



## **BOARD DECISION**

### **RFR 2018-08 / LA17073**

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary LA17073

Silver Winds Hutterian Brethren

July 18, 2018

## Background

On June 11, 2018, NRCB Approval Officer Joe Sonnenberg issued Decision Summary LA17073 in relation to the confined feeding operation (CFO) proposed by Silver Winds Hutterian Brethren (Silver Winds) at NW 06-17-21 W4M in Vulcan County. Silver Winds sought approval for a new CFO consisting of 120 milking cows (plus associated dries and replacements), 15,000 chicken layers, 15,000 chicken pullets, 7,000 turkey toms/breeders, 1,200 ducks and 400 geese. The proposed CFO includes the construction of a dairy barn, concrete liquid manure tank, heifer shed, pullet barn, layer barn, 2 turkey finisher barns, turkey brooder barn, duck and goose barn, and various ancillary structures. The approval officer considered this application in Decision Summary LA17073 and issued an approval with conditions.

Pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA), a Request for Board Review (RFR) of Decision Summary LA17073 was filed by Doug McIntyre on July 3, 2018, who the approval officer had determined is a directly affected party. The RFR was filed within the 10-day filing deadline established by AOPA.

Following receipt of the RFR, all parties were provided with a copy of the RFR and notified of the Board's intent to meet and deliberate on this matter. Directly affected parties with an adverse interest to the matters raised in the RFR were provided the opportunity to make a rebuttal submission in response. The Board did not receive any rebuttal submissions that met the July 11, 2018 filing deadline.

A division of the Board consisting of L. Page Stuart (Panel Chair), Sandi Roberts and Keith Leggat was established on July 5, 2018 to consider the RFR. The Board convened to deliberate on the RFR on July 12 and 18, 2018.

## 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 14 of the Board Administrative Procedures Regulation describes the information that must be included in each RFR.

## Documents Considered

The Board considered the following information:

- Decision Summary LA17073
- Approval LA17073
- Technical Document LA17073
- RFR filed by Doug McIntyre
- Portions of the public record maintained by the approval officer

## Board Deliberations

In its deliberations, the Board considered the issues raised in the RFR filed by Mr. McIntyre. The Board must dismiss an application for review if, in its opinion, the issues raised in the RFR were adequately dealt with by the approval officer or the issues are of little merit. The RFR focused on the surface water quality risk associated with manure spreading on irrigated land that drains across Mr. McIntyre's land and into Lake McGregor. Pursuant to the RFR, Mr. McIntyre asked the Board to amend or vary the approval officer's decision to establish manure spreading setbacks to surface drainage features, and to allow spreading of manure on both irrigated land and dry land that does not drain into the ephemeral water course that connects directly to Lake McGregor.

### Risk to Surface Water Quality

In the RFR, the applicant stated that the approval officer could not, without first conducting a site visit, adequately assess the risk that surface water movement would carry land-spread manure into a natural drainage to Lake McGregor. The RFR specifically references the irrigated lands immediately west of the building site. The Board notes that the applicant has identified the irrigated portions of section 1-17-22 W4M and W½ 6-17-21 W4M as manure spreading lands. Mr. McIntyre's submission to the approval officer included an invitation asking the approval officer to contact him so that Mr. McIntyre could allow him access to his property to see the drainage system between the manure spreading lands and Lake McGregor. In his RFR, Mr. McIntyre asserted that due diligence was not done in assessing the surface water drainage on the property. Surface water quality protection is a core principle in AOPA, both in association with CFO facilities and with manure spreading activities.

The Board notes that the approval officer was aware of the natural drainage course that flows into Lake McGregor. Indeed, the approval officer refers to that drainage in Appendix C to Decision Summary LA17073. In addressing risk from manure at the CFO facilities entering the natural drainage course to Lake McGregor, the approval officer described the ephemeral creek as being more than 800 metres from the CFO facilities. As part of that risk assessment, the approval officer stated that he mapped drainage patterns of the subject property and then confirmed that mapping during a site visit. In one case the approval officer's file states in a note attached to an elevations map that "Duck and goose barn is near 'drainage divide'. Water most likely to flow SW.[sic]" In a Google Earth Pro map created by the approval officer, the approval officer has taken an elevation profile from the duck and goose barn to the southwest that confirms a slope toward the ephemeral creek connected to Lake McGregor. The elevation profile runs directly through a portion of the spreading lands.

The Board finds that the evidence supports Mr. McIntyre's assertion that the identified manure spreading lands, or at least a significant portion of them, would be on land that would drain into Lake McGregor under conditions where sufficient rainfall or snow melt caused surface water to leave the property. The Board also finds that the approval officer understood that the identified manure spreading lands are in the Lake McGregor drainage basin.

At the application stage, approval officers limit their consideration of identified manure spreading lands to an assessment of whether the operator has access to sufficient land to meet the land base requirements to spread the manure produced in the first year of operation. In identifying lands in its application, the operator is not committing to use those specific lands. The NRCB does not generally issue permits for manure to be spread on specific lands unless the operator is seeking relief from certain provisions of the regulations. For this application, such relief is not being sought. Given these circumstances, the Board finds that the approval officer adequately considered the issues raised in the RFR.

Manure application practices and the management of manure must be done in accordance with the AOPA regulations. Regulatory oversight and response in relation to manure management and manure spreading are compliance matters managed by NRCB inspectors. NRCB inspectors have the authority to investigate and enforce various provisions of the Standards and Administration Regulation, including numerous provisions that have the intended purpose of keeping manure to the locations it has been applied. Preventative provisions include slope-dependent variable setbacks from common bodies of water, and restrictions on spreading over frozen or snow covered land. Other requirements such as record keeping and soil testing track ongoing manure management practices and their relationship to nutrient loads over time.

The Board notes that Mr. McIntyre invited the approval officer to meet with him so he could access the land and understand the surface water drainage pattern. While the Board is satisfied that the approval officer adequately collected sufficient information to fully understand the application, it believes that the review process would have benefited from the approval officer taking up Mr. McIntyre's offer. Had the approval officer met with Mr. McIntyre, he would have had the opportunity to have a candid discussion about the scope of his mandate as an approval officer, the regulatory provisions that exist to protect surface water from land spreading activities, and the role of the NRCB compliance group in investigating any concerns raised. The Board believes there is merit in the approval officer reaching out and offering to meet with Mr. McIntyre once Mr. McIntyre has had the opportunity to review this decision. Such a meeting could also include an NRCB inspector, who could discuss the compliance responsibilities of the NRCB in relation to land spreading.

## **Decision**

As a result of the Board's deliberations, the Board finds that the approval officer adequately considered all issues raised in the filed Request for Review and therefore does not direct any matters to a hearing. The RFR is denied.

DATED at EDMONTON, ALBERTA, this 18<sup>th</sup> day of July, 2018.

*Original signed by:*

\_\_\_\_\_  
L. Page Stuart

\_\_\_\_\_  
Sandi Roberts

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Keith Leggat

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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](http://www.qp.gov.ab.ca) or through the NRCB website.