



BOARD DECISION

RFR 2010-01 / RA03012A

In Consideration of Requests for Board Review filed under the *Agricultural Operation Practices Act* in relation to Amended Approval RA03012A.

Hutterian Brethren Church of Three Hills
(Three Hills Colony)

March 10, 2010

Background

On January 21, 2010, NRCB Approval Officer Orin Kenzie issued Decision Summary RA03012A in relation to the Hutterian Brethren Church of Three Hills (Three Hills Colony) confined feeding operation (CFO). Decision Summary RA03012A granted Three Hills Colony's application to amend four conditions of its existing Approval RA03012.

The effect of the amended conditions would allow Three Hills Colony to use a natural cover on its liquid manure storage facilities (rather than a plastic cover), change reporting requirements for the under facility leakage detection system, delete the requirement for four groundwater monitoring wells, and change the reporting schedule for leakage detection system results.

The Three Hills Colony CFO is currently permitted for 250 sows farrow to finish, 5000 poultry layers, 2500 poultry broilers, 120 cow dairy (plus replacements and dries) and 1200 beef finishers. The operation is located at SE-01-31-24-W4 in Kneehill County.

Pursuant to Section 20(5) of the *Agricultural Operation Practices Act (AOPA)*, Requests for Board Review of Decision Summary RA03012A were filed by Rosalie Lammle and Siegfried Schmidt on February 9 and 10, 2010 respectively. Each Request for Board Review met the 10-day filing deadline established by *AOPA*. Both Rosalie Lammle and Siegfried Schmidt were found by the Approval Officer to be directly affected parties. Following receipt of the Requests for Board Review, all directly affected parties were provided with a copy of the requests, as well as a notice of their opportunity to file a rebuttal. On behalf of Three Hills Colony, Sam Wurz filed a rebuttal submission on February 17, 2010. The Approval Officer filed a response on February 22, 2010.

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 14 of the *Board Administrative Procedures Regulation* describes the information that must be included in each Request for Board Review.

Documents Considered

The Board considered the following information in arriving at its decision:

- Decision Summary RA03012, dated August 6, 2003
- Decision Summary RA03012A, dated January 21, 2010
- Request for Board Review filed by Rosalie Lammle, dated February 5 and 8, 2010
- Request for Board Review filed by Siegfried Schmidt, dated February 5, 2010
- Rebuttal submission of Sam Wurz of Three Hills Colony, dated February 16, 2010
- Approval Officer's Response, dated February 22, 2010
- Leakage Detection Monitoring Risk Screening Summary for Three Hills Colony, dated October 31, 2008
- Board Decision RFR 2008-06 / EO 08-07 issued December 19, 2008 (regarding Enforcement Order 08-07 issued on November 6, 2008)

Board Deliberations

The Board met on February 25, 2010 to deliberate on the filed Requests for Board Review. In its deliberations, the Board determined that the Requests for Review raised issues concerning the amendments to Approval RA03012. With respect to the amendment changing the requirement for a plastic cover to a natural cover on the liquid manure storage facility, the Requests for Board Review raised issues concerning odour, air quality and the effectiveness of a natural cover. Related to the amendments removing the requirement to install four groundwater monitoring wells and altering the schedule and reporting requirements for the under facility leakage detection system, the Requests for Board Review raised issues concerning water quality in neighbouring wells and the need for ongoing water monitoring. Related to all amendments was a general concern about Three Hills Colony's willingness to comply with mandatory conditions in its Approval given its history of non-compliance. The Board also notes that the Requests for Review raised concerns related to the use of insecticides, run-off from manure spreading and water quantity.

In its deliberations the Board determined its mandate is limited to a consideration of the issues that relate to the matters on which the applicant sought to amend in Approval RA03012. As the application for amendment did not seek changes to the approval related to water quantity issues, the use of insecticides or manure spreading practice the Board did not consider those issues relevant to the Requests for Board Review. Any ongoing concerns relating to manure spreading practice can be raised with the NRCB's Compliance Division. As noted by the Approval Officer in Decision Summary RA03012A, the licensing of water use is the responsibility of Alberta Environment.

