



BOARD DECISION

2010-02 / RA03012A

Review of Decision Summary
RA03012A

Hutterian Brethren Church of Three Hills
(Three Hills Colony)

June 23, 2010

Background

The Hutterian Brethren Church of Three Hills (Three Hills Colony or the Colony) has a Natural Resources Conservation Board (NRCB) Approval for 250 sows farrow to finish, 5,000 poultry layers, 2,500 poultry broilers, 120 cow dairy (plus replacements and dries) and 1,200 beef finishers at its operation located at SE-01-31-24-W4 in Kneehill County. On January 21, 2010 NRCB Approval Officer Orin Kenzie issued Decision Summary RA03012A, which granted the Colony's application to amend four conditions of its existing Approval RA03012.

The effect of the amended conditions in Decision Summary RA03012A allowed Three Hills Colony to use a natural cover rather than a plastic cover on its liquid manure storage facilities, changed reporting requirements for the under facility leakage detection system, removed the requirement for four groundwater monitoring wells, and changed the schedule for reporting leakage detection system results.

Requests for Board Review of the amended approval were filed by Rosalie Lammle and Siegfried Schmidt on February 9 and 10, 2010 respectively. Both requests met the 10-day filing deadline established by the *Alberta Agricultural Operation Practices Act (AOPA)*. The Board issued a notice on February 12, 2010 granting a rebuttal opportunity to those parties who believed they would be adversely affected by the positions presented in the Requests for Board Review. The rebuttal deadline was set as February 22, 2010. In response to the Board's notice, the Colony filed a rebuttal submission on February 17, 2010 and the Approval Officer filed a response on February 22, 2010.

The Board met on February 25, 2010 to deliberate on the Requests for Board Review. In its decision (Board Decision RFR 2010-01/RA03012A) issued on March 10, 2010, the Board granted a review of Decision Summary RA03012A and advised that an oral hearing would be scheduled in Three Hills, Alberta.

The Board specified that the review was granted to consider the appropriateness of amending Approval RA03012 to replace the requirement of a plastic cover with a natural cover. Further, the Board stated that it expected the review might include evidence and submissions on the failure of this operator to meet the mandatory conditions attached to its original approval and what measures the NRCB might implement to avoid such events in the future.

A Board Panel (the Panel or the Board) consisting of Vern Hartwell (Panel Chair), Jim Turner and Donna Tingley was appointed to conduct this review.

All directly affected parties were consulted regarding potential hearing dates and the hearing was scheduled for May 18, 2010 to accommodate all participants. The Board issued a hearing notice to the directly affected parties on March 26, 2010 identifying May 4, 2010 as the deadline for filing written submissions. Submissions were filed by Three Hills Colony and by the Approval Officer and Field Services Division. The Requests for Board Review filed by Rosalie Lammle and the Schmidts were treated as their hearing submissions, since both parties informed NRCB review staff that they were not in receipt of the Board's March 26, 2010 notice prior to the submission filing deadline.

The hearing was conducted on May 18, 2010 at the Super 8 Motel in Three Hills, Alberta. Parties to the review and their representatives are identified below:

Parties to the Review	Counsel/Representative
NRCB Approval Officer <ul style="list-style-type: none"> • Orin Kenzie, Approval Officer • Andrea Hiba Brack, Environmental Technical Specialist 	Mike Wenig, Counsel
Rosalie Lammle	Rosalie Lammle
Siegfried Schmidt and Sharon Schmidt	Sharon Schmidt
Three Hills Colony	Sam Wurz

Bill Kennedy participated in the hearing as General Counsel to the Board. Additional staff support was provided by Susan Schlemko (Manager, Board Reviews) and Laura Friend (Secretary to the Board).

This report briefly highlights the positions of the hearing participants and provides the Panel's decision following its review of Decision Summary RA03012A.

