



## **BOARD DECISION**

### **RFR 2018-13 / RA18037**

In Consideration of Requests for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA18037

Spruit Farms Ltd.

December 11, 2018

## Background

On October 18, 2018, NRCB Approval Officer Jeff Froese issued Decision Summary RA18037 in relation to the confined feeding operation (CFO) proposed by Spruit Farms Ltd. (Spruit Farms) at NW 36-36-19 W4M in the County of Stettler No. 6 (County). Spruit Farms sought approval to expand an existing 2,400 feeder pig CFO by increasing the permitted livestock to 2,400 feeder pigs and 8,000 weaner pigs. The proposed CFO includes the construction of a new weaner barn (107 m x 37 m, with 0.6 m deep manure storage pits) and constructing four 0.9 m deep manure storage pits below an existing feeder pig barn. The application to the approval officer also sought to amend the existing permit by removing two permit conditions originally imposed by municipal development permit 9906F. The approval officer considered this application in Decision Summary RA18037 and issued an approval with conditions.

Pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA), Requests for Board Review (RFRs) of Decision Summary RA18037 were filed by directly affected parties Doug and Annette Cook, Barry Bolton, Merv Toews, Jim and Betty Lou Muhlbach, Virginia Nielsen, the Innocent family (Glen, Judy and Robyn), and the County.

Pursuant to section 20(6) of AOPA, John and Joyce Bolton requested that the Board first find them to be directly affected by the Spruit Farms application, and then consider their RFR of Decision Summary RA18037. John and Joyce Bolton had filed a statement of concern with the approval officer.

All RFRs and the section 20(6) request by John and Joyce Bolton were received before the filing deadline of November 8, 2018. On November 9, 2018 the Board received a submission from the approval officer in relation to the filed RFRs; the approval officer copied that submission to all other relevant parties.

Following receipt of the RFRs, all parties were provided with copies of the requests on November 9, 2018, 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 RFRs were given the opportunity to provide a rebuttal submission in response on or before November 19, 2018. The Board received a rebuttal submission from Spruit Farms on November 19, 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(1) 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 RA18037, dated October 18, 2018
- Approval RA18037, including Appendix and referenced Water Well Monitoring Requirements
- Technical Document RA18037
- RFRs filed by:
  - Doug and Annette Cook
  - Barry Bolton
  - Merv Toews
  - Jim and Betty Lou Muhlbach
  - Virginia Nielsen
  - Glen, Judy and Robyn Innocent
  - the County
- Request to review directly affected party status and RFR filed by John and Joyce Bolton
- Approval officer submission dated November 9, 2018
- Portions of the public record maintained by the approval officer
- Rebuttal submission from Spruit Farms dated November 19, 2018

## Board Deliberations

The Board met on November 21, 23, 27, and December 5, 2018 to deliberate on the RFRs.

### ***Preliminary Issue—Review of Directly Affected Party Status***

John and Joyce Bolton submitted a statement of concern to the approval officer in response to the Notice of Application (published in the June 28, 2018 edition of the *Stettler Independent*). The approval officer determined that John and Joyce Bolton had not established that they would be directly affected by the proposed CFO.

In reviewing the concerns raised, the Board finds that John and Joyce Bolton have not established that they would be directly affected parties. The Board refers to NRCB Approvals Operational Policy 2016-17, (clause 6.3), and NRCB Board Decision 2011-05 / RA11001 (Klaas Ijtsma, page 4), which describe a test for directly affected parties as follows:

- a plausible chain of causality exists between the proposed project and the effect asserted,
- the effect would probably occur,
- the effect could reasonably be expected to impact the party,
- the effect would not be trivial, and
- the effect falls within the NRCB regulatory mandate under AOPA.

This approach is similar to that described by the approval officer in Decision Summary RA18037.

The Board notes that the approval officer considered the proximity of the CFO to the lands and residence of John and Joyce Bolton, and concluded that the Boltons had not established that they should be considered directly affected parties to the Spruit Farms' application.

