



BOARD REQUEST FOR REVIEW DECISION

RFR 2022-13 / LA21057

In Consideration of a Request for Board
Review filed under the *Agricultural
Operation Practices Act*

Tateson Ranching Ltd.

November 1, 2022

The Board issues this decision under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for the Board’s review of Decision Summary LA21057.

Background

On October 28, 2022, the Board issued a Decision Letter, stating that it found that the approval officer had adequately dealt with all issues raised in the applicant’s filed request for review, and/or that the issues raised were of little merit. The Board denied the request for review of Decision Summary LA21057. The reasons for the denial are provided in this document, Board Decision Report RFR 2022-13.

On September 22, 2022, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary LA21057. That decision granted an application by Tateson Ranching Ltd. (Tateson or the applicant) for an Approval for a new confined feeding operation (CFO) for 3,000 beef finishers and permits four rows of feedlot pens (this includes the already constructed, unpermitted pens) and a catch basin. The proposed CFO is located at W ½ 20-16-12 W4M in the County of Newell (the County).

The Board received one request for Board review (RFR) of the approval officer’s decision, from Tateson, requesting a review of three of the permit conditions. The RFR met the filing deadline of October 14, 2022.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board consisting of Peter Woloshyn (chair), Sandi Roberts, L. Page Stuart, and Indra Maharaj was established on October 20, 2022, to consider the RFR and decide whether a review is warranted. As used here, a “review” is a quasi-judicial hearing in which the parties can generally submit expert and other witness testimony, and other evidence, when relevant to the issues selected by the Board for the hearing.¹ (References to the “Board” in this document are to findings of the panel of board members established specifically for this file.)

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. The Board will dismiss a request for review if the Board finds that the approval officer’s decision adequately dealt with the issues raised in the request, or if the issues are otherwise of little or no merit.

Documents Considered

The Board considered the following information:

- Decision Summary LA21057, dated September 22, 2022
- Technical Document LA21057, dated September 22, 2022
- Approval LA21057, dated September 22, 2022
- RFR filed by Tateson Ranching Ltd., received October 14, 2022
- Approval officer material, dated October 18, 2022

¹ For more information on Board reviews, see NRCB, *Board Reviews & Court Decisions – Board Review Process*, [online](#).

- County of Newell Municipal Development Plan, Bylaw No. 1734-11, November 2011
- NRCB Fact Sheet, Distinguishing Between Confined Feeding Operations and Seasonal Feeding & Bedding Sites (for Cattle Operations), August 13, 2018
- NRCB Operational Policy 2015-2, Distinguishing Between Confined Feeding Operations and Seasonal Feeding & Bedding Sites (for Cattle Operations), July 5, 2018

Board 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.

Board Deliberations

Under section 25(1) of the *Agricultural Operation Practices Act (AOPA)*, the Board must determine whether an applicant seeking a RFR has raised issues that warrant a review. The applicant must convince the Board that the grounds for review have merit and/or have not been adequately dealt with by the approval officer. The Board has examined each of the Tateson Ranching Ltd. grounds for review and concluded that the issues raised have been adequately dealt with by the approval officer or are of little or no merit. The reasons for this decision follow.

Tateson applied for and received approval (Approval LA21057) to construct a 3,000 head beef finisher CFO. Tateson requested a review of three permit conditions associated with Approval LA21057. The Board notes that an inspection was also held with respect to this facility and unauthorized feedlot pens were identified to have already been constructed.

RFR Ground for Review #1: Decommissioning Condition

Approval LA21057 states: "The co-permit holders shall decommission any parts of the constructed feedlot pens (including fences, bunks, etc.) that are closer than 30 metres (m) to the irrigation drain."

Tateson argued that the approval officer should have granted a variance that would have allowed feedlot pens to be located within 30 m of the irrigation drain. This assertion was made on the basis that it had submitted information to the approval officer to show that the natural drainage from the feedlot would be away from the irrigation drain and that there was an existing berm extending the length of the cow-calf site and the feedlot. In Tateson's opinion, this satisfies the requirements set out in the AOPA Standards and Administration Regulation (Standards Regulation), section 7(3)(a) and (b).