Issues

The review hearing principally dealt with three matters:

1. The cover for the earthen manure storage (EMS):
 - a. Whether the Board should amend, vary or reverse the Approval Officer's decision (RA03012A) to allow the use of a natural cover instead of a plastic cover over the Colony's earthen manure storage.
2. Compliance:
 - a. the Colony's failure to comply with conditions of its original Approval Permit and subsequent Enforcement Order, and
 - b. the NRCB Field Services Division's response to the Colony's non-compliance.
3. The NRCB's Alternate Dispute Resolution (ADR) process.

Earthen Manure Storage Cover

The original 2003 approval (RA03012) issued to the Colony included a condition requiring a plastic cover over the EMS. Condition 4 (d) specified:

The earthen liquid manure storage (hog and dairy) must include a plastic surface covering for both cell 1 and cell 2.

In May 2009 the Colony applied to amend this condition. In January 2010 the Approval Officer granted the amendment application and modified condition 4 (d) to read:

The earthen liquid manure storage which holds the manure from the hog and dairy facilities must have a natural cover at least 30 cm thick covering 90% of the liquid surface area of the manure in both cell 1 and cell 2 of the liquid manure storage. In order to assist in the forming and maintaining the natural cover, straw, may be added to the cover. The cover must be maintained at all times except when manure is being agitated and removed for spreading.

A brief summary of each participant's views concerning issues regarding the EMS cover follows.

During the review, the Approval Officer submitted his opinion that a natural cover, at least 30 cm thick, over the earthen manure storage (EMS) would provide the same odour control as a plastic cover. He also indicated that a straw cover over the EMS would provide the Colony with some flexibility in terms of agitating and pumping the contents, and suggested a natural cover would be easier to maintain and repair than a plastic cover. For clarity, the Approval Officer described a natural cover to be composed of organic materials such as straw, natural crusting, sawdust, shavings, and peat moss. Natural crusting he characterized as an accumulation of solids (e.g., undigested food materials and sawdust shavings) that would form a cover over the liquid surface of the EMS.

In response to the Board's request for information regarding the merits of natural and synthetic¹ covers, the Approval Officer's submission included a literature review prepared by Andrea Hiba Brack, NRCB Environmental Technical Specialist. This review showed comparisons of performance characteristics of natural crust or straw covers versus plastic impermeable covers on liquid EMSs. For odour management purposes, the literature review suggested that a 30 cm straw cover was similar to a plastic impermeable floating cover and was considerably less expensive. Ms. Hiba Brack noted significant variability in the cost of plastic covers (dependent on plastic type, thickness, strength, UV protection, etc.); however, costs were generally shown to be less than \$1 per m² for a straw cover versus up to almost \$32 per m² for a plastic cover. The Approval Officer added that the original condition did not specify the type of plastic cover.

With respect to the EMS cover, Ms. Lammle submitted, "*An impermeable cover needs to be constructed of sufficient strength and design to withstand extremes in wind and cold. Straw and organic materials can be easily blown aside, over-weighted with snow and heavy rains, and subject to temperature changes.*" Ms. Lammle requested that the original approval conditions be upheld by the Colony, including the requirement for a plastic cover over the EMS. Ms. Lammle indicated a natural cover would provide insufficient protection in extreme weather conditions and expressed concerns that a natural crust would have a short life expectancy,

¹ The focus of this report relates to the approval which required a "plastic" cover; the Board's information request referred to a "synthetic" cover, which is a broader reference that by definition would include a plastic cover.

would reduce methane emissions by only 30 – 40 % and that use of a natural cover would impede the Colony's ability to direct inject the lagoon materials due to straw blocking the injection equipment. Ms. Lammle maintained that better methods were available to reduce odours and gas emissions; she asked that the Board require the Colony to have an impermeable cover on its EMS to prevent the escape of odours and greenhouse gasses.

With respect to odour impacts, Ms. Lammle related that odours had been significant, but said she had not filed formal complaints as she assumed the Colony was in compliance with its construction requirements. Describing the significance of these impacts, Ms. Lammle recalled that there had not been much odour during the past month, but odours the previous year had caused her to avoid gardening, to cancel family gatherings, to avoid going outdoors, and prevented her from drying clothes outdoors. She recalled a weekly presence of odours and stated that they intensified when the Colony cleaned out its pens or spread manure, thus preventing them from opening windows.

