



BOARD DECISION

2018-06 / LA17041

Review of Decision Summary LA17041

Norman and Linda Wever, carrying
on business as Norlin Investments

April 24, 2018

Background

This report provides the Board's decision following its written hearing review of Decision Summary LA17041.

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 of December 14, 2017, 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.

A panel was appointed to conduct the review, consisting of Peter Woloshyn (panel chair), L. Page Stuart, and Michele Annich. Ms. Stuart was unable to attend panel deliberations and as such the remaining panel members continued through the balance of the proceeding as a two person quorum. On January 17, 2018, in Board Decision RFR 2018-02, the Board determined that a review was warranted to consider Norlin's design and maintenance plan for a surface water run-on and runoff control system. The Board determined that the review would be conducted as a written hearing.

Board Decision RFR 2018-02 directed Norlin to complete and file a design and maintenance plan for a surface water run-on and runoff control system for the CFO, including any proposal for secondary containment, with the approval officer. The Board further directed that the above documents (the Surface Water Control System) be prepared and stamped by a professional engineer or other appropriate professional. The Board tasked the approval officer to provide a complete copy of the surface water control system to the Board, along with any approval officer comments, once he was satisfied as to its adequacy.

Norlin's surface water run-on and runoff control system and the approval officer comments on Norlin's proposed system were filed with the Board on February 8, 2018. The Board issued a notice to all directly affected parties on February 13, 2018 that invited submissions through February 28, 2018. On February 28, 2018 the Board received a group submission from 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. In accordance with the procedure established by the Board, Norlin and the approval officer filed responses to the directly affected parties' comments on March 6, 2018.

Following its review of Norlin's surface water run-on and runoff control system, the Board requested additional information from the approval officer on March 8, 2018. The Board received a response to that request from the approval officer on March 14, 2018. The Board sent a letter to Norlin on March 22, 2018 directing Norlin to complete and file a revised design plan for a surface water run-on and runoff control system. On March 28, 2018, Norlin filed a response to the Board's March 22, 2018 letter. On March 28, 2018, the Board circulated the Norlin response letter to all interested parties by email.

The Board issued a letter to all interested parties on April 3, 2018 in which it set out the NRCB panel decision with reasons. That letter stated that the Board's full decision report would follow at a later date; this decision contains the Board's full decision report, including a restatement of the reasons set out in the April 3, 2018 letter.

Documents Considered

The Board's record was complete on March 28, 2018 and included:

- Decision Summary LA17041 dated November 23, 2017
- AOPA Application Part 2 - Technical Document LA17041
- RFR filed by Wanda Berger, dated December 12, 2017
- 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
- Norlin's Rebuttal Submission to the RFRs, dated December 18, 2017
- Portions of the public record maintained by the approval officer
- hearing submissions filed by:
 - Norlin Investments, dated February 8, March 6 and March 28, 2018
 - NRCB approval officer, dated February 8, March 6 and March 14, 2018
 - 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 February 28, 2018

The Board maintained an accessible ftp site so that the hearing record was accessible by all parties throughout the review process.

Issue

Norlin was required to provide a design and maintenance plan for its surface water run-on and runoff control system that complies with AOPA and satisfies the Board.

Discussion

For the reasons that follow, the Board is prepared to exercise its authority to approve the Norlin CFO pursuant to section 25(7) of AOPA.

Norlin has now completed and filed a design and maintenance plan for a surface water run-on and runoff control system (drawing received March 28, 2018) for the CFO that satisfies the Board. The Surface Water Control System plans are prepared and stamped by a professional engineer. The Board finds that the approval officer, in both his original decision and subsequent submission dated March 14, 2018, was satisfied that the catch basin capacity was adequate in capturing runoff from 39,600 m² of uncovered pen area. While drawings in both TD LA17041 and Norlin's February 8, 2018 submission indicated a total pen area of 92,000m², the approval officer never confirmed the covered pen area. The Board finds that the approval officer's submissions on this point were speculation as there were no engineered or other drawings which expressed this design, as the Board discussed in its correspondence to the operator dated March 22, 2018. Indeed, the engineered drawings of the operator's engineer dated February 8, 2018 and the previously attached drawing to the application (see page 8 of 29 of TD LA 17041) were contrary to the approval officer's most recent submissions (they suggested a covered pen area of less than 10% of the 92,000 m² drainage area or "open corrals with partial tent covering").