In its RFR, Tateson failed to acknowledge that the feedlot pens had already been constructed, without authorization.

Board Views

The Board notes that the approval officer relied on section 17 of AOPA and section 7 of the Standards Regulation that require a separation of 30 metres between the manure storage facility/manure collection area and a common water body. Section 7(3) of the Standards Regulation states:

7(3) Subsection (1)(c) does not apply if the owner or operator demonstrates to an approval officer or the Board, before the facility or area is constructed, that

- (a) The natural drainage from the facility or area is away from the common body of water, or
- (b) A berm or other secondary protection for the common body of water constructed by the owner or operator protects the common body of water from contamination.

[emphasis added]

It is clearly stated in section 7(3) that the subsection providing for the separation between facilities and water bodies does not apply if the operator shows compliance with the conditions in section 7(3)(a) or 7(3)(b) before the facility or area is constructed. There is no provision in this section for an operator to show that the facility or area complies with section 7(3)(a) or section 7(3)(b) after the facility or area is already constructed.

In the Decision Summary, the approval officer considered the relevant sections of AOPA and the Standards Regulation and considered the information provided by Tateson in support of its position that the facility complies with section 7(3)(a) and section 7(3)(b). The approval officer concluded that, even with the natural drainage and the purported berm, it was not clear that the variance “would provide the same or a greater degree of protection as being 30 m away from the water body”. Further, it is undisputed that the facility is, in part, already constructed, without approval, and, therefore, the variance set out in section 7(3) cannot be issued.

The Board finds that the approval officer thoroughly considered the relevant provisions of AOPA and the Standards Regulation and adequately dealt with this issue.

RFR Ground for Review #2: Runoff Control Plan for the Cow/Calf Site

Approval LA21057 states: “The co-permit holders shall submit a detailed plan showing how manure contaminated runoff will be prevented from leaving the cow-calf site (as shown on page 5 of Technical Document LA21057), and how manure from this site will be managed.”

Tateson asserted that it was not appropriate for the approval officer to impose a condition related to the management of the cow-calf seasonal feeding and bedding site (SFBS) as part of a permit for a beef CFO. Tateson objected to the link between the condition of providing a runoff plan for the SFBS and the operation of the feedlot pens, the latter which form the CFO portion of the operation.

Tateson argued that a review is required to determine whether the approval officer has the authority to connect the SFBS operation (through the issuance of the condition) to the CFO

permit. Tateson requested that if the Board determined on review that the approval officer did not have this authority, the condition should be removed.

In support of its position, Tateson provided the following five objections for why the condition does not have merit:

1. The SFBS meets the Standards [Regulation] section 4(2)(a), which required the presence of an intercept (berm) between the site or corral and common body of water which directs water away from the common body of water (as illustrated in Figure 2 below).
2. AOPA does not require an operator of a SFBS to develop a runoff control plan.
3. The AO has not included a risk assessment of the SFBS (which would show how runoff from the SFBS is a risk to the environment).
4. The AO did not report AOPA non-compliance or runoff issues resulting from the SFBS. In fact, an NRCB Inspector has been on site, and did not identify any issues with the management of the cow-calf pens.
5. Finally, the condition indicates manure impacted runoff must not leave the cow-calf site (indefinitely). This condition is not practical, as manure impacted water that collects in the cow/calf pens must be pumped off and land applied as field and crop conditions allow.

Board Views

Objection No. 1

In its RFR, Tateson asserted that the SFBS meets the Standards Regulation section 4(2)(a).

In the Decision Summary, the approval officer noted that the SFBS pens are between five to twelve metres away from and alongside an irrigation drain that empties into Scots Lake. The approval officer referenced the Standards Regulation section 4(1), which states that an owner or operator of a seasonal feeding and bedding site must locate the site 30 metres or more from a common body of water, and that this subsection does not apply if (a) an interceptor is constructed that diverts runoff away from the common body of water or (b) all manure and bedding materials are removed from this site to an appropriate manure storage site.

