



## **BOARD DECISION**

### **RFR 2011-08 / LA10035**

In Consideration of Requests for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary LA10035.

Beumer Cattle Ltd.

December 1, 2011

## **Background**

On October 13, 2011, NRCB Approval Officer Karen Stewart issued Decision Summary and Approval LA10035 to Beumer Cattle Ltd. The decision approved Beumer Cattle Ltd.'s application to: operate two existing cattle pens as feedlot/confined feeding operation (CFO) pens; operate an existing feedlot pen; operate an existing calf shelter and hutch area; construct and operate new feedlot pens; expand the existing calf shelter and pens; use an existing freshwater pond as a catch basin for runoff from the new and existing areas permitted by Approval LA10035; and expand the overall permitted capacity from 499 beef feeder calves to 4,000 beef feeders, at its CFO located in the County of Lethbridge at NW 11-008-19 W4M.

Pursuant to Section 20(5) of the *Agricultural Operation Practices Act (AOPA)*, Requests for Board Review of the Approval Officer's decision were filed by three parties: Tracey Nadeau; Randy Ward; and Roger Elliott on behalf of the Indian Hill Golf Club. Each of these parties was recognized as directly affected in Decision Summary LA10035 and each request was filed by the 10-day filing deadline established by *AOPA*.

All directly affected parties identified in Decision Summary LA10035 were provided with a copy of the Requests for Board Review along with notice of the opportunity for parties who believe they would be adversely affected by positions in the Requests for Board Review to file a response by November 14, 2011. Subsequently the Board received a response from Beumer Cattle Ltd. filed November 14, 2011. On the same date, the Board also received correspondence from counsel for the Approval Officer.

The Board convened to deliberate on this matter on November 16 and November 22, 2011.

## **Jurisdiction**

The Board's authority for considering a request to review 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 board 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 and Approval LA10035, dated October 13, 2011;
- Request for Board Review filed by Tracey Nadeau, dated November 3, 2011;
- Request for Board Review filed by Randy Ward, dated November 2, 2011;
- Request for Board Review filed by Roger Elliott on behalf of the Indian Hill Golf Course, dated November 3, 2011;
- Response to the Requests for Board Review filed by Beumer Cattle Ltd., dated November 14, 2011;
- Documents the Board obtained from the Approval Officer's public records, namely:
  - Photocopy of Notice of Application dated and published July 5, 2011 in the Sunny South News;
  - Copy of "courtesy letter" dated June 29, 2011 signed by NRCB Approval Officer.

The Board determined that it would be inappropriate for them to have regard for information provided in the submission made by counsel for the Approval Officer in response to the Requests for Board Review. In reaching this conclusion, the Board notes that a submission that responds to a Request for Board Review must be from a party who is adverse in interest to at least one of the Requests for Board Review. While the Board recognizes that the Approval Officer's submission on this file is clearly intended to provide assistance rather than advocate a particular outcome, the Board finds that the concept of having the Approval Officer make submissions concerning the reviewability of that Approval Officer's decision to be problematic. To further complicate the issue, the timing of such submissions is such that directly affected parties have no opportunity to be aware of any submissions made by the Approval Officer to the Board and therefore do not have the opportunity to respond or comment.

## **Board Deliberations**

The Board met on November 16 and November 22, 2011 to consider the Requests for Board Review. At the Board's initial meetings all Board Members were present; however during the course of deliberations, Board Member Turner advised the panel that personal commitments made his continued participation impractical. In his absence the three remaining Board Members completed the consideration of the Requests for Board Review.

In its deliberations, the Board noted that the Requests for Board Review raised the following issues:

- Notice to tenant occupants in the vicinity of the operation;
- Odour, dust and flies;
- Water quantity (licencing);
- Surface water quality related to run-off from the proposed operation;
- Ground water contamination;
- Effects on the economy and community and the appropriate use of land;
- Future expansion of the confined feeding operation (CFO);
- Past non-compliance.

## **Notice to Tenant Occupants**

The review request filed by Tracey Nadeau asserted that residents who were renting in the area of the proposed expansion were not provided notice of the application. The matter of notice is clearly an issue of importance to the Natural Resources Conservation Board. In establishing a notice protocol, consideration was given to the most effective and appropriate method of informing potentially directly affected parties of the CFO application. While this protocol is now administered by NRCB Field Services, the Board recognizes that the standard practice is to

provide notice through publication in a regularly published newspaper that circulates broadly throughout the notice area identified as appropriate by the Approval Officer. In addition to newspaper publication, the Approval Officer will take reasonable steps to obtain mailing addresses for area landowners and provide a courtesy letter that will include most of the details that appear in the formal notice. The rationale for relying on a newspaper notice rather than direct mail for notification of affected parties is that the process of obtaining complete and current mailing lists is imperfect. Generally these lists are obtained from County records and will not include renters or may not reflect recent changes in ownership.

