



BOARD DECISION

RFR 2019-07 / RA19016

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA19016

Kramer Dairy Ltd.

December 17, 2019

Background

On November 20, 2019, Natural Resources Conservation Board (NRCB) approval officer Jeff Froese issued Decision Summary RA19016 (Decision Summary) and Authorization RA19016 (Authorization) with conditions, for the construction of a barn addition and calf lean-to at an existing dairy confined feeding operation (CFO) owned and operated by Kramer Dairy Ltd. (Kramer), at SE 2-43-25 W4M, in Ponoka County (County). The Authorization includes permitted construction of:

- Dairy barn addition 3.1 m x 21 m, final barn dimensions to be 42 m x 21 m and 21 m x 25 m
- Calf lean-to 5.5 m x 24.4 m

Pursuant to section 22(4) of the *Agricultural Operation Practices Act* (AOPA), a Request for Board Review (RFR) of Decision Summary RA19016 was filed by Kramer, within the 10-day filing deadline established by AOPA.

Following the receipt of the RFR, all directly affected parties were provided with copies 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. The Board received a submission from the County on December 5, 2019, meeting the December 11, 2019 rebuttal filing deadline.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board consisting of Page Stuart (Panel Chair), Sandi Roberts, and Daniel Heaney was established on December 3, 2019, to consider the RFR. The Panel (Board) convened to deliberate on the RFR on December 5 and 10, 2019.

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(1) of the AOPA Administrative Procedures Regulation describes the information that must be included in each request for Board Review.

Documents Considered

The Board considered the following information:

- Decision Summary RA19016, dated November 20, 2019
- Authorization RA19016, dated November 20, 2019
- RFR filed by Kramer Dairy Ltd., dated November 29, 2019 and received on December 2, 2019
- Rebuttal filed by Ponoka County, submitted December 5, 2019
- No additional public record documentation was submitted by the approval officer

Board Deliberations

The Board met on December 5 and 10, 2019, to consider the Kramer RFR, which requested the Board to reconsider the inclusion of condition #10 in Authorization RA19016. Condition #10 RA19016 reads:

10. “Addressing the environmental risk posed by the earthen liquid manure storage. The permit holder shall submit a written plan by May 31, 2020 that addresses the environmental risk posed by the earthen liquid manure storage. The plan must be prepared by an independent and qualified third party professional and not be implemented until the plan has been approved by the NRCB in writing. Once the plan is approved by the NRCB in writing the plan must be implemented within five years, unless otherwise directed by the NRCB in writing. “

The RFR references the approval officer’s use of the NRCB’s Environmental Risk Screening Tool (ERST), which resulted in the approval officer finding that the existing earthen manure storage (EMS) poses a “low risk” to groundwater and surface water. Kramer asserted that this finding “should be a sufficient enough indicator to allow us the opportunity to make slight adjustments to our barn.” Kramer further stated that the approval officer’s decision is not backed with proof and that the costs of meeting this condition are not warranted. Kramer has interpreted condition #10 as requiring it to re-line or rebuild its EMS.

At the request of the approval officer, who received advice from the NRCB’s monitoring review team, Kramer retained a geotechnical engineer and completed a soil investigation in the fall of 2019. The approval officer stated that the results of that investigation confirmed that sand and sandstone layers below the EMS could act as a potential pathway for manure to migrate into the aquifer or uppermost groundwater resource. Relying on this information, the approval officer added condition #10 to Authorization RA19016.

Having regard for the approval officer’s comments included at page 7 of Technical Document RA19016, the Board is aware of many of the approval officer’s considerations that resulted in condition #10. However, based on the information before it, the Board finds that it does not have sufficient information to conclude that the approval officer adequately considered the information that resulted in a finding that that the EMS poses a risk to groundwater. Therefore, the Board has determined that a review is appropriate.