The Board notes that the approval officer is authorized under section 6 of the Standards Regulation to require the applicant to demonstrate that appropriate run-on and runoff controls are in place in conjunction with a permitted CFO. The Board finds that the approval officer adequately considered all of the information provided by Tateson with respect to the berm, the surface and groundwater flows, and the other technical information. The Board finds that the approval officer's requirement to develop a runoff control plan for the SFBS is reasonable, given the close proximity of the SFBS pens to the feedlot pens. The Board considers Objection No. 1 is of little merit.

Objection No. 2

In its RFR, Tateson stated that AOPA does not require an operator of an SFBS to develop a runoff control plan.

Section 6 of the Standards Regulation authorizes an approval officer to require a surface water control plan and system installed where appropriate. The Board finds that, given the proximity of the SFBS to the CFO, the approval officer appropriately included a condition that requires a runoff plan for the SFBS.

The Board considers this argument to be duplicative as the appropriate regulations are addressed in Objection No. 1 raised by Tateson in the RFR.

Objection No. 3

With respect to the third objection raised by Tateson, the approval officer noted, in section 8 of the Decision Summary, that she conducted an Environmental Risk Screening Tool (ERST) assessment of the already constructed pens and the location for the proposed feedlot pens. The approval officer also received the drawings of the layout of the CFO portion of the facility and the purported SFBS pens, both of which are located west of the asserted easterly drainage pattern. While the approval officer does not specifically mention the SFBS in these paragraphs, the location of the various pens within a shared footprint makes it likely that the feedlot pen site has the potential to be impacted by the SFBS. Therefore, the Board finds that the approval office appropriately required a runoff control plan for the SFBS to address surface water risk for the entire site.

The Board finds that the approval officer adequately dealt with the issues forming the basis for Tateson's Objection No. 3.

Objection No. 4

With respect to the fourth objection raised by Tateson, it suggested that the on-site inspector did not take any action in relation to the SFBS and, therefore, the runoff plan was unnecessary. The Board notes that the approval officer adequately considered relevant information regarding the runoff and run-on requirements for the entire site. The Board finds that, given the location of the SFBS and the feedlot pens, and the proximity of the entire facility to the irrigation drain and Scots Lake, establishing a runoff plan for the entire site is appropriate and that application officer adequately considered the facts and issues in reaching her conclusion in this regard.

The Board finds Objection No. 4 to be duplicative of previously raised issues and of little merit.

Objection No. 5

Finally, Tateson asserted that the condition that states "manure-impacted water must not leave the cow-calf site" is impractical since water that gathers in the SFBS pens must be pumped and land-applied as conditions allow. In this case, the Board is confident that the approval officer was referring to preventing contamination from occurring off the owner's property and was not intending that manure (water-based or otherwise) is meant to be permanently stored on site. The Board considers this objection to overlap the issues raised with respect to the runoff control plan (Objection No. 2) and the risk assessment (Objection No. 3) raised by Tateson in the RFR. Further discussion of this objection is not necessary as the reasons for decision in Objection No. 2 and Objection No. 3 apply to this objection as well.

The Board has undertaken a detailed review of this issue and the five objections that Tateson raised in its RFR with respect to the imposition of a runoff plan condition for the cow-calf SFBS. The Board concludes that the approval officer thoroughly and adequately considered the relevant legislative provisions as well as the information provided by Tateson in determining that the condition was appropriate and relevant.

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The Board finds that Tateson's RFR Grounds for Review #2 (that include Objections 1 through 5) have little merit and do not warrant review by the Board.

RFR Grounds for Review #3: Operating Conditions

Approval LA21057 states: "All manure must be applied to cultivated land and incorporated within 48 hours."

Tateson requested that the Board grant a review to consider the manure application condition be modified to include non-cultivated land. While all parties recognize that the operation is located in a "sensitive area", Tateson submitted that the condition should be modified to include non-cultivated land because the approval officer has "... not illustrated why manure application on non-cultivated land in this area is inappropriate risk to the environment."

Tateson stated, in its RFR, that "they are prepared to test for Nitrogen (sic) and the proposed Phosphorus limits for all of their landbase."