Having reviewed the section 20(6) request filed by John and Joyce Bolton, the Board reaches the same conclusion as the approval officer in respect to whether the Boltons should be considered directly affected parties in relation to Application RA18037. The Board has confirmed that the Boltons' lands and residence are outside of the "affected party" area delineated by the Agricultural Operations, Part 2 Matters Regulation (AR 257/2001). The Board notes that the Bolton's RFR filing references a number of concerns, including odour, pollution, water quantity, land value, fly-transmitted disease, and an increase in predators. Listing these concerns in the general terms done in the RFR does not establish a plausible chain of causality between the claimed effects from the CFO and the Boltons. The Board does not doubt that there will be times that the Boltons will experience odour and other nuisance related effects from the Spruit Farms' operation. However, the Board considers that the "affected party" distances in the AOPA regulations were established to include all lands and residences that, barring special circumstances, would experience effects from the CFO facility that could make the owners or residents directly affected parties. In this case, Joyce and John Bolton do not own or reside on land within the one mile affected party radius and have not provided specific evidence to demonstrate to the Board that they meet the directly affected party test.

To conclude, the Board finds the approval officer's decision that John and Joyce Bolton are not directly affected parties is reasonable. As such, the Board dismisses the John and Joyce Bolton request for directly affected party status.

### ***Deliberations on Requests for Review (RFRs)***

In its deliberations, the Board considered each RFR filed by the directly affected parties and the various issues raised. 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 issues raised in the RFRs include:

- number of families directly affected
- accuracy of MDS measurement
- manure spreading land base
- need for road use agreement
- traffic
- flies and spread of disease to cattle
- land value
- increase in scavengers
- groundwater quantity
- surface water quality
- manure storage creating risk to groundwater quality
- measures to minimize odour associated with manure spreading
- odour
- owner does not live on site

## **Reliability of MDS measurement**

Doug and Annette Cook questioned the accuracy of the measurement between the nearest existing or proposed manure storage facilities to their residence. Using Google Earth Pro<sup>®</sup>, the approval officer determined that the Cook residence was 580 m from the Spruit Farms manure storage lagoon. In Decision Summary RA18037, the approval officer determined the required minimum distance separation (MDS) to be 509 m, after applying the expansion factor as directed by the *Standards and Administration Regulation* (AR 267/2001). The NRCB has used and relied on the Google Earth Pro<sup>®</sup> measurement tools for assessing MDS for several years. The Board does understand that such measurements may have a margin of error. However, based on inquiries made in a previous review (NRCB Board Decision 2015-02 / BA13006 and BA14002; William and Audrey Trenchuk), the Board is satisfied that the margin of error associated with the Google Earth Pro<sup>®</sup> measurements used by the approval officer for the land base in this instance may amount to a couple of metres. The measurement performed by the approval officer is shown on page 11 of 37 of Technical Document RA18037 as 578.13 m between the Cook residence and the CFO facility, and this exceeds the required MDS by approximately 70 m. The Board is therefore satisfied that the approval officer adequately considered this issue.

## **Number of directly affected parties**

The RFRs filed by Barry Bolton, Merv Toews, Jim and Betty Lou Muhlbach, the Innocent family, and the County state that the number of directly affected parties alone is sufficient reason to deny the expansion application. The approval officer set out his reasons for determining that six families were directly affected parties for this application. Every person who owns or resides within the 25 quarter sections of land that were within a one mile distance of the CFO parcel is considered to be an “affected party” in accordance with section 5 of the *Agricultural Operations, Part 2 Matters Regulation*. The NRCB Approvals Operational Policy states that any “affected party” that files a statement of concern with the approval officer will be presumed to be a “directly affected party”. However, it is the Board’s view that the number of directly affected parties is not determinative of the nature or extent of the effects that will be experienced by any one party.

The Board also considered whether the number of affected parties is a determinative factor in assessing the general effects on the community and whether a CFO is an appropriate land use. Area land uses, compatibility with adjacent land uses, and land use objectives are managed by the responsible municipal authority. In this case, the Board is satisfied that the approval officer had appropriate regard for the County’s Municipal Development Plan (MDP Bylaw 1414-09, with amendments to June 25, 2014) and the County’s Land Use Bylaw 1443-10 (with amendments to September 14, 2016). The approval officer noted that the CFO lands are identified in the County’s Zoning Districts map as “Agricultural District” and are not located within a CFO exclusion zone under the County’s MDP; as such, the CFO expansion is consistent with the County’s planning instruments. The Board is satisfied that the County has addressed effects on the community associated with broad CFO siting considerations within its planning and land use documents. The Board concludes that there is no merit to warrant a review of whether the number of directly affected parties in this application could lead to a conclusion that the CFO expansion should be denied.

