



BOARD DECISION

RFR 2019-05 / LA19004

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary LA19004

Beekman Farms Ltd. and P & H
Wessels Farms Ltd.

September 3, 2019

Background

On July 26, 2019, Natural Resource Conservation Board (NRCB) approval officer Adria Snowdon issued Decision Summary LA19004 and Approval LA19004 with conditions, to construct a new beef confined feeding operation operated by P & H Wessels Farms Ltd. (Wessels), on NW 33-07-26 W4M, land owned by Wessels and Beekman Farms Ltd., in the Municipal District of Willow Creek (County). The construction includes:

- A new 2,500 beef finishers confined feeding operation (CFO)
- Constructing a synthetically lined catch basin (40 m x 40 m x 5 m)
- Constructing feedlot pens (190 m x 223 m)

Pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA), Requests for Board Review of Decision Summary LA19004 were filed by Edith Evans, and Jadon and Jana Sharratt. Each of the two filed requests for Board review (RFR) met the 10-day filing deadline established by AOPA. A third RFR was received past the filing deadline of August 19, 2019 set out in the approval officer's cover letter to the decision summary.

Under authority of section 18(1) of the *Natural Resource Conservation Board Act*, a division of the Board consisting of Page Stuart (Panel Chair), Keith Leggat, and Daniel Heaney was established on August 21, 2019 to consider the RFRs. The Board convened to deliberate on the RFRs on August 26 and 28, 2019. Before deliberating on the merits of the issues raised, the Board reviewed, as a preliminary matter, the status of the RFR that was received past the deadline. This included an assessment of the pertinent portions of AOPA, as well as review of previous board decisions with respect to late filing of documents.

RFR received past the filing deadline

An RFR submission from Robert Rippin and Niesje Vanden Dool (Rippin and Vanden Dool) was received by the NRCB on August 20, 2019, after the filing deadline of August 19, 2019. Additional correspondence was provided by Rippin and Vanden Dool on August 21 and 26, 2019. Rippin and Vanden Dool do not assert that there was any NRCB induced error in the failure to file the RFR within the time period provided in the notice of decision provided to them by the approval officer. The Board reviewed the facts relating to these submissions, including documentation provided by the Board Reviews Manager.

The Board finds that as a result of unfortunate errors by Rippin and Vanden Dool on both their facsimile and email transmissions, their RFR was not directed to the NRCB until the RFR deadline had passed.

The RFR deadline is determined in accordance with the statutory provision in AOPA section 20(5) (also reflected in section 15 of AOPA's Administrative Procedures Regulation). AOPA section 20(5) states:

20(5) A directly affected party may, within 10 working days of receipt of the decision under subsection (4), apply to the Board in accordance with the regulations for a review of the decision.

As the Board has no authority to extend a statutory deadline, and the Rippin and Vanden Dool submission did not meet the filing deadline, it cannot be accepted by the Board.

That said, the Board was provided with evidence that documents Rippin and Vanden Dool's efforts to file their RFR. The Board also notes that upon the issuance of Notice of Filed Requests for Board review letter on August 20, 2019, Rippin and Vanden Dool contacted the NRCB to ask why their RFR was not included. For these reasons only, the Board makes the observation that had the Rippin and Vanden Dool RFR been submitted within the statutory timelines, none of the issues raised would warrant consideration for review. The Board notes, for example, the construction and operation of wind turbines in Alberta is regulated by the Alberta Utilities Commission, an agency that requires environmental assessment of various risks associated with the siting, construction, operation and reclamation of wind turbines, including risks to ground and surface water.

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,*
- (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 review has the onus of demonstrating that there are sufficient grounds to merit review of the approval officer's decision. Section 13(1) of the AOPA Administrative Procedures Regulation describes the information that must be included in each request for Board Review.

Documents Considered

The Board considered the following information:

- Decision Summary LA19004, dated July 26, 2019
- Approval LA19004, dated July 26, 2019
- RFR filed by Edith Evans (Evans), submitted August 19, 2019
- RFR filed by Jadon and Jana Sharratt (Sharratt), submitted August 19, 2019
- Rebuttal filed by Wessels, submitted August 27, 2019
- Portions of the public record maintained by the approval officer

Board Deliberations

The Board met on August 26 and 28, 2019, to deliberate on the following issues raised in the RFRs.

- Ground and surface water quality
- Suitability of land for manure spreading
- Property values
- Ground water quantity
- Fire risk
- Animal containment

Ground and Surface Water Quality

One of the primary objectives of AOPA and the standards regulation is to ensure that manure storage facilities and manure spreading activities address risk to surface and groundwater. In Decision Summary LA19004, the approval officer concluded that both the feedlot pens and the run off catchment basin include liners that satisfy AOPA requirements. In the approval, the approval officer has required leak detection monitoring and reporting to assess ongoing risk associated with the catch basin.

