



BOARD DECISION

RFR 2018-12 / RA18050

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA18050

Faberdale Dairies Ltd.

October 4, 2018

Background

On August 22, 2018, NRCB Approval Officer Jeff Froese issued Decision Summary RA18050 and Approval RA18050 with conditions, in relation to Faberdale Dairies Ltd.'s (Faberdale) confined feeding operation (CFO) at SW 32-41-23 W4M in Lacombe County. Faberdale was granted approval to expand an existing dairy by increasing the permitted livestock numbers from 565 milking cows to 600 milking cows, 50 dry cows and 70 calves; and to construct a livestock barn, a hospital barn and a concrete solid manure storage pad. The approval also permits the previously constructed "new" EMS that is larger than what was previously permitted.

Pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA), a Request for Board Review (RFR) of Decision Summary RA18050 was filed by William Weatherill, 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 submissions that met the September 21, 2018 filing deadline. One late rebuttal submission was received on September 23, 2018. As this submission arrived after the filing deadline, it was rejected by the Board and was not read or considered.

A division of the Board consisting of Peter Woloshyn (Panel Chair), Sandi Roberts and Daniel Heaney was established on September 21, 2018 to consider the RFR. The Board convened to deliberate on the RFR on September 26, 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 13 of the *Agricultural Operation Practices Act Administrative Procedures Regulation* describes the information that must be included in each RFR.

Documents Considered

The Board considered the following information:

- Decision Summary RA18050
- Approval RA18050
- Technical Document RA18050
- RFR filed by William Weatherill
- Portions of the public material maintained by the approval officer

Board Deliberations

In its deliberations, the Board considered the issues raised in the RFR filed by Mr. Weatherill. 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 without merit. The issues raised in the RFR include:

- toxins in cleaning solutions and animal feed mixes
- nuisance odour
- local road capacity, dust and safety
- surface water pollution
- amount of groundwater usage
- groundwater contamination

The RFR asks the Board to reverse the approval officer's decision. It also asks the Board to consider including the following permit conditions:

- not allow waste material to be spread on SE 27-41-23 W4M and SW 28-41-23 W4M
- require government inspections and sampling of all waste material from this CFO
- upgrade local roads
- road dust control
- commercial and environmental taxation of this CFO

Toxins in Cleaning Solutions and Animal Feed Mixes

In the RFR, Mr. Weatherill lists agents that are used to clean dairy equipment and ingredients that are contained in feed mixes. He contends that wastes generated from the Faberdale dairy contain toxic chemicals from the cleaning agents and feed ingredients that are being spread on lands adjacent to Gadsby Lake and have the potential to run off into the lake. He suggests that these materials should be government inspected and not allowed to be spread near the lake.

In his Decision Summary the approval officer states that personnel from Alberta Agriculture and Forestry's (AF) Regulatory Services department were contacted for advice about dairy equipment cleaning products. An AF project coordinator responded that "the use of toxic substances in milk tank wash water is uncommon as the milk tank is used to hold a liquid meant for human consumption." In the Board's view it was appropriate for the approval officer to alert AF regulatory staff to the concern raised. The Board respects AF's regulatory role in these matters and finds that the approval officer adequately dealt with the concern regarding the dairy's cleaning solution ingredients.

Regarding animal feed additives, the Board notes that the Canadian Food Inspection Agency (CFIA) is responsible for regulating the animal feed ingredient industry. As such, the Board relies on CFIA's

knowledge and regulatory mandate, as AOPA does not directly address feed ingredients and their impact on the environment. Therefore, the Board finds that the matter of feed ingredients is without merit for its consideration under AOPA.

Nuisance Odour

The RFR raises the issue of nuisance odour both from the CFO site and during manure spreading. The Board notes that nuisance odour from the CFO site was not expressed as an issue in Mr. Weatherill's Statement of Concern to the approval officer in his July 12, 2018 submission.

AOPA addresses nuisance odour mitigation from CFO sites by establishing a minimum distance separation (MDS) requirement. A written waiver can be signed by an owner of a residence that is nearer to the CFO than the required MDS. Technical Document RA18050 states that the nearest neighbouring residences to the CFO site are zoned "agricultural district", and are considered as category 1 neighbours. The required MDS to category 1 neighbours for this proposal is calculated to be 465 metres. The distance to Mr. Weatherill's residence is identified as 1650 metres. In the decision summary, the approval officer states that the CFO meets the required AOPA setbacks from all nearby residences with one exception, and the owner of that residence signed a written waiver of the MDS requirement. A copy of the waiver is provided in the technical document. After considering this evidence, the Board finds that the approval officer satisfactorily reviewed the MDS requirement, which is the primary method that AOPA uses to deal with nuisance odour mitigation from CFO sites. The proposed construction and operating practices for this CFO are within typical industry practices and as such, the Board finds that MDS is an appropriate mitigation measure for general odour nuisance concerns.

Mr. Weatherill's Statement of Concern to the approval officer did mention concerns about odours during manure spreading. In his decision summary, Appendix B, the approval officer discusses the Standards and Administration Regulation's requirements during manure spreading to reduce odour nuisance effects. If someone has concerns that the requirements are not being followed, those concerns can be reported to the NRCB's 24 hour complaint line (1-866-6722) and that call will be followed up on by an NRCB Inspector. The Board finds that the approval officer adequately dealt with this concern.

Local Road Capacity, Dust and Safety

The RFR states that "breakdown of local roads will continue" if expansion of this CFO is allowed. It also notes that road dust will increase due to hauling more waste and that road dust is not only an annoyance it is also a safety issue. Mr. Weatherill suggests that permit conditions include a requirement for the upgrade of local roads and dust control.

