



BOARD DECISION

RFR 2020-06 / LA20014

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary LA20014

Hutterian Brethren Church of Granum

October 9, 2020

The Board issues this decision document under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for Board review of Decision Summary LA20014.

Background

On August 26, 2020, Natural Resources Conservation Board (NRCB) approval officer Carina Weisbach issued Decision Summary LA20014 and Registration LA20014 with conditions, to construct a new poultry confined feeding operation (CFO) proposed by Hutterian Brethren Church of Granum (Granum Colony) at SE 25-11-28 W4M in the Municipal District of Willow Creek. The construction includes:

- A new 20,000 chicken layers (no pullets included) confined feeding operation (CFO)
- A chicken layer barn—78.5 m x 16.2 m
- Manure storage area (attached to barn)—18.3 m x 14.9 m

Pursuant to section 22(5) of the *Agricultural Operation Practices Act (AOPA)*, six Requests for Board Review (RFR) of Decision Summary LA20014 were filed by directly affected parties. The directly affected parties that filed an RFR were Don Chatterton; Allan Minor (represented by Kerry Gellrich); Byron Westwell; Dean and Nicole Dunand; Radon Chatterton; and Ken and Debra Loeffler. Each of the six filed RFRs met the 10-day filing deadline established by AOPA of September 17, 2020.

The Board received five RFRs from parties that the approval officer found were not directly affected by Application LA20014. Those parties were Shelby Biddlecombe; Rodney and Hope Jensen and Eddie and Natalie Jensen; Logan Jensen; Marlon Thompson; and Vonda Chatterton.

The Board received two RFRs from parties that did not file a statement of concern (SOC) with the approval officer; those parties were Pam Heyland and Barry and Casey Arnestad.

Under the authority of section 18(1) of the *Natural Resource Conservation Board Act*, a division of the Board consisting of Peter Woloshyn (panel chair), Keith Leggat, and Page Stuart was established on September 24, 2020 to consider the RFRs. The Board convened to deliberate on the RFRs on September 29, 2020.

As established by the approval officer, all directly affected parties, all parties determined not directly affected, and the two parties who submitted an RFR but had not submitted an SOC to the approval officer, were notified of the Board's intent to review these requests and provided with a copy of the RFRs. Parties that had an adverse interest to the matters raised in the RFRs were given the opportunity to submit a rebuttal. The Board received a rebuttal from Granum Colony dated September 23, 2020, meeting the rebuttal filing deadline of September 24, 2020.

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 LA20014, dated August 26, 2020
- Registration LA20014, dated July 26, 2020 (to be amended by AO to read August)
- Technical Document LA20014, August 26, 2020
- RFR filed by Pam Heyland, received September 15, 2020
- RFR filed by Don Chatterton, received September 16, 2020
- RFR filed by Allan Minor (represented by Kerry Gellrich), received September 16, 2020
- RFR filed by Shelby Biddlecombe, received September 16, 2020
- RFR filed by Barry and Casey Arnestad, received September 16, 2020
- RFR filed by Byron Westwell, received September 16, 2020
- RFR filed by Dean and Nicole Dunand, received September 17, 2020
- RFR filed by Rodney and Hope Jensen and Eddie and Natalie Jensen, received September 17, 2020
- RFR filed by Radon Chatterton, received September 17, 2020
- RFR filed by Logan Jensen, received September 17, 2020
- RFR filed by Marlon Thompson, received September 17, 2020
- RFR filed by Ken and Debra Loeffler, received September 17, 2020
- RFR filed by Vonda Chatterton, received September 17, 2020
- Portions of the public record maintained by the approval officer
- MD of Willow Creek Municipal Development Plan
- Rebuttal from Granum Colony, dated September 23, 2020
- Submission of the approval officer, dated September 24, 2020

Eligibility to File an RFR

The directly affected parties

The Board must consider an RFR filed by a directly affected party. As noted, the six directly affected parties that filed an RFR were Don Chatterton; Allan Minor (represented by Kerry Gellrich); Byron Westwell; Dean and Nicole Dunand; Radon Chatterton; and Ken and Debra Loeffler.

