



BOARD DECISION

RFR 2017-09 / RA17040

In Consideration of Requests for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA17040

Brad Towle

October 11, 2017

Background

On August 31, 2017, NRCB Approval Officer Francisco Echegaray issued Decision Summary RA17040 in relation to Brad Towle's (Towle) confined feeding operation (CFO), located on a 32.15 acre parcel at NW 22-35-27 W4M in Red Deer County. Towle sought a registration for a new 40,000 chicken broiler operation and the construction of a poultry barn. The Approval Officer considered this application in Decision Summary RA17040, and issued a registration with conditions.

Pursuant to Section 22(4) of the *Agricultural Operation Practices Act* (AOPA), a Request for Board Review of Decision Summary RA17040 was filed by Denise Lester, and a joint Request for Review was filed by Della and Grant Lastiwka, Jim and Barb Glazer, Dustin and Tresa Marshall, Jake and Kristie Fehr, Ken and Sherry Hill, and Shelly Hill. Each of these parties made submissions to the Approval Officer. Both Requests for Review (RFR) were filed within the 10-day filing deadline established by AOPA.

Following receipt of the RFRs, all directly affected parties were provided with copies of the requests 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 provided the opportunity to make a submission in response. The Board received response submissions from Red Deer County and Towle that met the October 2, 2017 rebuttal filing deadline.

The Board convened to deliberate on the Requests for Board Review on October 3 and 10, 2017.

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 RA17040
- Registration RA17040
- Technical Document RA17040
- Requests for Board Review filed by:
 - Denise Lester
 - Della and Grant Lastiwka, Jim and Barb Glazer, Dustin and Tresa Marshall, Jake and Kristie Fehr, Ken and Sherry Hill, and Shelly Hill
- Response to the Requests for Board Review filed by Red Deer County dated September 27, 2017, and Towle dated October 2, 2017
- Red Deer County Municipal Development Plan and Land Use Bylaw
- Portions of the public record maintained by the Approval Officer.

Board Deliberations

The Board met on October 3 and 10, 2017 to deliberate on the filed RFRs.

In its deliberations, the Board considered each RFR 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:

- odour
- manure handling
- animal disease
- land values
- water quantity
- impacts on the community
- consistency with MDP and LUB

Odour

Both RFRs raise the issue of nuisance odour from the CFO, specifically referencing the effects of northwest prevailing winds and elevated odours associated with the last two weeks of each bird cycle, and during barn cleanout and manure hauling.

The Approval Officer referenced the establishment of minimum distance separation (MDS) requirements as the nuisance mitigation measure for CFOs. The Approval Officer notes that the nearest residence is 337 metres from the proposed CFO. The calculated MDS for this CFO is 178 metres.

Section 25(1) of AOPA directs the Board to determine whether an issue was adequately dealt with by the Approval Officer and, if so, dismiss that issue from the review. The Board has reviewed the relevant components of the Approval Officer's public record as well as his analysis in Appendix C of Decision Summary RA17040 and finds that that the Approval Officer adequately considered nuisance odour issues, noting he acknowledged that the distance from a residence in this case was double the required MDS under AOPA.

Manure Handling

The Lester RFR requests that any approval for the CFO specifically address on-site short-term storage, as weather events and seasonal road bans may limit the CFO's ability to transport manure directly from the barn to spreading lands. The Lester RFR further asserts that any approval should include provisions protecting surface and groundwater from CFO wash water.

The Approval Officer included a condition that prohibits "storing solid manure on a short term basis on site". The Board is satisfied that, with this condition in place, this issue does not merit consideration at a review, particularly given that short-term storage is also already defined under section 5 of the Standards and Administration Regulation. Similarly, the Board does not find any merit in reviewing protocol or conditions relating to the wash water from the CFO as, once the dry manure has been cleaned from the barn, the volume of residual manure included in the wash water is inconsequential and will not pose a risk from a manure management perspective.

Finally, both RFRs express concern over the choice of manure spreading lands, as surface water movement may carry manure offsite. The Board is satisfied that the Approval Officer adequately determined that the two quarters provide sufficient land to take the nutrients from the CFO. The Board finds that the Approval Officer adequately dealt with this issue, as the Standards and Administration Regulation directly and adequately establishes manure spreading controls to protect surface and groundwater.

