



BOARD DECISION

RFR 2010-04 / EO 10-02

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Enforcement Order 10-02.

Beumer Cattle

November 19, 2010

Background

Beumer Cattle is a confined feeding operation (CFO) owned and operated by Mr. Gerrit Beumer in Lethbridge County at NW ¼ 11-8-19-W4. NRCB permits held by Mr. Beumer include Registration LA02010A and Authorization LA05014 issued for a 499 beef feeder operation.

On October 25, 2010 NRCB Inspector Kevin Seward issued Enforcement Order 10-02 to Gerrit Beumer, as owner/operator of Beumer Cattle. The Enforcement Order (EO 10-02) stated that two pens constructed in 2008 were not covered by the existing permits. The Inspector reported that these pens had been used as a CFO for confining up to 700 head of cattle. Since the pens were not permitted under the *Agricultural Operation Practices Act (AOPA)*, the Inspector concluded that the pens' construction and use were in violation of the act. The Inspector also found that because there was *"...insufficient evidence that the new pens were built to AOPA specifications for permitted CFO facilities, their use may also be considered a risk to the environment."* EO 10-02 was issued to remedy the violations and eliminate or minimize risk to the environment. EO 10-02 ordered as follows:

Pursuant to section 39(1) of AOPA, Gerrit Beumer shall take all necessary and appropriate measures to comply with AOPA and its regulations with respect to the unpermitted pens and related structures.

In particular:

- 1) Mr. Beumer must prohibit livestock from using the unpermitted pens from April 1 through September 30, annually.*
- 2) Any livestock using the pens between October 1 and March 31 must have unlimited access to the adjacent grazing land after October 10.*
- 3) Effective immediately the gates from the new pens to the adjacent grazing land must be opened providing all livestock in those pens unlimited access to the adjacent grazing land.*
- 4) By November 1, 2010, the pens' gates to the adjacent grazing lands are to be removed entirely to ensure that any livestock within the pens have unlimited access to the adjacent pastures. The gates must be reinstalled between April 1 and September 30, or the fence extended across the area of the gates, to preclude livestock from re-entering the pens during this period.*

Following a meeting with Mr. Beumer, Inspector Seward amended EO 10-02 on October 28, 2010. The amendment deleted the third requirement and amended the first sentence in the fourth requirement to read:

"By November 1, 2010, the gates from the new pens to the adjacent grazing land must be opened and removed entirely to ensure that any livestock within the pens have unlimited access to the adjacent pastures."

The Inspector indicated the amendment was to provide Mr. Beumer additional time before the cattle in the new pens would need to be given unlimited access to adjacent pastures. This would allow time for a temporary fence to be installed around a silage pile and for repairs to be made to perimeter fencing.

Mr. Beumer filed a Request for Board Review of EO 10-02 on November 8, 2010, pursuant to section 41(1) of *AOPA*. In his request, Mr. Beumer asked the Board to rescind the order. He stated that “...*this portion of my facility, the seasonal feeding and bedding site / livestock corral is managed differently from my NRCB permitted confined feeding operation.*” Mr. Beumer submitted that under *AOPA* seasonal feeding and bedding sites are dealt with differently and are excluded from requiring permits.

Mr. Beumer contended that all seasonal feeding and bedding sites require livestock corrals and overwintering areas and that these areas similarly do not require permitting. He further submitted that *AOPA* does not state that seasonal feeding and bedding sites or livestock corrals should or must be managed without gates or with specific time constraints as was prescribed in the order.

The Board convened to deliberate on this matter on November 17, 2010.

Jurisdiction

The Board’s authority for considering a request to review an enforcement order is found in Section 41 of *AOPA*, which states:

- 41(1) The Board may, on the request of a person to whom an enforcement order is directed, review and confirm, vary, amend or rescind the enforcement order.*
- (2) An enforcement order takes effect at the time prescribed in the enforcement order and its operation is not suspended by a request for a review, but the Board may, if it thinks fit, suspend the operation of an enforcement order when a review is requested until a decision on the review is rendered.*
- (3) A written copy of the Board’s decision under subsection (1) must be served on the persons to whom the enforcement order that is being reviewed is directed.*

Documents Considered

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

- Enforcement Order 10-02, dated October 25, 2010;
- Amendment to Enforcement Order, dated October 28, 2010; and,
- Request for Board Review filed by Mr. Gerrit Beumer, dated November 8, 2010.

Board Deliberations

As a result of its deliberations, the Board concluded that a Board review is warranted. In his Request for Board Review of EO 10-02, Mr. Beumer has met the minimum threshold for the Board to conduct a review of an Enforcement Order which is that issues raised in the Request for Board Review are substantive and within the Board’s jurisdiction to determine.

EO 10-02 will remain in effect unless a suspension of the Enforcement Order is requested and subsequently granted by Board. To date, Mr. Beumer has not applied for suspension of the order. The Board expects that the hearing can be conducted in December 2010 with a Board decision rendered within 30 days thereafter.

The Review Hearing

This review will be conducted in the form of an oral hearing. The hearing will be held on **December 16, 2010**, commencing at **10:00 am** in a Lethbridge venue. Participants will be notified of the venue once it has been secured. The Board expects that the hearing will be completed within half a day.

The Board asks the parties to prepare written submissions in advance of the hearing. The written submissions should address the following issues:

1. The criteria or factors that the Board should use to determine whether a livestock operation is a CFO or a seasonal feeding and bedding site pursuant to *AOPA*; and
2. How those criteria or factors should be applied and weighted in the case of the circumstances of the Beumer Cattle operation.

The Board requests that the NRCB Inspector file a copy of the June 11, 2008 letter to NRCB Approval Officer Orin Kenzie from Mr. Beumer's consultant Environ-Ag Consulting Ltd, including any attachments, referenced in the order along with his written submission.

Parties must file eight copies of their written hearing submissions with the Board by **December 9, 2010**. After the December 9, 2010 filing deadline, if parties choose to provide any additional materials for presentation at the review, they are requested to provide eight copies at the hearing.

The Board will conduct a site visit (driving past the Beumer Cattle facility) on the morning of December 16, 2010. Panel members will not enter Mr. Beumer's property. Should parties wish to draw the Board's attention to specific items it should have regard for, please identify this in your written submission.

Decision

The Board determined a review was warranted. The review of Enforcement Order 10-02 will take the form of an oral hearing. The effect of the order has not been suspended or stayed pending the hearing.

DATED at CALGARY, ALBERTA, this 19th day of November, 2010.

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.