



BOARD DECISION

RFR 2021-01 / RA20029A

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA20029A

Lone Pine Hutterian Brethren

February 11, 2021

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 RA20029A.

Background

On January 6, 2021, Natural Resources Conservation Board (NRCB) approval officer Francisco Echegaray issued Decision Summary RA20029A (Decision Summary), modifying the dimensions of the already constructed earthen liquid manure storage facility (EMS) at an existing confined feeding operation (CFO) operated by Lone Pine Hutterian Brethren (Lone Pine), located at SW 7-39-17 W4M in the County of Stettler No. 6 (County). The approval officer approved the application.

Pursuant to section 22(4) of the *Agricultural Operation Practices Act (AOPA)*, one Request for Board Review (RFR) of the Decision Summary was filed. That RFR was filed by the County and met the 10-day filing deadline of January 27, 2021, established by AOPA.

The directly affected parties, as identified by the approval officer, were notified of the Board's intent to review the RFR and were provided with a copy on January 28, 2021. Parties that had an adverse interest to the matters raised in the RFR were given the opportunity to submit a rebuttal by the deadline February 3, 2021. No rebuttals were received.

Under the authority of section 18(1) of the *Natural Resource Conservation Board Act*, a division of the Board consisting of L. Page Stuart (panel chair), Keith Leggat, Earl Graham, and Indra L. Maharaj was established on January 28, 2021 to consider the RFR. The Board convened to deliberate on the RFR on February 2, 2021.

Jurisdiction

The Board's authority for granting a review of the 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 a review of the approval officer's decision. Section 13(1) of the AOPA Administrative Procedures Regulation describes the information that must be included in

a request for Board review. The RFR submitted by the County complied with section 13(1) of the AOPA Administrative Procedures Regulation.

Documents Considered

The Board considered the following information:

- Decision Summary RA20029A, dated January 6, 2021
- Technical Document RA20029A, dated January 6, 2021
- NRCB Authorization RA020029A, dated January 6, 2021
- RFR filed by County of Stettler No. 6, dated January 27, 2021
- County of Stettler No. 6 Municipal Development Plan
- Portions of the approval officer public material

Board Deliberations

The Board met on February 2, 2021 to consider the issues raised in the RFR filed by the County. The Board must determine whether the party requesting the review, the County, has identified sufficient grounds to merit a review of the approval officer's decision. This process includes consideration by the Board of whether the issues raised in the RFR were adequately considered by the approval officer.

While the RFR covered a number of areas, the following issues raised relate specifically to Authorization RA20029A:

- Authorization amendment relating to a change in EMS dimensions
- Consolidating permits
- AOPA requirements and risk

The Board observes that, as identified by the approval officer in the Decision Summary, a number of the issues raised in the RFR relate to original authorization, Authorization RA20029, and not to the amended authorization, Authorization RA20029A. Those issues are:

- Adequacy of NRCB response to previous application RA20029
- Applicant compliance with NRCB permitting process outlined in RA20029
- Surface and groundwater quality
- Health risks and loss of potable water access
- Financial impacts to the County of Stettler

In the Decision Summary, the approval officer notes, at page 2, that:

Application RA20029 met all relevant AOPA requirements, with the terms and conditions included in the permit (Authorization). Therefore, I am not required to address concerns that relate to the original application and do not relate to the modified dimensions of the EMS. However, solely as a courtesy to the County, I will discuss the concerns raised by the County.

The Board agrees with the approval officer's assessment that the issues that are raised in the RFR that relate to Authorization RA20029 are without merit in the consideration of the RFR pertaining to amended Authorization RA20029A. Therefore, the Board will provide findings only with respect to the issues raised in the RFR that relate to the amended Authorization RA20029A.

Authorization Amendment Relating to a Change in EMS Dimensions

In its RFR, the County asserted that it disagreed with the approval officer's statement that an approval officer does not have the jurisdiction to re-visit the merits of previously issued permits. The County further stated that a review of the approval officer's decision is required to ensure that the concerns regarding the sandy soils and the negative impacts on nearby water sources/courses have been properly addressed.

In the Decision Summary, the approval officer described the details of the amended authorization application, noting that it dealt only with the modified dimensions of the constructed EMS (constructed in the same location but modified from 61 m x 61 m x 4.5 m deep, to 85 m x 44 m x 4.5 m deep), and that the previous application (RA20029) dealt with whether the EMS met the technical requirements set out in AOPA. The approval officer stated that the EMS was evaluated using the Environmental Risk Screening Tool (ERST) in August 2020, and that distances to surface bodies of water and groundwater aquifers remained the same as were identified in Decision Summary RA20029. In that evaluation, the EMS was determined by the approval officer to pose a low potential risk to surface water and groundwater. The approval officer also noted that the EMS was constructed using the same proposed compacted clay liner that was previously permitted for the original EMS, with no proposed increase in livestock numbers or manure production. The approval officer described the impact of the modified EMS dimensions, indicating that the depth did not change from the original (4.5 m) and that, although the constructed EMS has a lesser capacity than the originally permitted facility, it still meets the AOPA 9-month storage requirement.