Board Views

Section 24(1) of the Standards Regulation states that manure, composting materials or compost may only be applied to arable land and, if applied to cultivated land, must be incorporated within 48 hours of application.

According to Technical Document LA21057, the spreading lands identified by Tateson all border Scots Lake and are located within the environmentally sensitive area of regional significance (Kininvie). In considering this information, the approval officer stated, in Appendix B(d) of the decision summary, "Because the CFO is located within an identified environmentally sensitive area which is also identified as an 'amphibian sensitive area' on the Fish and Wildlife Map (FWIMP), additional soil testing will be required to prevent influx of nutrients into the lake through manure contaminated runoff, or onto the surrounding native grasslands through wind erosion and subsequent deposition of soils." The Board notes that Tateson did not challenge the need to conduct additional soil nutrient testing, including phosphorus levels. Also, based on this information, the approval officer restricted manure spreading to cultivated land. Section 24(1) of the Standards Regulation requires that all manure applied to cultivated land must be incorporated within 48 hours. While the risks were not specifically quantified, the approval officer took a conservative approach in imposing a condition that lowers the potential risk to amphibians and to Scots Lake.

The Board finds that the approval officer adequately dealt with issues raised by Tateson with respect to the imposed manure spreading condition.

Additional Matter: Inconsistency with Respect to the Time Frame for Incorporation of Manure

The Board notes a discrepancy in the stated time requirement for manure incorporation between Decision Summary LA21057 (24 hours) and Approval LA21057 (48 hours). This matter requires resolution.

Additional Issue: Adjacency of the SFBS to the Permitted CFO

In its deliberations determining whether to grant Tateson’s request for review, the Board spent significant time considering the issue of whether the SFBS should have been considered part of the CFO in accordance with [NRCB Operational Policy 2015-2 \(Policy 2015-2\)](#).

The Board recognizes that the determination by the approval officer that the cow-calf operation is a SFBS at the Tateson CFO location has not been disputed by Tateson. Despite finding no merit in Tateson’s grounds for review associated with the SFBS runoff control condition, the Board notes that this RFR presents an opportunity for it to provide some insight and direction with respect to the consideration of the adjacency of CFOs and SFBSs.

The Board notes that the Tateson RFR refers to the [Fact Sheet](#) that summarizes the NRCB’s “Operational Policy 2015-2: Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites” (SFBS Policy).

The SFBS Policy describes the typical physical and operating characteristics of both SFBSs and CFOs. It also describes under what conditions a SFBS will be considered to be adjacent to a CFO. If a SFBS is determined to be adjacent to a CFO, it must operate in a manner that is consistent with all factors in Table 1 of the SFBS Policy (and/or Fact Sheet). The Board acknowledges that Tateson has been advised that the SFBS pens can only be used outside of the grazing season of July 1 to September 15 and the pens shall confine only cow-calf pairs at any time. However, according to the SFBS Policy, a SFBS that is adjacent to a CFO must employ all of the operating factors of a ‘classic’ SFBS as listed in Table 1 of the SFBS Policy.

Given the information in evidence associated with this RFR—in particular, the Technical Document LA21057, the Decision Summary LA21057, and the Tateson RFR—it is apparent to the Board that the SFBS could have been considered to be “adjacent” to the CFO and, accordingly, required to operate in alignment with the SFBS Policy. However, the Board notes that it is unable to find evidence in the Decision Summary to confirm that either the identified SFBS meets all of the required factors outlined in Table 1 or that there are reasons that the SFBS facilities should be exempted from SFBS Policy 2015-2.

Decision

As a result of its deliberations and for the reasons stated in this document, the Board has determined that the issues raised by Tateson Ranching Ltd. in its Request for Review were either adequately considered by the approval officer or are of little or no merit. Therefore, the Request for Review by Tateson Ranching Ltd. is denied.

DATED at EDMONTON, ALBERTA, this 1st day of November, 2022.

Original signed by:

Peter Woloshyn (chair)

Sandi Roberts

L. Page Stuart

Indra Maharaj