Parties that do not meet the affected party definition

As for the RFRs filed by Shelby Biddlecombe; Rodney and Hope Jensen and Eddie and Natalie Jensen; Logan Jensen; Marlon Thompson; and Vonda Chatterton, the Board is bound by AOPA's provisions for determining if a person is an affected party. AOPA and the Agricultural Operations, Part 2 Matters Regulation establish linear distances from the CFO facilities based on the operation's type and size. A person who owns or occupies land within that distance to the CFO facilities is an affected party as defined by AOPA. In Application LA20014, the distance is ½ mile.

Further, AOPA differentiates between smaller, registration size CFO applications and larger, approval size CFO applications in establishing eligibility to participate in the NRCB approval process as an affected party. Section 21(5) of AOPA, which applies to registration size applications, states that only an affected party may be found to be a directly affected party. The RFRs filed by Shelby Biddlecombe; Rodney and Hope Jensen and Eddie and Natalie Jensen; Logan Jensen; Marlon Thompson; and Vonda Chatterton do not establish that they meet the affected party eligibility criteria (own or reside on land within ½ mile of the CFO facility) for this application. As such, the Board did not consider their RFRs.

Accordingly, the Board notes that the approval officer assessment of directly affected party status for those that live or occupy land outside the ½ mile affected party area was in error. This error has undoubtedly led to some confusion among parties.

Parties that did not make a submission to the approval officer

AOPA states that a request to review their status as a directly affected party and file an RFR may only be filed by a party who made a submission to the approval officer during the application process. As neither Pam Heyland nor Barry and Casey Arnestad filed a submission with the approval officer, the Board cannot consider their RFRs.

Board Deliberations

The Board met on September 29th, 2020, to deliberate on the issues raised in the RFRs.

While the RFRs covered a number of issues, they focused on the following:

- Surface and Ground Water Quality
- Ground Water supply
- Impact on Minor Air Strip
- Health Effects
- Effects on Environment, Economy, and Community

- Procedural Fairness
- Notice
- Dead Animal Disposal
- Compliance

As referenced above, the Board must consider whether the party requesting a review has identified sufficient grounds to merit review of the approval officer's decision. This includes a consideration by the Board of whether the issues raised in the RFR were adequately considered by the approval officer. Section 22 of AOPA establishes the considerations that must be considered by an approval officer for an application for a registration sized CFO. The considerations set out in section 22 require an assessment of whether the proposed CFO complies with the Standards and Administration Regulation, as well as the AOPA provisions that deal with matters such as notice, and an assessment of whether the application is consistent with the municipal development plan (MDP). In contrast to the more expansive considerations that apply to applications for CFO approval applications [AOPA, section 20], the Board notes that AOPA has narrowed the scope of review for registration applications.

The Board has reviewed each of the matters raised by the directly affected parties in their RFRs and, in each case, is satisfied that these issues were adequately considered by the approval officer for the reasons stated below.

Surface and Groundwater Quality

The Don Chatterton, Allan Minor, and Ken and Debra Loeffler RFRs raised concerns that the proposed CFO will negatively impact water quality as a result of its proximity to both Meadow Creek and Willow Creek, as well as the potential for area flooding. The RFRs asserted that the proposed CFO is located in a flood plain, as established by Alberta Environment and Map 2 of the report "MD of Willow Creek Environmentally Significant Areas, February 1989". Concerns expressed included that flooding of manure spreading lands is likely to result in contamination of groundwater and wells, as well as creating the potential for manure contaminated runoff to enter Meadow Creek and Willow Creek.