The Schmidts expressed disappointment with the Colony's failure to meet its obligations and advocated the position that a cover, as was first committed to, should be required. In their written submission, Ms. Schmidt advised that she drives past the Colony's lagoons almost daily, but had never noticed it covered. The Schmidts submitted that odour concerns were prevalent, advising that in the summer of 2009 their family was unable to sit outside about six times a month due to odours from the Colony's operation. They stated that odours would often leak into their house, even through closed windows. They further submitted that odours caused their family significant discomfort including burning eyes, excruciating headaches and nausea. Ms. Schmidt noted that the odours also impacted their ability to schedule family visits. In this regard, the Schmidts suggested they would appreciate a written letter providing 48 to 72 hours' notice of the EMS cover being removed, in order to provide their family an opportunity to make other arrangements if needed.

Considering the merits of a natural cover, the Schmidts expressed concern that heavy rains could break up the natural straw crust and also suggested that a straw cover could rot and exacerbate the odours emanating from the lagoons. The Schmidts also feared that diseases or harmful contaminants could spread to their property from the Colony's lagoons by means of birds, insects, or strong winds.

Mr. Sam Wurz appeared on behalf of the Three Hills Colony. With respect to the EMS cover, Mr. Wurz apologized for the Colony's failure to install a cover as required under its permit. He explained that when the Colony split there was a great deal of work to be done and the installation of the EMS cover was simply put aside. When the Colony became aware that the lagoon cover did not meet its permit requirements, he indicated that the Colony did some research and learned that plastic covers were impractical. Mr. Wurz stated that his research showed plastic covers were very susceptible to weather, wind, snow, ice, and rain and that they were not durable. He further suggested the cost of installing and maintaining a plastic cover would not justify its benefit (he indicated he was told a plastic EMS cover could cost between \$200,000 and \$300,000).

Mr. Wurz stated that there had not been any odour complaints regarding the Colony's operation. He indicated that the Colony had enjoyed good success controlling odours by using a natural cover (wood shavings) on Cell 1 of the EMS, and suggested that as a result odours were very minimal. Mr. Wurz described that odours from Cell 1 were controlled through use of natural enzymes and anaerobic bacteria and that Cell 2, being mostly water, had very little odour. Mr. Wurz further described that the natural crust cover on Cell 1 was formed by shavings, straw

and hay from the dairy and hog barn pits being flushed (the shavings, hay, and straw floated to the top to form the natural crust cover) and that Cell 2 had a straw cover. He indicated the straw cover on Cell 2 had been applied after the amendment was approved. Although the Colony hadn't measured the depth of the cover, he stated that 10 to 12 large, round bales (weighing 900 – 1,100 pounds each) were chopped up and applied with a blower.

Having heard his neighbours' submissions at the hearing, Mr. Wurz noted that he was very surprised by the comments from Ms. Lammle and the Schmidts regarding how odours from the Colony's operation impacted them. Mr. Wurz observed that although odours were unavoidable, the Colony would do its best to properly manage the EMS by covering it as soon as the lagoon was emptied in the fall or spring in order to reduce or eliminate odours. He also confirmed that the Colony had the equipment for chopping and blowing the straw onto the lagoon in order to maintain a natural cover. The Colony asked the Panel to uphold the permit amendment and committed to being more diligent in following its permit.

The Panel considered the information submitted by all parties regarding the relative merits of natural and plastic covers. The only technical information the Panel received was provided in the literature review included with the Approval Officer's submission (Exhibit 1c), which looked at various performance characteristics comparing the effectiveness of natural and synthetic covers. The Panel found the literature review presented the most compelling evidence, providing data regarding the odour reduction percentages, life expectancy and costs of EMS covers. The Panel recognizes that choosing the appropriate EMS cover relies first on knowing the objectives one hopes to achieve. In this case, the Panel determined the primary objective of the EMS cover is to provide odour mitigation. The Panel accepts the findings of the literature review which showed that effectiveness of odour mitigation provided by a straw cover was similar to that provided by a synthetic cover.