## **Adequacy of manure spreading land base**

The RFRs filed by Doug and Annette Cook and Virginia Nielsen each question whether the proponent’s application satisfied the manure spreading land base application requirement. Section 24 of the *Standards and Administration Regulation* states that an applicant must satisfy an approval officer that

the applicant has a sufficient manure spreading land base for the first year following the granting of the application. The RFRs state that four of the manure spreading agreements were incomplete as they did not name Spruit Farms as the manure producer at the outset of the form (two instances), did not describe the time period for the agreement by omitting a number in the space provided for the duration of the contract (two instances), or included a number but failed to state a unit (i.e., year) for the number in two instances. In their rebuttal to the RFRs, Spruit Farms filed updated manure spreading agreements with Imperial Ranch Ltd. and Stewart Farming Ltd.

The Board finds that the agreements as originally filed with the approval officer are sufficiently clear to satisfy the requirements of section 24 of the *Standards and Administration Regulation*. The contracts set out land descriptions and identify Spruit Farms as the manure producer on the signature lines. The body of each contract describes that the agreement has a minimum time period of one year. Therefore the Board finds that failure to include a specific number is not fatal because the default wording supports a one year agreement. Where a numeral 5 is included, but no unit is entered, the Board finds that a plain reading of this agreement is that it has a five year term.

However, in its review, the Board found that the Land Base for Manure table (Technical Document RA 18037) did not reconcile. As a result, the Board extended its review to the available spreading land listed on pages 14 and 15 of 37 of Technical Document RA 18037. In order to reconcile the numbers included on pages 14 and 15 of the Technical Document, the Board spent considerable time reviewing the “analysis of manure spreading lands” in the approval officer’s public record material. The Board acknowledges that the approval officer undertook a detailed review of land available for spreading, using soils information and area calculations derived from the Alberta Soil Information Viewer for each quarter section covered by the land spreading agreements. Using the approval officer background documents, the Board reconciled the approval officer’s final area and soil calculations (489 ha black soils and 94 ha brown soils). While the Board was able to derive the total land available for manure spreading, the Board notes that the Land Base for Manure table (Technical Document RA18037, pages 14 and 15 of 37) did not, but should have, reconciled with the approval officer’s background work.

The Board concludes that the approval officer adequately considered this issue since the background work supported the calculated results for available lands and soil types, far exceeding the land base required for manure spreading of 224 ha of black soils or 358 ha of brown soils.

### **Flies and the potential for flies to spread disease to cattle**

The RFRs filed by Barry Bolton, Merv Toews, Jim and Betty Lou Muhlbach, Virginia Nielsen and the Innocent family state that there will be an increase in flies and that the flies may spread disease to cattle, horses, pets and people. The only specific disease expressed in the RFRs and to the approval officer was the potential to see increased pink eye in cattle. The approval officer followed up on this concern with an extension specialist and a research scientist with Alberta Agriculture and Forestry. Based on the information the Agriculture and Forestry individuals provided, the approval officer concluded that there is a low risk of swine manure propagating flies that carry pink eye. In addition, the Board notes that AOPA makes no reference to the proximity of CFOs to each other, nor does AOPA restrict multi-species located at the same CFO. Fly control is managed by the NRCB as a compliance matter, as AOPA regulations require that operators employ reasonable fly control measures at CFO sites. The Board notes that other than restating the general concern, the RFRs do not challenge the approval officer’s rationale, and as such the Board finds that the approval officer adequately considered the disease issues associated with flies.

## **Matters beyond the Board's mandate**

Approval officers commonly receive statements of concern, and the Board commonly receives RFRs, that ask the NRCB to deny an application because the construction or expansion of a CFO may adversely affect neighbouring land values. The Board and approval officers have consistently stated that effects on land values are not a subject for the NRCB under AOPA. Impacts on property values are a land use issue which is a planning matter dealt with by a municipality in its municipal development plan.

The Virginia Nielsen and Barry Bolton RFRs expressed concerns about the CFO's expansion causing increased traffic and having an effect on roads. In their RFR, Doug and Annette Cook expressed the need to have a road use agreement to manage the increased road maintenance associated with the CFO's expansion. The approval officer noted that the County did not raise any concerns over the increase in traffic or an increase in required road maintenance related to the Spruit Farms expansion application in its July 11, 2018 response to the approval officer. The Board notes that the approval officer's approach is entirely consistent with the general NRCB position that road use and road maintenance are properly matters for the municipal authority. Therefore, the Board finds that road use and road maintenance issues have no merit for its review under AOPA.

