



BOARD DECISION

RFR 2017- 02 / BA16011

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary BA16011

Eyot Creek Farms Ltd.

February 22, 2017

Background

NRCB Approval Officer Randy Bjorklund issued Decision Summary BA16011 (the AO Decision) regarding Eyot Creek Farms Ltd.'s (Eyot) application to expand a confined feeding operation (CFO), located at SE 16-48-25 W4M in Leduc County, roughly 10 kilometres south of the City of Leduc, on January 5, 2017. Eyot had applied to expand its dairy operation by increasing its livestock numbers from 69 to 150 milking cows (plus associated dries and replacements), decommissioning the existing earthen manure storage, constructing a new liquid manure storage tank, replacing the existing milking cow barn, permitting an addition to the young stock barn, and constructing an addition to the dry cow barn. The approval officer considered this application in the AO Decision, and issued a registration with conditions.

A Request for an NRCB Board Review of Decision Summary BA16011 (the RFR) was filed by Dan Lachman on January 26, 2017, meeting the 10-day filing deadline pursuant to section 22(4) of the *Agricultural Operation Practices Act* (AOPA). The RFR asked the Board to reverse the approval officer's decision.

Following receipt of the RFR, the Board sent a Notice of Filed Request for Board Review (the Notice), and a copy of the RFR, to all of the people found by the approval officer to be directly affected parties. The Notice advised that any adversely affected parties had an opportunity to file a response submission with the Board by February 7, 2017. The Board received a written response from Stevan Blenke on behalf of Eyot on February 7, 2017.

The Board met on February 9, 2017 to deliberate on the RFR and the response.

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 of an approval officer's decision has the onus of demonstrating that there are sufficient grounds to merit a review. The information that must be included in each RFR is described in section 14 of the *Board Administrative Procedures Regulation*, and is also set out in the AO Decision cover letter dated January 5, 2017.

Documents Considered

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

- Decision Summary BA16011 dated January 5, 2017 and its companion technical document (Part 2 Technical Requirements);
- Request for Board Review filed by Dan Lachman, dated January 26, 2017;
- Response Submission to the Board's January 31, 2017 Notice of Filed Request for Board Review, submitted by Stevan Blenke on behalf of Eyot; and
- portions of the public record maintained by the Approval Officer.

Board Deliberations

The Board is directed by AOPA to dismiss a request for review if, in its opinion, the issues raised in the RFR were adequately dealt with by the approval officer, or if the issues are of little merit. Having regard for the documents referenced above, the Board has determined that the issues raised by Mr. Lachman were adequately dealt with by the approval officer, and the Board therefore dismisses the RFR.

Mr. Lachman states in his RFR that the approval officer did not adequately investigate or give any consideration to the concerns he presented. Specifically, those concerns are the nuisance effects arising from applying the expansion factor in establishing minimum distance separation (MDS) between the Eyot manure storage facility and the Lachmans' residence, manure spreading practices, and water quality and quantity. Some of the concerns also raise allegations of past non-compliance.

Issue 1 – Nuisance Issues (flies, odour, silage)/Use of the Expansion Factor

The RFR states that the proximity of the Eyot manure storage facility to the Lachman residence does not provide sufficient distance to mitigate various nuisance effects. The approval officer states in his AO Decision that AOPA requires the application of the expansion factor when calculating the MDS, and the MDS "is a proxy for reducing and mitigating impacts from odours, flies, and other nuisance effects." In its response to the RFR, Eyot states that it is optimistic that, by replacing aged infrastructure and technology, it will be in a better position to control and mitigate future nuisance-related effects. Eyot also states surprise that the Lachman's have a fly issue as the Blenke home only has "the odd fly here or there."