Within the technical document, the approval officer referenced an Alberta Environment and Parks (AEP) analysis that describes the proposed area of the chicken barn as having the potential to be affected by flood waters from Meadow Creek. This is noted as consistent with the Environmental Significant Areas report referenced in the MDP of the MD of Willow Creek. As well, the surface water vulnerability is assessed to be moderate according to the AEP website. The approval officer noted that site-specific observations, including a closer evaluation of the AEP material, together with compiled photographs from the site wetlands assessment, support the previous landowner's assertion that water has not flooded the yard site during the last sixty years. The approval officer then observed that the west bank of the creek has flooded 700 metres north of this site, and assessed that the elevation of that bank is five metres lower than the proposed CFO location (which is east of the creek).

With respect to the surface water risk associated with manure spreading lands, the approval officer described a Google Earth aerial photo indicating that a larger area of the quarter section SE 32-11-27 W4M identified for manure spreading was impacted by flood waters from Willow Creek in 2015. Noting that spring manure application could coincide with flood events, and that

the close proximity of Willow Creek provides water for human consumption and is fish bearing, the approval officer included the following condition in the Registration (pg. 2):

“The permit holder shall spread manure on the SE 32-11-27 only in the fall and all the manure has to be incorporated.”

The approval officer applied the NRCB’s Environmental Risk Screening Tool (ERST) to the proposed CFO’s manure storage area and barn, and the risks to groundwater and surface water were both determined to be low. With respect to the technical requirements of AOPA, the approval officer concluded that the proposed CFO:

- Meets the required AOPA setbacks from water wells, springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA’s nutrient management requirements regarding land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities
- Is consistent with the South Saskatchewan Regional Plan

The approval officer acknowledged that groundwater contamination of wells from manure contaminated flood waters from Meadow Creek is possible under extreme circumstances. However, the approval officer’s final determination was that the risk of flooding at the proposed CFO site is minimal, and that section 8 of the Standards and Administration Regulation has been met.

The Board accepts the assertions within the RFRs that the general area around the CFO has the potential for seasonal flooding to occur, and appreciates the concerns regarding potential surface and groundwater impacts. Having regard for the evidence within the RFRs, together with the documented general surface water vulnerability of the area, the Board notes that the site-specific evaluation by the approval officer included three key observations:

- That the previous landowner asserted that the yard site has not flooded during the last 60 years,
- that this anecdotal landowner evidence is supported by historical photographs compiled for the purpose of a wetland assessment, and
- that an assessment of the creek bank topography shows a significant elevation difference between the historical flooding areas on the lower west bank of the creek, and the higher east bank of the creek where the CFO would be sited.

The Board is satisfied that these site assessments sufficiently demonstrate that, despite the general flooding risk of the area, the flooding risk to the proposed CFO site is minimal, notwithstanding extreme events. The Board finds that the approval officer adequately dealt with the issue of flooding relative to the CFO barn and manure storage areas.

With respect to the flooding risk of manure spreading lands identified in the technical document, the Board references the objectives and requirements of AOPA (Beekman Farms Ltd. and P & H Wessels Farms Ltd. RFR 2019-05):

“One of the primary objectives of AOPA and the standards regulation is to ensure that manure storage facilities and manure spreading activities address risk to surface and groundwater.... AOPA regulations include requirements that provide nutrient limits and setback provisions to limit risk to ground and surface water.... At the time of application, an applicant must satisfy that they have secured sufficient manure spreading lands to take the anticipated manure production from the CFO.

The Board is satisfied that the Granum Colony has met the requirements to identify potential manure spreading lands, and notes that the Granum Colony is not bound to use these identified lands for manure spreading. Rather, the AOPA Standards and Administration Regulation provides that an applicant must only demonstrate that they have sufficient land base for manure spreading for the first year following the granting of the application (section 25(2)(a)).