Construction and maintenance of local roads is a municipal responsibility. In its July 5, 2018 response to the approval officer about this CFO application, Lacombe County stated "The County is writing to advise we have no concerns regarding the above noted application." The Board generally defers road use issues to the municipality and/or Alberta Transportation. In this case, the Board finds the concerns raised in the RFR related to local road use issues are not a relevant Board consideration under AOPA.

Surface Water Pollution

In his RFR, Mr. Weatherill contends that surface water is "presently being polluted". He notes that wastes from the Faberdale CFO are spread on lands adjacent to Gadsby Lake and asserts that "spring runoff and summer rains wash the waste materials directly into this pristine fresh water lake." The Board did not receive any specific evidence to substantiate these claims.

In Decision Summary RA18050, Appendix B, the approval officer lists sections of the Standards and Administration Regulation that address manure application limits, land base requirements and setbacks from surface water bodies that are intended to mitigate risk to surface water from manure spreading activities. When reviewing the technical document for this application, the Board noticed that 421 ha of land in the black soil zone are required for manure application and Faberdale has secured 716 ha of land, much more than the minimum required. The Board finds that the approval officer adequately dealt with runoff concerns related to Gadsby Lake by considering the total land base available for spreading and protection offered to common bodies of water through the *Standards and Administration Regulations*.

Amount of Groundwater Usage

A concern about the “strain” on local water wells due to the proposed expansion is stated in the RFR. This issue was not expressed in Mr. Weatherill’s July 12, 2018 Statement of Concern to the approval officer.

Water licence applications are made to Alberta Environment and Parks (AEP) under the provisions of the *Water Act* and not to the NRCB. Concerns relating to water licensing are handled in the application process under the *Water Act*.

Having said that, the NRCB developed a policy and declaration form that operators must sign as part of the AOPA application process. The declaration form is intended to ensure applicants are fully aware of their responsibility to comply with the *Water Act*. The Board notes that Faberdale chose Option 3 which states “I (we) declare that the CFO will not need a new licence from AEP under the *Water Act* for the development or activity proposed in this AOPA application.” This statement was signed on February 28, 2018. The Board further notes that on June 25, 2018, AEP responded to the approval officer about the proposed CFO and advised that additional water licensing will be required for the increased number of animals at the site. The Board requires that the approval officer notify Faberdale and AEP about this discrepancy.

The Board notes that AEP has ongoing jurisdiction on water licensing and as such the matter is not relevant for review by the Board under AOPA.

Risk to Groundwater Quality

The RFR states a concern for groundwater contamination in the region and asks if the old water wells on lands where Faberdale spreads waste have been “plugged off”. The Board did not receive any specific evidence that groundwater in this region has been contaminated.

The decision summary discusses two water wells that are located within 100 meters of Faberdale’s existing CFO facilities. The regulations require that manure storage facilities and manure collection areas must not be constructed less than 100 meters from a water well unless it can be demonstrated that the aquifer is not likely to be contaminated by the facility. The approval officer applied a risk screening process to determine potential risk to these wells and concluded that they scored low risk and could be allowed an exemption from the 100 meter distance requirement. Despite the risk screening result, Approval RA18050 contains a permit condition requiring these water wells to be tested annually to assure that the groundwater quality remains satisfactory. The Board finds that the approval officer properly and adequately dealt with the potential environmental risk associated with water wells located on the CFO site.

The concern about plugging off old water wells on manure spreading lands was not expressed in Mr. Weatherill's July 12, 2018 Statement of Concern to the approval officer and the Board did not receive any specific evidence about the existence of such wells. However, AOPA does provide protection to water wells from manure spreading activities in its Standards and Administration Regulation, section 24(9)(c) which states that manure, composting materials or compost must not be applied within 30 meters of a water well. The intent of this requirement is to protect the aquifer that a well is drilled into.

The matter before the Board relates to a CFO facility application. Applications for CFO facilities require the approval officer to assure that project proponents have secured access to an adequate manure spreading land base. Approval officers would generally not conduct an examination of whether manure spreading lands had old water wells, particularly if they were not brought to their attention during the facility application process. Risk to surface water and groundwater from manure spreading activities are provided for in the AOPA regulations and are operational matters responded to by the NRCB compliance division. For these reasons, the Board is satisfied that the approval officer adequately considered this issue. While the Board finds that this is not an issue that warrants review at a hearing, it directs that the approval officer refer this issue to NRCB compliance. Either the NRCB approval officer or an inspector can follow up on the concerns with both Mr. Weatherill and Faberdale to assure that manure spreading is conducted appropriately to respect the AOPA groundwater protection provisions in relation to water wells.

Taxation

The RFR recommends that the Board consider implementing a commercial land tax on Faberdale as well as an environmental tax on Faberdale's gross income.

Taxation of CFOs is not considered in AOPA or within the jurisdiction of the NRCB, and therefore not relevant to a Board review.

Decision

As a result of the Board's deliberations, the Board finds that the issues raised in the filed Request for Review were adequately considered by the approval officer, are not relevant Board considerations under AOPA or are without merit, and therefore does not direct any matters to a hearing. The RFR is denied.

DATED at EDMONTON, ALBERTA, this 4th day of October, 2018.

Original signed by:

Peter Woloshyn

Sandi Roberts

Daniel Heaney

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

19th Floor, 250 – 5 Street SW
Calgary, AB T2P 0R4
T (403) 297.8269 F (403) 662.3994

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.ca

Web Address: www.nrcb.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.