The approval officer referenced a previous Board Decision (Hutterian Brethren of Murray Lake. RFR 2020-9/LA20035 at page 3), which stated, "When making a permit decision on a new application, approval officers do not have the jurisdiction to re-visit previously issued permits." AOPA section 18(1) confirms that an authorization can be amended by an approval officer:

- 18(1) An application for an approval, registration or authorization or for an amendment of an approval, registration or authorization must be made to an approval officer in accordance with the regulations.*
- (2) An approval officer may determine whether an application is complete.*
- (3) If an application is not completed in accordance with the regulations, the approval officer may deny the application.*

The Board then reviewed AOPA section 22(2.2), which outlines the requirements for an approval officer to consider when reviewing an application to amend an authorization, as is the case in front of the Board:

- 22(2.2) In considering whether an application for an amendment to a registration or authorization meets the requirements of the regulations, an approval officer*
- (a) shall not consider whether the 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, but*
 - (b) must consider whether the proposed expansion or alteration of an existing building or structure or any proposed new building or structure meets the requirements of the regulations.*

With this jurisdiction in mind, the Board accepts the approval officer's statement in the Decision Summary, at page 5, that: "The previous application RA20029 met all relevant AOPA requirements. The proposed change to the dimensions of the EMS has no impact on that determination, which still stands."

Further, the Board finds no evidence in the RFR to suggest that the modified length and width dimensions of the EMS contribute to an increased risk related to the modified EMS. As well, the Board notes that the post-inspection report by Envirowest Engineering, dated November 9, 2020, which is signed and stamped by Emily J. Low, P.Eng, and submitted as part of the Technical Documents supporting the amendment application, states, at page 4, that "the installed liner meets the applicable requirements as outlined in the Envirowest Engineering report (July 24, 2020)."

Therefore, the Board finds that the approval officer adequately dealt with the issue of risk that may have been associated with the change in dimensions of the EMS. Further, the Board confirms that the approval officer does not have the authority to revisit the original decision's (RA20029) conclusions regarding the compliance of the applied-for facility with the technical requirements under AOPA.

Consolidating Permits

In its RFR, the County states that one of the bases of its RFR is:

In light of the development being constructed in contravention of the original NRCB approval and the issuance of a second approval which closely mirrors the approval of the first application, the County is requesting a review of the decision to ensure that the concerns regarding the sandy soils and the negative impacts on nearby water sources/course have been properly addressed.

Although the assertion is not entirely clear, the Board infers that, in context, the County's statement is intended to indicate the County's request to have the Board re-open the original application, particularly with respect to the question of the adequacy of consideration of the

soil conditions and impacts on water sources as it pertained to the approval of the EMS in the original application and subsequent authorization (RA20029).

The Board referred to NRCB Approvals Policy (updated May 8, 2018):

10.5 Consolidating permits

Approval officers will consolidate a CFO's previously-issued permits (including any written or unwritten deemed permits) when issuing a new approval or registration, or an amendment of an approval or registration. Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all of the CFO's operating and construction requirements.

The Board observes that the practice of consolidating permits (as opposed to detailing amendments as separate, sequential documents) is a practical and sensible approach to document management, reducing administrative burden and the risk of confusion as to the governing provisions applicable to a permitted facility.

The approval officer was unable to address this concern in the Decision Summary as it was not included in the County's statement of concern (SOC) to the NRCB dated December 2, 2020.

The Board finds that the consolidation of the previous authorization RA20029 and authorization RA20029A carries no significance beyond a functional convention to provide all parties with a single, comprehensive reference document.

The Board finds the issue raised by the County in its RFR relating to the consolidation of permits, and the potential for reconsideration of an original application at the point in time of an amendment application and permit consolidation, is without merit.

AOPA Requirements and Risk

The County expressed concern, at page 4 of the RFR, with "the statement in the RA20029A Decision Summary (dated January 6, 2021) that AOPA requirement do not guarantee zero risk but that a low potential risk exists".

The approval officer was unable to address this concern as it was not included in the County's SOC to the NRCB dated December 2, 2020.

One of the purposes of AOPA is to mitigate environmental risk of confined feeding operations. It is the Board's position that "zero" risk is not a realistic target, given that any activity inherently includes intrinsic risks. However, the application of AOPA's legislative and regulatory framework, together with tools the NRCB has developed over time, such as the ERST, actively direct and facilitate the assessment and subsequent requirements for the mitigation of risk for confined feeding operations in Alberta. In the case of the EMS that is the subject of this decision by the Board, the construction of the liner to the specifications detailed in the permitting conditions set out in the original application with dimensions amended in Authorization RA20029A, in combination with the EMS meeting other technical requirements

set out therein, provides the protection that AOPA requires to satisfy its mandate to give due consideration to the environmental impacts of the proposed facility.

Decision

As a result of its deliberations, the Board has determined that the issues raised in the filed Request for Review were either adequately considered by the approval officer, are not relevant Board considerations under AOPA, or are without merit. Therefore, the Board has determined, pursuant to section 25(1)(a) of AOPA, that there are no matters to be directed to a review and, therefore, the County of Stettler No. 6's Request for Review is denied.

DATED at EDMONTON, ALBERTA, this 11th day of February, 2021.

Original signed by:

L. Page Stuart

Indra L. Maharaj

Keith Leggat

Earl Graham

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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.