The Board requested and obtained a copy of the newspaper publication details along with a copy of the courtesy letter issued by the Approval Officer. The Board is satisfied that the normal protocol for providing notice was followed by the Approval Officer and that all reasonable steps were taken to notify area residents of this application.

### **Odour, dust and flies**

Issues related to odour, dust and flies were raised in all three Requests for Board Review. Concerns focused on the potential for nuisance odours to have negative effects on usage of recreational facilities and result in a decrease in land values. While less was said about dust and flies, these concerns were mentioned in the same context as odour from the CFO and therefore the Board has treated these as nuisance related concerns.

The Board notes the Approval Officer's finding that each of the directly affected parties "*will probably experience manure odours from the proposed CFO expansion.*" In considering these effects the Approval Officer stated that odours are a normal and expected part of agricultural operations in rural areas and that odours would be greater during spreading events. The Approval Officer also assessed the minimum distance separation for the proposed CFO in accordance with the provisions contained in the *Standards and Administration Regulation* and concluded that the requirements were met to all land use categories.

The Board accepts that CFOs are a source of odour and that neighbours often expect such odours will cause an imposition to the use and enjoyment of their property. Regulatory requirements to mitigate odour include minimum distance separation and mandatory incorporation of manure spread on cultivated land. Other mitigatory measures are available and may be implemented by the operator on his own initiative or at the direction of the NRCB if an Inspector determines that the operator is creating an inappropriate disturbance. In this case, in response to concerns expressed by the Indian Hill Golf Club, Beumer Cattle Ltd. has committed to a prohibition on spreading manure on the north half of NW11-008-19 W4M on Fridays, Saturdays and Sundays; this prohibition is a condition of the CFO Approval.

The siting of CFOs is governed by both the *Agricultural Operation Practices Act* and the relevant provisions in the County of Lethbridge municipal development plan (MDP). The Board concludes that the Approval Officer completed an adequate review of both the minimum distance separation and County of Lethbridge MDP.

The assessment of the potential for dust and flies to create nuisances on neighbouring residents and recreational activities is largely an unknown at the time an application is being considered by the Approval Officer. As the *Standards and Administration Regulation* places the onus on operators to adequately control both flies and dust, the expectation is that the operator will take appropriate action to manage these issues. Should neighbours believe the operator's actions fall short of incorporating appropriate measures, the NRCB will investigate and where deemed appropriate require the operator to control dust and flies.

The Board finds that the Approval Officer adequately considered all relevant factors associated with potential odour, dust and flies from the proposed expansion.

### **Water quantity (licencing)**

In his Request for Review, Randy Ward stated that the Approval Officer did not adequately consider the issue of water licencing. The NRCB does not require proof of an adequate water supply prior to issuing an approval for new or expanding CFOs. The Board agrees with the Approval Officer's statement that the issuance of water licences is outside of the NRCB's jurisdiction and authority.

The Board is satisfied that the issue of water supply is not a relevant issue for a review under the *Agricultural Operation Practices Act*.

### **Surface water quality related to run-off**

Public health concerns arising from manure run-off were raised by Tracey Nadeau and Randy Ward. Each mentioned that that water samples taken from irrigation water indicate the presence of *E.coli*. The Approval Officer assessed and described the separation of the existing and proposed manure storage facilities from common bodies of water and was satisfied that they met the separation distances set out in the *Standards and Administration Regulation*.

The operation has had some drainage issues in the past, including ponding in the County right-of-way. The Approval Officer determined that the feedlot pens and the existing and proposed calf shelters, pens and hutch area all provide equivalent or greater protection than is required by the regulations. Existing and proposed catch basins, including the fresh water pond converted to a catch basin to control run-off, also meet regulatory requirements. The Approval Officer has included a condition in Approval LA10035 that "*A completion report confirming the drainage from fields and ditches is directed around the CFO, prepared by a qualified third party, must be provided to the NRCB prior to animals entering the newly permitted areas of the CFO.*"

The Board is satisfied that the Requests for Board Review do not raise issues beyond those that were adequately dealt with by the Approval Officer. The Board also notes that Alberta Health Services reviewed the application and inspected the site. In its written submission to the Approval Officer, Alberta Health Services stated a degree of satisfaction with the operation's design elements intended to protect surface water.

