



NRCB | Natural Resources
Conservation Board

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SENT VIA EMAIL

January 25, 2019

Laura Friend
Manager, Board Reviews
Natural Resources Conservation Board
19th Floor, Centennial Place
Calgary, Alberta T2P 0R4
Email: laura.friend@nrcb.ca

Dear Ms. Friend:

Re: Review of LA18058A Nelson Family Ranches Ltd. – request for clarification

I act for Operations at the Natural Resources Conservation Board. As such, I represent the Approval Officer as well as Field Services in this matter.

We have had an opportunity to review the written reasons of the Board in RFR 2019-01 *Nelson Family Ranches Ltd.* In particular, we noted the following directions from the Board at pages 3-4 of the reasons:

Directives:

The Board has determined that a review of the deemed capacity of the Nelson Ranches CFO would benefit from a complete assessment conducted by the approval officer. Rather than simply moving forward with a review on the basis of the Decision Summary LA18058A, the Board hereby directs the approval officer to determine the grandfathered footprint as of January 1, 2002 and to complete a deemed capacity determination for the Nelson Ranches CFO.

The Hofer Family asserted that additional pen space has been constructed at the Nelson Ranches CFO. The Board expects this issue to be resolved as part of this review. Therefore, the approval officer is directed to determine whether there has been unauthorized construction of additional pen space at the Nelson Ranches CFO.

NRCB policy titled "Determining Deemed Capacity for Grandfathered Confined Feeding Operations" (Operational Policy 2016-5) sets out the procedure for determining deemed capacity under AOPA section 18.1; further, section 11 of the AOPA Procedures Regulation establishes the process governing deemed permit determinations. The Board finds that it would be prudent to follow the principles set out in Operational Policy 2016-5, Operational Policy 2016-6, and section 11 of the AOPA Procedures Regulation as part of a

comprehensive determination of permitted capacity at the Nelson Ranches CFO.

The Board further directs that the approval officer determine the deemed capacity at the Nelson Ranches CFO for all livestock types within the beef category, as described in Schedule 1 in the AOPA *Agricultural Operations, Part 2 Matters Regulation*.

Format:

The Board understands that further notice may be necessary as outlined in the AOPA Procedures Regulation and operational policies. The Board has not identified a specific deadline for the approval officer submission; however, the Board expects that Field Services will make every effort to expedite its decision in a timely manner. Once the Board has received the approval officer's deemed capacity determination, it will provide the opportunity for directly affected parties to make submissions and to rebut the submissions of other parties. While at this time the Board has not identified a need to conduct an oral hearing, it has not ruled out either that possibility, or other review options available to the Board under AOPA section 25(4).

NRCB Operations is unclear on what exactly the Board is directing, and on what basis.

We understand the dispute is over the type of livestock that development permit 98-25 allows. It appears, however, that the Board is directing the Approval Officer to determine the deemed physical capacity of the confined feeding operation ("CFO") on January 1, 2002.

We draw to the Board's attention that:

- a. Development permit 98-25 was issued in October 1998.
- b. A CFO constructed under a development permit issued before January 1, 2002 falls under section 18.1(1)(c) of the *Agricultural Operation Practices Act* ("AOPA"). Under section 18.1(2)(c), the capacity allowed by a deemed permit under section 18.1(1)(c) is the capacity authorized by that development permit.
- c. The majority of NRCB Operational Policy 2016-5, *Determining Deemed Capacity for Grandfathered CFOs*, does not apply to this CFO's situation. The Policy's guidance for field services staff to use a "physical capacity" method¹ applies only to sections 18.1(2)(a) and (b) of AOPA. It does not apply to section 18.1(2)(c) of AOPA.
- d. The Nelsons have not made a claim relating to physical capacity of the CFO in 2002. The Approval Officer was clear in Decision Summary LA18058A that he did not make a grandfathering determination.

Given these observations, we query the utility of 2002 information to a Review of LA18058A, which only formalized livestock type in the 1998 permit.

¹ Under the Policy, "deemed capacity" is the maximum number of livestock allowed by a CFO's deemed permit, whereas "physical capacity" is the number of livestock that a CFO can confine and feed based on the scope of its facilities (p 1).

We also struggle to understand the role of an investigation by the approval officer regarding the claim of “additional pen space,” as this was not part of the amendment decision.

The Approval Officer and Field Services would appreciate clarification from the Board on:

- 1) Specifically what information the Board is expecting the Approval Officer to provide to the Board before the Review;
- 2) What “additional pen space” the Board is requesting be looked at.

Yours truly,



Fiona N. Vance
Chief Legal Officer – Operations, NRCB

- cc. R.Philip M. North, Q.C., counsel for Hofer Family (via e-mail)
- Shawn & Jeff Nelson, for Nelson Family Ranches Ltd. (via e-mail)
- Bill Kennedy, General Counsel, NRCB (via e-mail)
- Shawn Hathaway, County of Warner (via e-mail)
- Joe Sonnenberg, Approval Officer, NRCB (via e-mail)
- Walter Ceroici, Acting Chief Executive Officer, NRCB (via e-mail)