The Panel heard participants' concerns for maintenance of the EMS cover during extreme weather events. Based on the evidence, the Panel finds that ongoing management and maintenance of a straw cover would be less challenging than for a plastic cover. The Panel notes that the Colony understands what equipment is required to maintain a straw cover. In contrast, the Panel agrees that a damaged or torn plastic cover would likely be more time consuming and costly to repair. In the event that the EMS cover is damaged, the Panel believes the ability to repair it quickly is important in order to lessen the duration of odour impacts to neighbours.

With respect to Ms. Lammle's concern for greenhouse gasses, the Panel notes a plastic impermeable cover would likely result in higher reductions of air emissions, although it would not eliminate the need for gasses to be vented. That said, the Panel observes that greenhouse gas emissions are not regulated under *AOPA*. Instead, *AOPA* includes measures to mitigate odour impacts; the Panel is confident that a properly maintained straw cover can achieve effective odour mitigation. Regarding Ms. Lammle's concern for manure injection being impeded by the use of straw in the cover, the Panel does not expect the Colony's ability to inject manure will be hindered regardless of the type or length of straw used.

The Panel believes the primary impacts to the Schmidts and Lammles are odour related. The Panel finds that by applying specific conditions to ensure proper management and maintenance of the EMS cover, in addition to stringent reporting requirements, the neighbours will be afforded adequate odour mitigation and will also have an opportunity to confirm the Colony's adherence to permit conditions. Therefore, the Board is directing permit conditions for the Colony to maintain a 30 cm straw cover over 90% of Cell 1 and Cell 2 at all times (except when the lagoons are being agitated or emptied); to develop a protocol for measuring and verifying the

depth of the straw cover; to conduct regular testing and reporting of the thickness of the straw cover; to provide timely measurements to the NRCB Red Deer office for public review; and to provide the Lammle and Schmidt residences and the NRCB Red Deer office with a minimum four days' notice, prior to manure spreading events, agitating or removing the EMS cover. These conditions and reporting requirements are further detailed in the Board Decision section at the end of this report.

The Panel also finds it noteworthy to comment on the damaged relationships between the Colony and its neighbours who participated in the review (the Schmidts and Lammles). Throughout the hearing, the Panel heard several statements that demonstrated a lack of trust exists between these parties. The Panel believes the Colony's failure to meet its obligations to properly mitigate odour impacts from its manure lagoons likely played a key part in causing a breakdown in these relationships. That being said, the Panel recognizes that neighbours with differing land uses often have dissimilar expectations of each other, which can also create unique challenges. In this case, the Panel believes there are opportunities to improve these relationships between neighbours. The Panel anticipates improved communications may result through its requirement for the Colony to provide advance notification of events expected to temporarily increase odours (manure spreading events, EMS agitation or cover removal) and through ensuring reported measurement data for the straw cover is publicly available.

Compliance

In NRCB Board Decision RFR 2010-01, the Board suggested that in addition to considering the appropriateness of amending the approval to replace the requirement for a plastic cover with a natural cover, it expected to review evidence and submissions on "*the failure of this operator to meet the mandatory conditions attached to its original approval and what measures the NRCB might implement to avoid such events in future.*"

In response to this Board suggestion, the Approval Officer submitted two documents which relate to this matter: *Written Submission for the Approval Officer and Field Services Division* and *Briefing Response to the Board's Inquiry on Compliance Issues* (both included in Exhibit 1(c)). In addition, further to an undertaking by the Approval Officer's Counsel, a letter from Inspector Tim Jespersen, dated May 20, 2009, was submitted to the Board.