### **Ground water contamination**

In his Request for Review Randy Ward states that the hydraulic conductivity and depth to water table calculations are highly speculative and as a consequence may cause a risk to local residents. The Board has reviewed the information set out in the Approval Officer's Decision Summary and is satisfied that appropriate advisory expertise was obtained from the NRCB's Science and Technology group. In reviewing this information, it would appear from the description provided that considerable analysis and due diligence was conducted prior to any conclusions being reached. The Requests for Board Review do not raise any issues beyond those considered by the Approval Officer.

The Board is satisfied that the groundwater issues have been adequately dealt with by the Approval Officer.

### **Effects on the economy and community and the appropriate use of land**

Under s. 20(1)(b)(ix) of AOPA, an Approval Officer is required to consider the effects of an application for an approval or an amendment to an approval on “*the environment, the economy and the community and the appropriate use of land*”. In the case of this application, it is apparent to the Board that many of the issues raised in the Requests for Board Review concern the interrelated questions of the impact of the proposed expansion on the community and economy. Examples include: the impact of odours on the golf course, including the outdoor restaurant, potentially reducing membership and usership; county ownership of land adjacent to the lake with potential for future recreational development; costs to the county for road infrastructure; and land values.

In response, the Approval Officer relied on her finding that the proposed expansion was consistent with the County of Lethbridge MDP, in particular those provisions which establish CFO exclusion zones. Because the Beumer CFO lies outside the exclusions zones where CFOs are not allowed, the Approval Officer concluded that the effects of the CFO on the economy and the community are acceptable and the proposal constitutes an appropriate use of land.

The Board finds that the Approval Officer undertook a careful and comprehensive review of the County MDP, and accepts her conclusion that the proposed expansion does not offend its provisions, notably those which establish areas where new or expanded CFOs are to be excluded. The Board also notes that the Approval Officer addressed the specific concerns asserted by those submitting Requests for Board Review, which might collectively be described as concerns regarding impacts on the economy and the community, in various parts of the Decision Summary dealing with odour, flies, dust, water use, water contamination and drainage. On this basis, the Board concludes that the Approval Officer adequately addressed the appropriate use of land and the impact of the CFO expansion on the economy and the community by reviewing the County’s MDP and assessing the specific and unique issues raised by the directly affected parties. Accordingly, the Board does not find that the issues raised regarding the proposal’s potential impact on the economy and the community would cause the Board to look beyond the terms of the applicable MDP and decide to conduct a review of the Approval Officer’s decision on this issue.

### **Future expansion of the CFO**

The Indian Hills Golf Course raised the issue of potential future expansion stating that a 4,000 head feedlot is not sustainable in the long term. In considering an application or the review of an application decision, an Approval Officer or the Board properly limits their consideration to the applied for facilities and the effects that can reasonably be anticipated therefrom. The Approval Officer stated in the Decision Summary that “*any further expansion of the feedlot will require another application to the NRCB, and will be dealt with on its own merits.*” The Board is satisfied that this is the correct and only appropriate response to this issue.

### **Past non-compliance**

The Board is aware that the Beumer Cattle Ltd. operation has received an NRCB Enforcement Order and that complaints have been made to the NRCB and the County concerning odours and run-off from the existing operation. Non-compliance by operators has consequences for the operator and may also affect the community, the NRCB as regulator, and the reputation of the confined feeding industry. For this reason, the Board expects that operators will conduct their operations in accordance with the applicable statutory and regulatory requirements and the terms of their permit. The Board is confident that NRCB Field Services has the resources and capability to respond appropriately as issues of non-compliance come to its attention. The Board finds that the Approval Officer’s statements and conclusions with respect to the

applicant's past conduct are appropriate. Having regard for this finding, the Board is satisfied that this matter was adequately considered by the Approval Officer.

### **Decision**

As a result of its deliberations, the Board concluded that none of the issues raised in the Requests for Board Review merit further review by the Board. Accordingly, the Requests for Board Review are denied.

DATED at CALGARY, ALBERTA, this 1<sup>st</sup> day of December, 2011.

*Original signed by:*

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Vern Hartwell  
Panel Chair

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Donna Tingley  
Panel Member

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Jay Nagendran  
Panel Member

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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](http://www.qp.gov.ab.ca) or through the NRCB website.