d)(vi)]
- An area plan showing water courses and common bodies of water [s.2(3)(e)(v)]
- Runoff patterns [s.2(3)(e)(vii)]

In addition, the *Standards and Administration Regulation* provides that the approval officer or the Board may require that the above documents be prepared and stamped by a professional engineer or other appropriate professional s.6(2)(e).

The Board notes that the *Standards and Administration Regulation*, in addressing surface water control systems under section 6, sets certain design and maintenance criteria for such systems.

Review Process

The Board has determined that a written review on the issue of a surface water run-on and runoff control system for the CFO is appropriate. The details for the review process are set out in this section.

Norlin must complete and file a design and maintenance plan for a surface water run-on and runoff control system for the CFO that satisfies the approval officer. The report must contain:

- An area plan showing water courses and common bodies of water
- Run-on and Runoff patterns
- A description of surface water control systems proposed
- A site plan showing the location of all surface water control systems
- Construction and maintenance plans for surface water control systems

The above documents (the Surface Water Control System) be prepared and stamped by a professional engineer or other appropriate professional, and filed with the approval officer by no later than the close of business on February 28, 2018.

The approval officer shall, once he is satisfied with the adequacy of the surface water control system, taking into account section 6 of the *Standards and Administration Regulation*, provide a complete copy of the surface water control system to the Board along with any approval officer comments. The Board will establish online access (through an FTP site) to the Surface Water Control System and relevant components of the approval officer's public record for all directly affected parties.

The Board also notes that in the rebuttal submissions of Norlin, Norlin described its openness "to discussing a reasonable and plausible secondary surface containment plan of action and have already been in conversation with SMRID...". Based upon this submission, the Board directs that if a secondary containment plan is proposed by Norlin or the approval officer in his evaluation of the Surface Water Control System, details of it should be provided by Norlin, for evaluation by the approval officer and would be considered part of the overall "Surface Water Control System".

Directly affected parties will be given 15 calendar days to review the Surface Water Control System and provide their comments to the Board.

Norlin and the approval officer will have 7 calendar days to respond to the directly affected parties' comments.

Should the Board have questions of a party during the review, it will pose those questions in writing and request a written response that will form part of the public record.

All filings and correspondence made with respect to this review will be posted on the Board's FTP site. Once this site has been established, the Board will advise all parties.

All submissions are to be directed to the attention of Laura Friend, Manager of Reviews, Calgary office of the NRCB.

DATED at EDMONTON, ALBERTA, this 17th day of January, 2018.

Original signed by:

Peter Woloshyn

Michele Annich

NOTE: NRCB Board Member, L. Page Stuart, was appointed as a member of the division of the Board assigned to consider this matter. Subsequent to her appointment to the division, Ms. Stuart was unable to attend deliberations and as such the remaining panel members finalized this decision and will continue through the balance of the Norlin proceeding as a 2 person quorum.

[S. 18(2) *Natural Resources Conservation Board Act*]

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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.