AOPA regulations include requirements that provide nutrient limits and setback provisions to limit risk to ground and surface water. Nutrient limits are in place so that manure is land spread as fertilizer at agronomic rates for crops or forage. At the time of application, an applicant must satisfy that they have secured sufficient manure spreading lands to take the anticipated manure production from the CFO. While the manure spreading land acreage required at the time of application is calculated based on provincial land soil maps—in this case the black soil zone—actual manure spreading activities are subject to ongoing regulatory requirements under the NRCB's AOPA mandate.

Neighbours expressed concerns related to ground and surface water; however, in order to warrant review at a Board hearing, those concerns must justify revisiting the approval officer's decision. Simply stated, the Board has reviewed the approval officer's reasoning for concluding that the application satisfies AOPA's requirements related to surface and ground water protection, and finds that these matters were adequately addressed in the decision summary and approval.

Suitability of Land for Manure Spreading

The Sharratt RFR expressed a concern regarding where manure will be spread, and asserted that soil in the area is not black.

Requirements related to the manure application limits on land are addressed in section 24(3) of the AOPA Standards and Administration Regulation:

24(3) A person must

(a) have access to sufficient land for the application of manure, composting materials and compost so that the application limits for nitrate-nitrogen in Schedule 3 are not exceeded, or

(b) have a nutrient management plan that has been approved by the Board.

The Part 2 Technical Requirements Document (Technical Document) includes a listing of acres owned by Wessels, as well as two signed manure spreading agreements, describing lands and soil types available for land spreading. Each document includes confirmation by the approval officer that the described lands are suitable for spreading. The approval officer noted the soil type beside each land area listed as black. Further, the approval officer calculated updated land base requirements resulting from the amended application decreasing livestock numbers from 5,000 to 2,500 beef finishers. The Technical Document confirms that the land base requirement for spreading (black soil) is reduced from 963.7 to 481.8 acres. The Board notes that this reduced acreage assessment is not correctly reflected in the Decision Summary.

The Board finds that the acreage and soil type requirements for land spreading have been met. The Board reminds all parties that, as described in the Decision Summary, AOPA regulations set nutrient application limits requiring operators to test land on which manure is applied every three years for nitrate-nitrogen and soil salinity, and to have these results available for inspection by the NRCB.

The Board finds that issues relating to manure spreading and soil type have been adequately dealt with by the approval officer.

Property Values

The Sharratt RFR expressed a concern about property values. The Board and approval officers have consistently stated that effects on land values are not a subject for the NRCB's review under AOPA. Impacts on property values are a land use issue which is a planning matter dealt with by a municipality in its municipal development plan and land use bylaws.

AOPA section 20(1) addresses the requirements around land use provisions:

20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions....

In Decision Summary LA19004 Appendix A, the approval officer reviewed land use provisions in both the County's municipal district development plan (MDP), and in its land use bylaw (LUB). As well, the approval officer noted that municipalities are affected parties that are defined by AOPA to be "directly affected", and therefore are entitled to provide evidence and written submissions. The approval officer had regard for the County's manager of planning and development response stating that the application is consistent with the County's MDP. The approval officer concluded that the application is consistent with the County's land use provisions.

The Board finds that the approval officer adequately dealt with the concern regarding property values.

Ground Water Quantity

The Evans and Sharratt RFRs expressed concerns about water quantity. Water quantity, a matter outside of AOPA's mandate, is a water licensing issue that is managed by Alberta Environment and Parks (AEP) under the Water Act. The Board notes that the Wessels' rebuttal acknowledges the requirement to obtain a water license from AEP. The Board reminds all parties that, as the approval officer notes in the decision summary, any construction done without having the necessary licenses and permits in place is done at the operator's sole risk.

The Board finds that issues relating to ground water quantity have been adequately dealt with by the approval officer.

Fire Risk

The Sharratt RFR expressed concern about fire hazard. As the approval officer noted, there are no provisions within AOPA relating directly to fire hazard; however, AOPA permit holders must abide by other applicable legislation including the *Forest Prairie Protection Act* and applicable County burning permit bylaws.

The Board finds that issues relating to fire hazard have been adequately dealt with by the approval officer.

Animal Containment

The Sharratt RFR expressed concern about cattle getting out of pens. Animal containment is regulated by Alberta Agriculture and Forestry under the *Stray Animals Act*, and therefore not within the jurisdiction of AOPA.

The Board finds that issues relating to cattle containment have been adequately dealt with by the approval officer.

Decision

As a result of the Board's deliberations, it has determined that the approval officer has adequately addressed the issues raised in the filed Requests for Review, and therefore does not direct any matter to a hearing. The RFRs are denied.

DATED at EDMONTON, ALBERTA, this 3rd day of September, 2019.

Original signed by:

L. Page Stuart

Keith Leggat

Daniel Heaney

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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.