Water Quantity

Each of the RFRs raised a concern that the Towle CFO would adversely affect the ability of the groundwater resource to service existing licensed water wells. Water licence applications are made to Alberta Environment and Parks (EP) under the provisions of the *Water Act*, and not to the NRCB. If, as happened in this case, an applicant advises the NRCB that they wish to have their NRCB application and their *Water Act* application considered separately, the applications are "de-linked."

Once a water licence application is de-linked from the AOPA application, the NRCB has no statutory authority in relation to water quantity issues. Concerns respecting the issuance of a water licence application may be made directly to EP in accordance with the provisions of the *Water Act* and will be considered by that department, but do not have relevance to the CFO application to the NRCB Approval Officer or to the Board when included in an RFR. That said, should Towle not obtain a sufficient water licence, it may affect his decision to proceed.

Impacts on the Community

Both RFRs raise issues concerning the effect of the CFO on neighbouring land values, road use, and the potential for poultry disease transmission to the wild bird population.

The Approval Officer responded to each of these concerns in Decision Summary RA17040. The Board has reviewed the Approval Officer's consideration of these concerns, as well as the directly affected parties' expression of these issues in the RFRs. The Board understands that landowners will be concerned about the value of their lands. However, as the Board has stated in previous decisions, impacts on property values are a local planning matter dealt with by municipalities. They are not a relevant Board consideration under AOPA.

Similarly, road use and the issue of animal diseases are both matters that fall outside the mandate set out for the Board under AOPA. Livestock diseases are managed under the *Animal Health Act*, and road use is a matter that falls under the direct authority of the County.

The Board finds that these issues have no merit.

Consistency with County's Municipal Development Plan

The Board could find nothing in the RFRs or on the face of the evidence that would call into question the Approval Officer's conclusion that the CFO is consistent with the land use provisions of the Red Deer County Municipal Development Plan (MDP). The MDP does include several provisions that would preclude confined feeding operation development in certain areas in the County. None of those provisions apply to the Towle application, because it is not located in a prohibited area under the MDP (i.e., under section 3.3.3 the CFO is not located within an "Exclusion Area Buffer" or within an Urban Fringe, nor is it incompatible with adjacent land uses which are agricultural). The Board notes that MDP section 3.3.2 lists criteria used by the County to prepare a response to the NRCB in relation to AOPA applications; however, the Board agrees with the Approval Officer's conclusion that none of these criteria are what the Board considers land use provisions of the MDP.

The relevant planning instrument in all AOPA cases is the MDP and its land use provisions (for example, section 22(1) of AOPA in the case of registrations). The RFRs focus on the CFO's inconsistency with the County Land Use Bylaw (LUB) that states that confined feeding operations are not a permitted use on parcels under 80 acres. While the Board agrees that the LUB requires a minimum 80 acre parcel size, the LUB provisions are not a relevant consideration for the Board in considering an AOPA application. The Board does not accept the requesters' argument that parcel siting size is a relevant consideration for refusal of the proposed CFO, as the parcel size limitation is not a land use criteria for CFOs required by the MDP.

The Board finds that the Approval Officer adequately considered the land use provisions of the County's MDP, and concludes that issues raised related to municipal planning do not warrant consideration at a hearing.

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.

DATED at EDMONTON, ALBERTA, this 11th day of October, 2017.

Original signed by:

Vern Hartwell

L. Page Stuart

Michele Annich

Contact the Natural Resources Conservation Board at the following offices. Dial 310.0000 to be connected toll free.

Edmonton Office

4th Floor, Sterling Place, 9940 - 106 Street
Edmonton, AB T5K 2N2
T (780) 422.1977 F (780) 427.0607

Calgary Office

19th Floor, 250 - 5 Street SW
Calgary, AB T2P 0R4
T (403) 297.8269 F (403) 662.3994

Fairview Office

Provincial Building, #213, 10209 - 109 Street
P.O. Box 159, Fairview, AB T0H 1L0
T (780) 835.7111 F (780) 835.3259

Lethbridge Office

Agriculture Centre, 100, 5401 - 1 Avenue S
Lethbridge, AB T1J 4V6
T (403) 381.5166 F (403) 381.5806

Morinville Office

Provincial Building, #201, 10008 - 107 Street
Morinville, AB T8R 1L3
T (780) 939.1212 F (780) 939.3194

Red Deer Office

Provincial Building, #303, 4920 - 51 Street
Red Deer, AB T4N 6K8
T (403) 340.5241 F (403) 340.5599

NRCB Response Line: 1.866.383.6722

Email: info@nrcb.ca

Web Address: www.nrcb.ca

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.