The *Briefing Response* sets out a helpful chronology which establishes the events leading to the issuance on November 6, 2008 of Enforcement Order #08-07 to Three Hills Colony requiring it to install plastic covers on its manure storage lagoons by June 1, 2009, and follow-up actions. The chronology includes the following dates which are relevant to this decision:

- August 6, 2003 - Approval RA03012 issued by Approval Officer Orin Kenzie to the Three Hills Colony which included a requirement for a plastic cover on the EMS,
- June 18, 2008 - Site inspection by Inspector Tim Jespersen after which the Colony was directed to put the plastic surface cover for its EMS in place,
- November 6, 2008 – Enforcement Order issued to the Three Hills Colony requiring it to install plastic covers by June 1, 2009,
- December 1, 2008 - Request by the Colony for a review of the Enforcement Order followed by the Board's denial of a review dated December 19, 2008,
- May 14, 2009 – Application by the Colony to amend permit RA03012,
- May 20, 2009 - Letter to the Colony from Inspector Jespersen extending the date on the Enforcement Order from June 1, 2009 to January 1, 2010,

- January 21, 2010 - Date of the amendment to the Colony's permit RA03012 authorizing a natural cover.

The *Briefing Response* also explained that in the authors' opinion, due to the sequencing of the introduction of breeding stock to the Colony's facility, there would not have been enough manure production to warrant installation of a plastic cover pursuant to the 2003 Approval until at least mid-2005.

The authors of the *Briefing Response* conceded that "*the NRCB's Operations Division identified compliance issues with this file early on but did not take substantial enforcement action until early 2008. In our view action should have been taken much earlier.*" The *Briefing Response* also offered an explanation as to why there were compliance issues respecting the Three Hills Colony between 2005 and 2008: coordination problems between the Approval Officer and the Inspector due to their working out of different offices; a lack of clarity as to when the lagoon cover condition needed to be met; communication breakdowns between the Approval Officer and the Inspector; and the NRCB's inexperience in dealing with multi-phase developments. The authors of the *Briefing Response* also reported on the analysis undertaken by NRCB Operations Division to determine whether there were systemic errors in enforcing construction conditions, and their conclusion that there are no such systemic errors. The *Briefing Response* also described internal NRCB processes to provide follow-up with respect to construction conditions during and after construction.

At the hearing, Approval Officer Orin Kenzie described the process by which the requirement for a plastic cover was added to the original approval. Mr. Kenzie stated that once the affected parties submitted concerns over the potential odours from the operation, he discussed the concerns with the members of the Colony who offered to install a plastic cover on the EMS. According to Mr. Kenzie, once the approval was issued, he reviewed it line by line with the Colony and informed them that if they did not like the condition, they could ask for a review of the decision.

Concerns respecting compliance issues were raised by both parties who submitted requests for review arising from the NRCB decision to amend the Three Hills Colony approval. In her written submission, Ms. Rosalie Lammler suggested that although the Colony had agreed to NRCB requirements before establishing their operations, in her view, "*given that the Colony has disregarded your conditions to date, it has set a precedent for further non compliance.*" At the hearing, Ms. Lammler explained that she does not trust that the Colony will comply with governmental regulations. She further elaborated that she expects people to live by their word and that when people say they will enforce requirements, they will do so. Ms. Lammler was also critical of the NRCB for informing the Colony how to "*circumvent the NRCB's regulations.*"

In the written submission from Siegfried Schmidt, it was stated that, "*I have seen that they have not kept their original agreement and do not believe they will honor a new agreement.*" At the hearing, Ms. Sharon Schmidt expressed a lack of faith in the way the NRCB has been operating and requested that the Colony fulfil the obligations that they agreed to at the beginning.

In his written submission on behalf of the Three Hills Colony, Mr. Sam Wurz apologized for not putting a cover on the manure lagoon as required by the original approval and promised to comply and meet all of the requirements in the amended approval. At the hearing, Mr. Wurz explained that the Colony had run out of time and resources to add the cover which they had promised. He also admitted that the Colony had made a commitment to add a cover, but was of the opinion that the plastic cover had been suggested by the affected parties. While the Colony

understood that the requirement to add a plastic cover was an obligation of the Colony, the work was put on the “back burner” while other construction at the Colony was underway. According to Mr. Wurz, it was not until Approval Officer Kenzie raised the issue with the Colony at a later date, that they undertook some research to determine the costs and effectiveness of a plastic cover.

