



BOARD DECISION

RFR 2009-03 / BA08005

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Approval BA08005.

Gilani Investments AB Ltd.

September 8, 2009

Background

On July 29, 2009, NRCB Approval Officer, Randy Bjorklund, issued Decision Summary BA08005. The Decision Summary approved an application by Gilani Investments AB Ltd. (the Operator) to construct and operate a new chicken layer/pullet barn and solid manure storage building and increase livestock numbers by adding 25,000 pullets and increasing layers from 50,000 to 100,000 at its operation located at SW 4-58-26-W4 in Westlock County.

Pursuant to Section 20(5) of the *Agricultural Operation Practices Act (AOPA)*, Ian and Linda McConaghy filed a Request for Board Review on August 20, 2009. The request met the 10-day filing deadline established by *AOPA*. On August 26, 2009, the Board provided the directly affected parties (the Operator and Westlock County) with a copy of the filed Request for Board Review and an opportunity to file a rebuttal by the deadline of September 2, 2009 if they believed they would be adversely affected by positions presented in the request for review.

A rebuttal was filed by the Operator on August 27, 2009. Specific information from the Approval Officer's file was requested for the Board's consideration in an August 26, 2009 email from Susan Schlemko, Manager, Board Reviews. In response, the Board received two letters from the Approval Officer, dated August 27, 2009 and September 2, 2009, attaching documents from his file as well as information he obtained in relation to the Operator's water license. A copy of the Operator's rebuttal submission, Susan Schlemko's email and both of the Approval Officer's letters and attachments are provided to parties with this Decision Report.

The Board met on September 2, 2009 to deliberate on this matter. Their findings are outlined in this Decision Report.

Jurisdiction

The Board's authority to grant 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 14 of the *Board Administrative Procedures Regulation* describes the information that must be included in each request for review.

Documents Considered

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

- Decision Summary BA08005, dated July 29, 2009
- Request for Board Review filed by Ian and Linda McConaghy, dated August 20, 2009
- Email from Susan Schlemko to the Approval Officer, dated August 26, 2009
- Letter and attachments to the Board from the Approval Officer, dated August 27, 2009
- Letter and attachments to the Board from the Approval Officer, dated September 2, 2009

Board Deliberations

When considering an application submitted under *AOPA*, an Approval Officer must follow the notification requirements set out in the Act and regulations, including a specified notification period. The statutory notification period provides affected parties with an opportunity to submit a statement of concern to the Approval Officer within the established timeframe to request a determination of whether they have directly affected status. Upon considering the filed statements of concern, the Approval Officer determines which parties should be granted directly affected status under the legislation. Upon determining those parties with directly affected status, the Approval Officer then addresses their concerns in the Decision Summary.

The Board is granted authority to consider Requests for Board Review filed by directly affected parties in Section 25 of *AOPA*. Section 25 limits the Board to considering directly affected parties' requests only and therefore, a party requesting a Board Review must already have been granted directly affected status through the Approval Officer's application process or must include a request for the Board to reconsider their status within their Request for Board Review. *AOPA* states that the Board may only reconsider the status of parties who have made a submission to the Approval Officer.

Upon review of the McConaghy's Request for Board Review, the Board noted that the McConaghys listed themselves as being "*a directly affected party in the Approval Officer's Decision*". However, there are no directly affected parties listed in Decision Summary BA08005 and, accordingly, the Board must establish whether the McConaghys should be granted directly affected status.

The Board met to deliberate the Request for Board Review on September 2, 2009 and reviewed letters from the Approval Officer's file and correspondence to the Board to determine whether adequate notice was provided to parties. The record shows that a public notice was published in the Westlock News on June 8, 2009. The notice lists July 7, 2009 as the deadline to submit statements of concern regarding this application to the Approval Officer. The Approval Officer requested and received a list of addresses of neighbouring residents and landowners from the County and sent a courtesy letter to each name on that list; however, the McConaghys were omitted from the County's list and therefore did not receive a courtesy letter. The Board notes that the McConaghys were listed in the Decision Summary as neighbours and that once the Approval Officer noted the omission, best practice would have been to correct the error by contacting the McConaghys either by mail or telephone. That said, the Board accepts that the publication of the notice provided adequate notification consistent with the Board's established notification practices.

As the McConaghys did not meet the requirements to be considered a directly affected party because they did not request that the Approval Officer consider them directly affected once public notice was given and the deadline for submission of statements of concern had passed, the Board finds that a Board review is not warranted. However, as the Board reviewed information that addresses the McConaghys' concerns, it is discussed below.

Issues

In their Request for Board Review, the McConaghys stated their grounds for requesting directly affected status as being: *"concerned about the amount of water that will be used for this new chicken layer and pullet barn, and how it will affect our wells on our land."* In their grounds for requesting a review, the McConaghys stated when they were notified of the expansion, they were told someone would talk to them about the water usage at the operation and how it would affect them, however, they were never formally contacted. As stated above, they were concerned about the amount of water that would be used for this operation. They expressed concern that the water table would be lowered and could cause a loss of water to their wells. Further, they asked that the Board amend the decision and have the Operator use an alternate water supply. They believed that it should be amended as they were never formally notified of the expansion.

The Operator provided a rebuttal submission on August 27, 2009 and stated that *"the water licensing requirements were met and approved some time ago by Alberta Environment."*

When applying to the NRCB, the Operator has the option to delink its application for a water license under the *Water Act*, which is issued by Alberta Environment, from the NRCB application under *AOPA* and, in this case, the Operator chose that avenue. In his September 2, 2009 letter to the Board, the Approval Officer stated that the Operator applied to Alberta Environment for the water license required for the expansion and it was issued on May 13, 2009. He also stated that the Operator informed him that the water licensing process included a public notice in the newspaper and that there were no statements of concern received in response to that notice.

The Board notes that, as the water license was delinked from the Operator's NRCB application under *AOPA*, the Board has no jurisdiction to deal with any issues pertaining to the water license issued to the Operator by Alberta Environment. Should the McConaghys wish to obtain more information regarding the water license, the Approval Officer has provided contact information for Sharda de Boer at Alberta Environment, telephone number (780) 427-6430.

Decision

The Board concludes that the McConaghys remain a party without directly affected status and therefore the review request is denied.

DATED at CALGARY, ALBERTA, this 8th day of September 2009.

Original signed by:

Vern Hartwell, Chair

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

3rd Floor, 640 - 5 Avenue S.W.
Calgary, AB T2P 3G4
T (403) 662.3990 F (403) 662.3994

Fairview Office

Provincial Building, #213, 10209 - 109 Street
P.O. Box 159, Fairview, AB T0H 1L0
T (780) 835.7111 F (780) 835.3259

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.gov.ab.ca

Web Address: www.nrcb.gov.ab.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.