The Board accepts and understands that nuisance effects are to be expected when residences are located near CFOs, and that separation distance is the key mitigation measure established in AOPA. Use of the MDS expansion factor is mandatory under certain circumstances. The *Standards and Administration Regulation* (schedule 1, section 6) under AOPA requires that the approval officer and the Board apply the expansion factor "when calculating the minimum distance separation if the confined feeding operation or manure storage facility cannot meet the minimum separation distance

without the use of this factor". The NRCB has no statutory authority to consider the location or operation of silage facilities.

The Standards and Administration Regulation also requires that the owner or operator of a CFO or manure storage facility must employ reasonable measures to control the level of infestation of flies (section 20). This is primarily a compliance issue rather than a permitting matter, and the NRCB maintains a number of well-trained inspectors whose job is to follow up on complaints related to CFOs.

The Board finds that the approval officer adequately dealt with issues related to manure storage nuisance effects, and that the MDS expansion factor was applied as required by AOPA.

Issue 2 – Manure Spreading Practices

The RFR states that Eyot has a history of non-compliance with the manure spreading practices required by AOPA and that, as a consequence, there have been various unwarranted nuisance effects and potential risk to human health. Eyot does not specifically respond to the allegations of manure spreading non-compliance in its response to the RFR, other than to state that having positive relations with neighbours in the area is important to it. The approval officer's response in his AO Decision is to conclude that the application is consistent with the requirements of AOPA, and then goes on to provide contact information for the NRCB complaint line for non-compliance issues. The Board finds that this is entirely consistent with the requirements and provisions of AOPA and that the related issues were adequately dealt with by the approval officer. That said, the Board clearly sees that the approval officer missed an opportunity to provide better service to the community and has included some further remarks under the heading Board Comments.

Issue 3 – Water Quantity and Quality

The RFR is concerned that the Eyot dairy expansion will adversely affect groundwater resources, both through increased use of water and through contamination of resource. The Board has reviewed the approval officer's assessment of these concerns in the AO Decision and is satisfied that the approval officer has adequately dealt with these issues; therefore the Board is not prepared to direct these matters to a hearing.

Issue 4 – Compliance with AOPA

The Board finds that the approval officer appropriately states that ongoing compliance issues are properly a matter for the NRCB compliance group rather than matters relevant to the current expansion application. Further, the risk assessment of the current facilities appears to be technically complete in addressing those facilities.

Board Comments

The RFR alleges that there has been a history of non-compliance associated with this operation. The obvious and undisputed matter of non-compliance is the unauthorized expansion and manure storage facility construction that has taken place since January 1, 2002. Operators are responsible for making themselves aware of, and compliant with, AOPA and its regulations. As an operator of a CFO, Eyot must understand that it is causing effects on its neighbours and that there is an opportunity for it to reach

out. While the Eyot response stresses the importance of positive relations with its neighbours, there is no suggestion or evidence that it has initiated contact with its closest neighbour. In, fact the only statement related to its relationship was that the Lachmans “have never visited our farm and we question the validity of these claims.”

Mr. Lachman’s RFR stated an expectation that the approval officer would reach out to him in follow-up to his submitted statement of concern. The approval officer included the contact details for the NRCB complaint line in Decision Summary BA16011 and encouraged Mr. Lachman to use that contact information should issues arise. The Board encourages approval officers to carry on a dialogue with all parties interested in applications where the circumstances warrant, as clear and open communications improve the process and outcomes for all parties. Based on the materials before the Board, there was an excellent opportunity for the approval officer to reach out to Mr. Lachman directly, or to ask an inspector to follow up on the concerns raised with respect to the existing operation.

Finally, the RFR states that the NRCB statements concerning livestock numbers was misleading and inaccurate. The Board is aware that the way AOPA describes some of the categories of confined feeding operations could result in confusion for parties unfamiliar with the livestock industry. Describing the size of a dairy by the number of milking cows is a standard and long standing practice that was established long before its incorporation in AOPA. The Board does not believe that this issue is one that warrants further consideration.

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 RFR is denied.

DATED at EDMONTON, ALBERTA, this 22nd day of February, 2017.

Original signed by:

Vern Hartwell

Glenn Selland

Jay Nagendran