Given this legislative and regulatory context, the Board notes with interest that the inclusion of a condition relating to specific manure spreading lands is not typical. However, the Board accepts assertions by both directly affected parties and the approval officer that spring flooding to the named land parcel can occur. Therefore, the Board finds that the condition related to manure spreading as included on the registration permit, is a reasonable and practical approach to manage the risk of contamination from flooding events on that quarter. Given the requirements of the legislation, together with the extra layer of protection afforded by the manure spreading condition, the Board finds that the approval officer adequately addressed the issue of flooding and the potential for surface and groundwater contamination on manure spreading lands. The Board reminds all parties that all manure spreading activities are subject to ongoing regulatory requirements under the NRCB’s AOPA mandate.

With respect to the potential for surface and groundwater risk at the CFO site, the Board does not find sufficient evidence to contradict the approval officer’s findings that the proposed CFO satisfies AOPA technical requirements. As well, the site demonstrates a low risk to ground and surface water as determined by the ERST assessment completed by the approval officer. The Board notes the Alberta Health Services (AHS) statement that all efforts should be made to protect drinking water sources during construction and operation of the facility and that water testing of drinking water should be conducted. Given that AHS does not provide evidence to link the proposed CFO with the potential to contribute to the contamination of groundwater, the Board finds that this recommendation is nonspecific in nature. Rather, it is a general comment relating to generally accepted best practices for the management of potable water sources. Given the Board’s acknowledgment that AOPA contains facility construction and operational requirements for confined feeding operations, the Board accepts that the proposed CFO meets or exceeds the legislative requirements under AOPA related to surface and groundwater protection.

The Board finds that the approval officer adequately dealt with concerns related to surface and groundwater risk at the CFO site.

Ground Water Supply

The Don Chatterton, Byron Westwell, Ken and Debra Loeffler, and Radon Chatterton RFRs expressed concerns regarding water supply.

The approval officer referenced a response from AEP that confirmed the proposed CFO does not have an active water licence that would cover the water needs for a 20,000 head chicken layer operation and that AEP had not yet received an application for a water licence. The approval officer noted that the Granum Colony is reminded that it is its responsibility to acquire all applicable permits and licenses.

The Board affirms that the water supply concern raised in the RFRs is outside of AOPA's mandate, and finds that the approval officer has adequately dealt with groundwater supply.

Impact on Minor Air Strip

RFRs from Don Chatterton and Radon Chatterton expressed concerns about the approval officer's assessment of the status and use of the airstrip at the Allan Minor property (Minor Air Strip), and restrictions on flights in the area as a result of the siting of the CFO.

In the decision summary, the approval officer acknowledged that the directly affected party concerns of a potential restriction to scouting local cattle herds is understandable. However, the approval officer asserted that there is no conclusive information that the claimed 2000 feet airspace above the barn is off limits to local, small aircraft. The approval officer notes that all aircraft are required to abide by the requirements set out in the Canadian Aviation Regulations.

The Board notes that in his statement of concern to the approval officer during the application stage, Mr. Minor expressed concerns about whether the approved chicken barn would interfere with his airplane ingress and egress. The Board accepts that the operation of aircraft is a regulated activity under the Canadian Aviation Regulations and outside of the NRCB mandate; however, the Board notes that the siting of airstrips like that on the Minor property is a municipal matter.

The AOPA provisions related to CFO siting provide for setbacks to neighbouring residences and to land use planning provisions contained within the relevant MDP. The Board could not find any airstrip related siting restrictions or setback requirements in either AOPA or the County's MDP that would be relevant to the proposed CFO. For this reason, the Board finds that the siting of the CFO in proximity to, and the effects on, the Minor airstrip are not relevant to this registration application.

Absent references to setbacks or other restrictions for development near airstrips in the MDP, the Board does acknowledge Mr. Minor's concerns. However, the Board notes that limited evidence was provided to the approval officer regarding Mr. Minor's take-off and landing pathways. No evidence regarding flight pathways was provided to the Board by any parties at the request for review stage. The Board does note that the map provided by Mr. Minor in his statement of concern to the approval officer indicates his airstrip as having a north-south orientation. The Board also notes Mr. Minor's assertion that the normal landing and departing traffic pattern will put aircraft right over the poultry barn at 1000 feet or less above ground level. However, given that the CFO is located southwest of Mr. Minor's property and the Allan Minor airstrip, the Board is unconvinced that ingress/egress will be impeded. The Board finds that the approval officer adequately dealt with the impact on the Minor Air Strip.