Similarly, water quantity and the disposal of dead animals are issues that are often raised, both before approval officers and the Board. Dead animal disposal (CFO related or otherwise) is a matter that is beyond the AOPA mandate, in this case because it is directly regulated by Agriculture and Forestry. Water quantity is a water licencing issue that is managed by Environment and Parks under the *Water Act*.

## **Ground and surface water quality**

AOPA, its associated regulations, and the NRCB Approvals Operational Policy include multiple provisions that have the objective of protecting surface and groundwater quality. These provisions allow the approval officer to include conditions such as annual well monitoring in an approval, as is required in this case. One example of how groundwater is protected in relation to this CFO operation is found in the approval officer's assessment of whether the water well should receive an exemption from the 100 m setback provision. The Board finds that the approval officer's methodology was thorough and well-documented in granting the water well setback exemption, including the site specific considerations and the use of the risk assessment tool.

The Board expects operators and neighbours to be concerned and attentive to issues that have the potential to affect water quality. However, in reviewing the water quality concerns stated in the RFRs and the approval officer's decision and records, the Board does not find that the RFRs identify any matters that were not adequately dealt with by the approval officer.

The Board does note that Decision Summary RA18037 states at page 23 that "Approval RA 18037 includes a condition stating that the permit holder shall construct the secondary containment system for the EMS and have NRCB personnel inspect that system on or before July 31, 2019". However, the actual form of approval omits the statement requiring inspection by NRCB personnel of the secondary containment in clause 10. The Board expects that a revised approval will be issued to reflect the requirement set out in the decision summary.

## **Measures to minimize odour associated with manure spreading**

Objection to manure spreading and associated odour is identified in six of the filed RFRs. The CFO application included a request to remove a condition that was grandfathered from the County's permit which states "manure distribution is to take place once each year with incorporation into the soil done within 72 hours of spreading." The approval officer concluded that it was appropriate to remove this condition as Spruit Farms provided adequate justification to delete the limitation to spreading once per year, and found that AOPA's manure spreading requirements provide an equivalent manure spreading nuisance abatement that was previously provided for in the County's condition.

The Board recognizes that manure spreading creates odour that may linger for many days. The Board also acknowledges that incorporation or injection manure spreading methods may mitigate, but not eliminate, manure spreading odours. The Board notes that since 2002, when the NRCB was given the AOPA mandate, agricultural practice has evolved with regard to land and soil management. Specifically, there has been significant growth in acreage farmed employing direct seeding technology, resulting in a proportional decline in crop land available where manure can be incorporated. The Board understands that direct seeding is used to better manage moisture, erosion and nutrient uptake, and is considered as a more sustainable cropping system. In any event, in this approval and under AOPA, all manure spread on land that is conventionally tilled must be incorporated within 48 hours. The CFO's manure spreading requirements are therefore consistent with AOPA's manure management standards and regulations. Having regard for the approval officer's consideration of the County's original permit condition, the odour associated with spreading, and the concerns expressed in the RFRs, the Board does not find an issue that merits further review.

## **Odour from manure storage**

Decision Summary RA18037 states that the CFO application satisfies the minimum distance separation (MDS) requirements set out in AOPA. The MDS provisions are established by AOPA and the *Standards and Administration Regulation*, and provide formula calculations that describe a province-wide standard. As the CFO meets the prescribed MDS calculation, the anticipated intensity of odours to neighbouring residences is determined to be acceptable. For that reason, the Board finds that the approval officer adequately dealt with this issue.

## **Owner does not live on site**

The Cook, Muhlbach and County RFRs each express a concern that the applicant does not reside in the immediate area. The Board notes that there are no regulatory requirements in AOPA that require the owner of a CFO to live on-site. The Board finds the issue of whether the operator is resident at the CFO site or in the immediate area is not a relevant consideration, and therefore has no merit as an issue for review. However, the Board always encourages positive communication between CFO operators and those parties who may be affected by their operation. While such communication is not a regulatory requirement, there are obvious benefits to be had from ongoing positive communication.



## Decision

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

DATED at EDMONTON, ALBERTA, this 11th day of December, 2018.

*Original signed by:*

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