The question of whether the NRCB appropriately handled the compliance issues raised by this review is peripheral to the main issue for the Board which is whether the Colony should be permitted to use a natural cover on its EMS. Nevertheless, the Board is offering some comments and conclusions on compliance for two reasons: one, because the credibility of the NRCB has been challenged by the directly affected parties in this review and two, because some of the Board’s conditions regarding the cover, set out in this decision, arise from the Board’s findings and conclusions respecting compliance issues.

The Board is familiar with the NRCB *Compliance and Enforcement Policy* and is supportive of the application of the policy in a manner which is fair, consistent and predictable. The credibility of the NRCB depends at least in part on a clear understanding by regulated industry and the general public that the standards set out in *AOPA* will be upheld through the approval process and through regular follow-up to assure that requirements of the *Act* are met.

In the case of Three Hills Colony, it was evident to the Board that there were compliance issues starting shortly after the original approval was issued. The Board accepts the assertion in the NRCB *Briefing Response* that although the initial approval was granted in 2003, there was not enough manure production to warrant the addition of a plastic cover until mid-2005. The result, nevertheless, was that the Colony was out of compliance with respect to the plastic cover from that date until the NRCB Enforcement Order substituted a new date by which time the cover was to have been added, being June 1, 2009. This situation was unfortunate, and the Board appreciates the affected parties’ frustration, but nonetheless accepts the explanation offered in the *Briefing Response* for the delay in acting on the Colony’s non-compliance and understands that the problems giving rise to this situation have been addressed.

The Board notes that there is a second compliance issue raised by this review, which is the Colony’s non-compliance with the Enforcement Order issued by Inspector Jespersen. While the letter delivered by Inspector Jespersen to the Colony purported to extend the deadline for compliance with the Enforcement Order to January 1, 2010, the letter was not available to the affected parties, and indeed this Board, until after the hearing. Undoubtedly, however, the Colony was out of compliance with the Enforcement Order for the first three weeks of 2010. The Board considers any non-compliance with an Enforcement Order issued under *AOPA* to be a serious matter which warrants a response by the NRCB.

What was especially significant for the Board was the Colony’s attitude and approach to dealing with the original approval condition which required it to apply a plastic cover to its EMS. Based on the evidence before it, the Board concludes that the Colony agreed to install a plastic cover and understood that the approval condition created an obligation. There is conflicting evidence on who initially proposed the plastic cover, the Colony itself, or the Approval Officer on the suggestion of the affected parties, but it is the Board’s view that it is irrelevant who suggested the cover. Once it became a condition of the Approval, even though it was “offered” by the Colony over and above the requirements in *AOPA*, it nonetheless constituted a legal obligation of the same stature as the other conditions in the approval.

The Board considers the Colony's deliberate failure to comply with the original approval, and indeed the Enforcement Order, to be a serious matter and it is in the Board's view a factor that is relevant to a determination by the Approval Officer as to whether the approval condition should be amended, as proposed. While the Board has agreed, for the reasons set out above, that the Colony should be permitted to install a straw cover rather than a plastic cover on its EMS, the Board is requiring that additional conditions be added to provide accountability to the NRCB and the affected parties that the Colony is indeed meeting the requirements of its amended approval. While the Board is hopeful that the Colony's promises to "*do their best*" to comply with the amended approval will be met, it is mindful of the past failure of the Colony to comply with the original approval condition.

It was argued before the Board that the NRCB Approval Officer and Inspector acted improperly by meeting with the Colony and suggesting an approval amendment as a remedy to resolve the dilemma they faced. The Board disagrees, as it is of the view that it is appropriate for Approval Officers, in particular, to work with confined feeding operation (CFO) owners to help them understand their rights and obligations under *AOPA*. While it is expected that the focus of these efforts will be on CFO operators, fairness requires that officers of the NRCB recognize their responsibility to offer information to affected parties in appropriate circumstances.

The NRCB's Alternate Dispute Resolution (ADR) Process

Between the time of the Hearing Notice and the hearing the NRCB Operations Division identified the potential to engage the parties in an ADR process. This came to the Panel's attention by way of an email dated April 22, 2010 in which the prospect of settlement was raised. The Panel had a concern that such communication could lead other review participants to conclude that there was a close relationship or direct access to the Panel on hearing issues. The language of greatest concern was the contained invitation to contact the writer directly with any questions. The Panel also noted that the email was not copied to either the Colony or the directly affected parties. While the Panel did not respond directly to this email it instructed its counsel to advise the Operations Division that it viewed such communication as inappropriate.