Health Effects

The Don Chatterton RFR asserted that the approval officer did not adequately deal with the issues of negative impacts on health, failing to assess potential health risks to multiple generations of family by not requesting express confirmation from the AHS representative that no concerns exist. The Allan Minor RFR expressed concern that the health of the Minor family and the health of their cattle would be impacted by dust. The Bryon Westwell RFR asserted that road dust can be harmful to livestock, pets and a young boy with asthma, and that chicken droppings spilled on roads can be released into the air, spreading pathogens into respiratory systems and causing the potential for disease. The Ken and Debra Loeffler RFR described concerns that higher stress and depression from being confined at home, and an increased possibility of allergies, asthma, and other respiratory issues.

The approval officer noted that the application was sent to AHS for comments, and when a response was not received the approval officer contacted the AHS representative to discuss the raised health concerns. A subsequent response letter from AHS stated that all efforts should be made to protect drinking water sources during construction and operation of the facility and that water testing of drinking water should be conducted. The AHS representative did not comment on specific health concerns or outcomes with respect to the operation of the chicken barn. The approval officer further asserted that there is not a plausible chain of causality between the effects of the proposed CFO and the asserted health effects on the individuals.

In evaluating the adequacy of the approval officer's findings on health impacts of the proposed CFO, the Board assessed the RFR submissions relative to the following parameters (Hutterian Brethren of Summerland RFR 2018-05):

- Whether the proposed CFO will materially elevate the exposure of environmental factors of concern to the Directly Affected Parties; and
- Whether the RFRs satisfy the primary burden of proof on the directly affected parties to establish a direct link between the effects of the proposed CFO, and a specific health concern.

On the first matter, the Board assessed the directly affected parties' assertions that the proposed CFO will result in increases in dust, odour, as well as manure hauling on roads. The Board finds there is not sufficient evidence to demonstrate that the proposed CFO will materially elevate the exposure of environmental factors of concern, relative to other activities in the area. On the second matter, the Board agrees with the approval officer's assertion that the health concerns described in the RFRs, such as the necessity to be confined at home, asthma, general increases in respiratory issues and allergies and increases in pathogens due to spilled manure on roads, are described in general terms. The Board finds that the RFRs do not identify a plausible link between the effects of the proposed CFO, and a specific health concern.

The Board finds that the approval officer adequately dealt with the issue of health impacts.

Effects on Environment, Economy and Community

The RFRs included a number of concerns related to impacts on the environment, the economy, and the community. The Westwell and Dunand RFRs asserted there will be a negative impact on the community, creating controversy and conflict between neighbours, and reducing quality

of life. The Dunand RFR referenced a recently declined approval application one mile from the location of the proposed CFO, and expressed concern that the approval officer did not adequately deal with the negative effects on community. The Don Chatterton RFR asserted that the approval officer did not adequately deal with the issue of nuisance impacts, citing AOPA section 20(1)(b)(ix). The Westwell, Loeffler, Don Chatterton, Minor, Radon Chatterton, and Dunand RFRs describe various concerns relating to wildlife impacts, increased dust, insects, flies, traffic, noise, odour and cumulative effects, as well as a decrease in property values, and damage to community infrastructure.

The Board notes that the Granum Colony applied for an approval and a registration within the same month. The Board acknowledges that this may have contributed to some confusion amongst parties with respect to applicable sections under AOPA for this registration sized application.