The Board finds that the revised design of the system, as outlined by the operator and his engineer in their March 28, 2018 submission, provides the necessary clarity for the design of the proposed surface water control system. The Board finds that the Sheffer Andrew Ltd. March 28, 2018 surface water control system satisfies the regulatory requirements of AOPA.

Taking into account section 19 of the Standards and Administration Regulation, the Board finds that the calculations and design by Norlin's engineer illustrate that the designed capacity of 2040 m³ for the catch basin meets the requirements under the Standards Regulation. The Board finds that in applying the run off coefficient of 0.6 and the 1:30 year rainfall volume of 85 mm (both of which are mandated by AOPA), to the uncovered pen area of 39,600 m², the catch basin design volume must be 2020 m³. The Board notes that the revised engineered drawing received on March 28, 2018 now employs the AOPA mandated calculations and matches the previous calculations of the approval officer. In addition, the March 28, 2018 Norlin submission now shows the total pen area, covered pen area and uncovered pen area, all of which are required to adequately assess the surface water control system. In the future, the Board expects approval officers to ensure that surface water run off plans are properly developed and assessed before approval of an application, so that directly affected parties can transparently understand the proposed system.

The Board also finds that under the revised engineered drawing, 52,400 m² of the total 92,000 m² of pen area will be covered. This confirms that the catch basin has been properly sized since it is now clear that the total pen area is 92,000 m² consisting of 52,400 m² of covered pens and 39,600 m² of uncovered pens. The Board notes that Norlin proposes to divert run-on water from the covered pens from entering the catch basin using eavestroughs and underground pipes. Accordingly, the Board deletes condition #5 of the approval and replaces it with the following condition #5:

“The feedlot pens will involve covered and uncovered pen areas as outlined on the operator’s engineered plans dated March 28, 2018. The covered pen area shall be 52,400 m² and the maximum uncovered pen area shall be 39,600 m². All run-on water must be diverted from the covered portion of the feedlot pen area and excluded from entering the permitted catch basin through the use of eavestroughs and underground pipes. The catchment basin will be used to manage run off from the uncovered pen area. A maximum uncovered pen area of 39,600 m² may be constructed after condition #9 below has been met and the catch basin is operational.”

The Board further adds condition # 14 to the approval to address the secondary surface water system:

“A secondary run off control system in the form of constructed berms as outlined on the operator’s engineered plans dated March 28, 2018 shall be constructed prior to placing livestock or manure in the uncovered feedlot pens.”

The Board finds that the secondary runoff containment system as illustrated on the engineered plans is designed to store an additional 20,605 m³ of runoff on the CFO site.

The Board directs the approval officer to issue an approval that conforms to this decision.

Decision

For the reasons set out above, the Board hereby directs the approval officer to issue an approval to Norlin Investments to construct and operate a confined feeding operation as described in the application, subject to the conditions related to technical matters set out by the approval officer in Decision Summary LA17041 and subject to the amended conditions described above.

DATED at EDMONTON, ALBERTA, this 24th day of April, 2018.

Original signed by:

Peter Woloshyn
Panel Chair

Michele Annich
Panel Member

Contact the Natural Resources Conservation Board at the following offices.
Dial 310.0000 to be connected toll free.

Edmonton Office

4th Floor, Sterling Place, 9940 - 106 Street
Edmonton, AB T5K 2N2
T (780) 422.1977 F (780) 427.0607

Calgary Office

19th Floor, 250 – 5 Street
Calgary, AB T2P 0R4
T (403) 297.8269 F (403) 662.3994

Lethbridge Office

Agriculture Centre, 100, 5401 - 1 Avenue S
Lethbridge, AB T1J 4V6
T (403) 381.5166 F (403) 381.5806

Morinville Office

Provincial Building, #201, 10008 - 107 Street
Morinville, AB T8R 1L3
T (780) 939.1212 F (780) 939.3194

Red Deer Office

Provincial Building, #303, 4920 - 51 Street
Red Deer, AB T4N 6K8
T (403) 340.5241 F (403) 340.5599

NRCB Response Line: 1.866.383.6722

Email: info@nrcb.ca

Web: www.nrcb.ca

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.