At the hearing, counsel for the Approval Officer acknowledged that the email was an inappropriate communication despite having been sent as a sincere effort to advise the Panel of the intent to engage other participants in settlement discussions. Rosalie Lammle's primary concern in respect of the ADR process was her perception that the initiative had a predetermined objective of replacing the requirement of a plastic cover with a straw cover. Ms. Lammle's expectation was that the NRCB would enforce the requirements of the original approval rather than seek agreement to alternate provisions that would amend those conditions.

The Panel supports dispute resolution processes and recognizes the benefits of parties pursuing outcomes through discussion and negotiation in an open non-adversarial environment. Indeed, the Board has encouraged and even initiated such processes where it believes there is a reasonable potential for success. The Panel accepts that the Operations Division initiated the alternate dispute resolution process with the best of intentions and that the email to the Panel was purely intended to advise the Panel that it would be pursuing discussions with hearing participants.

The Panel notes that the Operations Division has identified that, while it may need to "*go back to the drawing board on how to initiate the process*," there will be circumstances where an ADR process would provide a beneficial option to a Board hearing. The Panel agrees with this assessment and supports the development of a formal ADR policy. This policy will need to identify the respective roles of the parties and the relationship of the mediator to the parties.

The Board believes it should participate directly in the development of any ADR policy as there are circumstances where it may initiate the process.

Board Decision

For the reasons set out above and having regard for all parties' evidence and submissions, the Panel concludes that with the implementation of the following conditions, a properly managed straw cover will provide adequate odour mitigation. Therefore, the Board directs the Approval Officer to amend Decision Summary RA03012A to include conditions specifying that Three Hills Colony must:

1. maintain a straw cover on the EMS with a minimum depth of 30 cm over 90% of Cell 1 and Cell 2 at all times, except when the lagoons are being agitated or emptied.
2. develop a protocol and demonstrate to NRCB Field Services how the Colony will measure and verify the depth of the straw cover.
3. conduct regular testing and reporting of the straw cover to confirm its thickness; the schedule for the testing will be as follows:

In 2010, measurements must be taken by July 15, August 15, September 15 and October 15.

- a. If the NRCB Inspector is satisfied that permit conditions are met during 2010, the Colony may revert to a bimonthly schedule for taking measurements. This would require that measurements be taken by April 15, June 15, August 15 and October 15 in 2011 and each year thereafter (the schedule excludes the need for measurements during winter months when the EMS is frozen).
 - b. Should the NRCB Inspector not be satisfied that permit conditions are being met in any given year, the requirement for measurements will revert back to a monthly schedule during non-winter months (April, May, June, July, August, September and October).
4. within seven days of measuring the depth of the straw cover, provide the NRCB Red Deer Office with a written record of the measurement and the time and date it was taken.
 5. provide its immediate neighbours (Rosalie Lammle and the Schmidt residence) and the NRCB Red Deer office a minimum of four days' notice prior to manure spreading events, agitating or removing the EMS cover.

The Panel directs that the Colony's reported EMS cover measurements be available to the public upon request. Public requests should be directed to the NRCB's Red Deer office.

Overall, the Panel observes the above reporting conditions are more stringent than is customary; however, it finds it warranted in this case given the Colony's prior disregard for complying with approval conditions.

On a go-forward basis, the Panel expects the Colony will honour its commitment to be more diligent in meeting permit conditions; however, the Panel requests that NRCB Field Services conduct random unannounced visits to the operation (at least twice per year) to confirm compliance. The Panel recommends that corrective action be taken immediately, should an

inspector observe that the EMS coverage is less than 90% or fails to meet the 30 cm depth requirement.

DATED at CALGARY, ALBERTA, this 23rd day of June, 2010.

Original signed by:

Vern Hartwell
Panel Chair

Donna Tingley
Panel Member

Jim Turner
Panel Member

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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.