Provisions under AOPA section 20(1), considerations on approvals include a provision that the approval officer must consider “effects on the environment, the economy and the community and the appropriate use of land”, and the “effects...on natural resources”, among others. However, AOPA, section 22(1) applies to registration applications (including this application) and is limited to assessing whether the application meets the requirements of the regulations and whether the application is inconsistent with the MDP land use provisions. In other words there is no provision for the approval officer to consider the broad effects on the environment, economy or community for registration applications.

The Board accepts the approval officer’s assessment that the application is consistent with the land use provisions presented in the MD of Willow Creek’s MDP. The Board is satisfied that the approval officer fully assessed the CFO application’s consistency with the AOPA regulations.

Notice

The Byron Westwell RFR asserted that the approval officer did not comply with AOPA section 21(1) which states that the approval officer must notify all affected parties of a registration application.

The approval officer confirmed in the decision summary that notice was published in the Claresholm Local Press on June 30, 2020, and the full application was posted on the NRCB website for public viewing, describing the nature of the proposed CFO and how to engage the NRCB application process in adequate detail. The NRCB’s established practice is to publish notices of application in newspapers that are circulated within the affected community. As well, 14 courtesy letters were sent to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius.

While it is unfortunate that Mr. Westwell did not see notice of the registration application, the Board notes that the longstanding policy of the NRCB is to provide notice in community newspapers and posting applications on the NRCB website. The established practice of mailing courtesy letters is intended to supplement that notice. There is no statutory obligation to provide courtesy letters to affected parties. Publishing the public notice in newspapers and the NRCB website is the chosen form of notice. The Board finds that the approval officer adequately dealt with the issue of notice.

Procedural Fairness

The Board acknowledges that several parties raised issues of procedural fairness. The Board makes two findings on the procedural fairness issues raised by parties. Firstly, during this RFR stage, parties failed to provide sufficient evidence to demonstrate if and how the claim of “procedural unfairness” made a material difference on the decision. Secondly, the Board finds that despite unproven claims concerning procedural fairness, all parties had sufficient time to enter evidence to the approval officer and indeed this review process. The Board has not identified any new evidence in the RFRs related to procedural fairness that would contribute to a difference in the original decision made by the approval officer.

Dead Animal Disposal

The Ken and Debra Loeffler RFR expressed concern about dead animals dumped on the land.

In the decision summary, the approval officer described that dead animal disposal is regulated directly by Alberta Agriculture and Forestry’s (AF) Regulatory Services Branch, under the *Animal Health Act* (see NRCB Operational Policy 2016-7: Approvals). The approval officer further provided context that given AF’s regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistency with AF’s requirements. The approval officer indicates that incidences of non-compliance or any concerns in relation to a CFO operation can be reported to the NRCB’s 24 hour a day reporting line (1-866-383-6722 or 310-0000 toll free line).

The Board finds that the matter of disposal of animal carcasses is without merit for its consideration under AOPA.

Compliance

The Don Chatterton and Radon Chatterton RFRs expressed concerns regarding the Granum Colony’s behaviour with respect to future compliance.

The approval officer included information within the decision summary that any incidences of non-compliance or any concerns in relation to a CFO operation can be reported to the NRCB’s 24 hour a day reporting line (1-866-383-6722 or 310-0000 toll free line).

The Board notes that it is not possible to comment on general issues of non-compliance that are speculative in nature. However, the Board reminds all parties that the NRCB maintains and manages compliance review and response through the NRCB complaint line, inspections, and enforcement action, and notes that anyone who has concerns that legislated requirements are not being followed, is encouraged to call the reporting line, as above.

The Board finds that the approval officer adequately dealt with compliance issues.

Board Decision

As a result of its deliberations, the Board finds that the issues raised in the filed Requests for Review were adequately considered by the approval officer. The RFRs are denied.

DATED at EDMONTON, ALBERTA, this 9th day of October, 2020.

Original signed by:

Peter Woloshyn

L. Page Stuart

Keith Leggat

Contact the Natural Resources Conservation Board at the following offices. Dial 310.0000 to be connected toll free.

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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.