The Board notes that as part of its initial application, the Three Hills Colony committed to install and maintain a plastic cover on cells one and two of its liquid manure storage facilities. The Board also notes that the applicant's commitment to install the plastic cover at the initial application was made at least in part to respond to concerns raised by directly affected parties. The amendment granted by the Approval Officer replaces the requirement for a plastic cover with a 30 cm thick natural cover covering 90% of the liquid surface area of each cell. In support of his decision, the Approval Officer references a research source that states "*a 10 cm thick layer*

of straw reduces odours by 47%, a 20cm layer by 69% and a 30 cm layer by 76%.” Decision Summary RA03012A does not include any comparative information that allows the Board to consider the relative performance characteristics of natural and synthetic covers. In light of the applicant’s initial commitment to install a plastic cover followed by a lengthy period of non-compliance, it is reasonable to expect that the Approval Officer would provide a thorough explanation and justification for any change in the condition, especially in light of concerns by directly affected parties. Having regard for the lack of any comparative assessment concerning the performance characteristics of natural and synthetic covers the Board is not satisfied that this issue was adequately dealt with by the Approval Officer.

The installation of earthen manure storage groundwater monitoring wells was mandatory at the time of issuance of Approval RA03012. Regulatory amendments in 2004 and 2006 provided for Approval Officer discretion in the decision on the need for such monitoring wells. In response to the current regulations, the NRCB has established a risk screening tool to provide an objective measure of the risk to the environment (i.e. groundwater) from earthen manure storage facilities. The Risk Screening Tool establishes a science-based approach to assess the potential for manure storage facilities to impact groundwater. The Risk Screening Tool was developed in consultation with various stakeholders, including the Alberta Auditor General, in recognition of the risk variability that may occur at confined feeding locations as a direct consequence of the local geological and hydrological conditions. A complete copy of the NRCB Risk Screening Tool is accessible on the NRCB website.

The Board notes that the tool was applied to the Three Hills Colony facilities and that the results of this assessment suggest that the potential risk to the groundwater resource is low. The Risk Screening Tool generated a numeric value of 28 out of 110 indicating a low potential risk to groundwater at this site. The Approval Officer noted that the upper most groundwater resource was at a depth of 41 metres overlain by a 22 metre protective layer of low permeability brown clay. Notwithstanding the failure of the applicant to install the monitoring wells under the mandatory condition contained in the initial approval, the Board is satisfied that the Approval Officer’s assessment of the need for such wells is adequate. Similarly, the Board is satisfied that the Approval Officer has dealt adequately with the proposed changes to the original conditions which alter the schedule and reporting requirements for the under facility leakage detection system. The changes are not significant and will achieve a similar objective as the original conditions which are annual monitoring for liquids in the perforated pipe leakage detection system followed by potential further testing as determined by the NRCB.

On a matter of procedure, the Board believes that it should comment on the filing of a submission by the Approval Officer on a Request for Review as the NRCB does not have an established practice on the matter. The Board acknowledges that the Approval Officer’s response was provided with the intent to be helpful to the Board rather than to advocate a position on the Board’s disposition of the matter. Indeed, in this case the Board is satisfied that it would have sought further information on the complaint record from the NRCB’s Compliance Division given the conflicting evidence in the Request for Review filed by Ms. Schmidt and the Approval Officer’s Decision Summary. The Board understands that there will be circumstances where it is appropriate for the Approval Officer to make a submission respecting a Request for Review. However, unless made in response to a specific Board request, the Board believes that an Approval Officer’s response should be limited to those cases where the Approval Officer has applied for and received its permission to prepare and file additional materials.

Decision

As a result of the Board's deliberations, it has determined that a review will be granted to consider the appropriateness of amending Approval RA03012 to replace the requirement for a plastic cover with a natural cover. The Board also expects that the review may include evidence and submissions on the failure of this operator to meet the mandatory conditions attached to its original approval and what measures the NRCB might implement to avoid such events in future. The Board believes that it would benefit from a concise (i.e. less than 10 page) submission from the Approval Officer on the relative merits of natural and synthetic covers. As with all hearing submissions filed with the Board, technical sources should be cited but not filed.

The review will take the form of an oral hearing which the Board expects to be completed in one day. The Board is proposing a hearing date of April 21, 2010 with written submissions to be filed by those who wish to participate in the hearing process two weeks in advance (April 7, 2010). NRCB staff will be contacting those parties who filed submissions with respect to any conflicts this timing may present and an appropriate venue in Three Hills will be chosen to hold the hearing.

DATED at CALGARY, ALBERTA, this 10th day of March, 2010.

Original signed by:

Vern Hartwell, Chair

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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.