Form of Review

The Board directs a written review. The Board has some confidence that a written review is appropriate in this case; however, it may review the need for an oral hearing if warranted. The Board will direct its staff to canvas submission timing with the approval officer, Kramer, and the County. Once appropriate dates have been identified, all parties will be advised in writing.

Approval Officer (AO)

The Board asks that the approval officer's submission address the following:

- AO 1. At page 7 of Technical Document RA19016, you stated “. . . the ERST is a tool with some limitations that may not perform well in every situation. In this case, the ERST results for the earthen liquid manure storage (EMS) indicate that it poses a low potential risk to groundwater and surface water. I am of the opinion that despite the tools low screening result to groundwater (67.2 points, a relatively high low risk score), the EMS still poses a risk to groundwater that warrants discussion and actions being taken . . .”
- (a) Please provide the details of the ERST component scores for the Kramer EMS and an explanation of why the particular component scores were chosen.
 - (b) Provide your evaluation of any limitations that may have caused the ERST to “not perform well” in evaluating the Kramer EMS.
- AO 2. Further, at page 7 of Technical Document RA19016, you stated, “The sand and sandstone were used as protective layers for the ERST which resulted in the low numeric risk result for groundwater. However, I also realize that these layers are potential pathways for liquid manure in the EMS to impact groundwater”.
- (a) Having regard for estimated depth of the Kramer EMS and the available information on the sand and sandstone layers, explain why the sand and sandstone (identified as an aquifer) produce a low numeric ERST value.
- AO 3. You stated that you relied on two factors in concluding that condition #10 was necessary. The first of those factors is identified above as the potential pathways for liquid manure in the EMS to impact groundwater. The second factor is the direction provided by the NRCB's monitoring review team.
- (a) Provide any assessment that was provided to you by the monitoring review team.
 - (b) Describe any direct contribution or participation the approval officer had in the monitoring team's review work.
 - (c) Provide the names and roles for each member of the monitoring review team that contributed to the direction provided.

- (d) Provide the evidence and advice you relied on, as well as an explanation of how this evidence and advice led you to the conclusion that condition #10 was necessary.

Kramer (KDL)

The filing date for the Kramer submission will provide an adequate opportunity to review the approval officer's submission before filing the Kramer submission. The Board asks that, in addition to responding to the approval officer's submission, the Kramer submission address the following:

KDL 1. You stated that condition #10 of your Authorization "does not indicate any risks nor suggests any indication of high risks in the foreseeable future".

- (a) In making this statement, please clarify whether you are relying entirely on the ERST score in judging the environmental risk posed by your EMS.

KDL 2. Section 22(2.2) of the *Agricultural Operation Practices Act* states that an approval officer "shall not consider whether existing buildings and structures meet the requirements of the regulations unless in the opinion of the approval officer the existing buildings and structures may cause a risk to the environment." In his decision summary, the approval officer has concluded that your existing EMS poses a potential risk. The Board has asked the approval officer to provide further information related to the condition #10 requirement. Once you have reviewed the additional material provided by the approval officer, the panel requests that you submit written comments to the panel that:

- (a) States clearly any issues you may have with the evidence and advice provided by the approval officer in his submission.
- (b) Provides a brief description of when your EMS was constructed and any information you may have on the method of construction. Describe any modifications made to your EMS since it was constructed.
- (c) Explains why your EMS does not pose a potential risk to groundwater.
- (d) Explains why you stated that condition #10 will require you to re-line or rebuild your EMS, whereas the condition requires that you submit a written plan that will address the risk.
- (e) Outlines any alternatives you are aware of that would address this condition without requiring rebuilding or re-lining the EMS.

County

Any submission from the County will be due on the filing date established for the Kramer submission.

Decision

As a result of the Board's deliberations, it has determined that a review is warranted to consider whether condition #10 is appropriate, having regard for the potential environmental risk posed by the EMS.

DATED at EDMONTON, ALBERTA, this 17th day of December, 2019.

Original signed by:

L. Page Stuart

Sandi Roberts

Daniel Heaney

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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.