



BOARD DECISION

RFR 2020-07 / RA20032

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA20032

Hutterian Brethren Church of Starland

October 27, 2020

The Board issues this decision document under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for Board review of Decision Summary RA20032.

Background

On September 21, 2020, Natural Resources Conservation Board (NRCB) approval officer Lynn Stone issued Decision Summary RA20032 and Approval RA20032 with conditions, to construct a new dairy confined feeding operation (CFO) proposed by the Hutterian Brethren Church of Starland (Starland Colony) located at NW 15-33-21 W4M in Starland County. The construction includes:

- A new 200 milking cows (plus associated dries and replacements) confined feeding operation
- A dairy barn with attached bull barn and pump room (165.4 m x 43.8 m)
- Dry cow shed (176.8 m x 57.9 m)
- Liquid manure storage facility (synthetically lined) (96 m x 42 m x 4.9 m)

Pursuant to section 20(5) of the *Agricultural Operation Practices Act (AOPA)*, two Requests for Board Review (RFR) of Decision Summary RA20032 were filed by directly affected parties. The directly affected parties that filed an RFR were John Kowalchuk and Starland County. Both of the two filed RFRs met the 10-day filing deadline established by AOPA of October 13, 2020.

Pursuant to section 20(6) of the *Agricultural Operation Practices Act (AOPA)*, the Board received a request to reconsider the approval officer's finding that Cynthia and James Krywcun were not directly affected by Application RA20032. This request was filed in a joint submission with John Kowalchuk's RFR and the met the 10-day filing deadline established by AOPA.

Under the authority of section 18(1) of the *Natural Resource Conservation Board Act*, a division of the Board consisting of Peter Woloshyn (panel chair), Sandi Roberts, Keith Leggat, and Earl Graham was established on October 19, 2020 to consider the RFRs. The Board convened to deliberate on the RFRs on October 21, 2020.

As established by the approval officer, all directly affected parties and the parties determined not directly affected were notified of the Board's intent to review these requests and provided with a copy of the RFRs. Parties that had an adverse interest to the matters raised in the RFRs were given the opportunity to submit a rebuttal. The Board did not receive any rebuttals.

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 AOPA Administrative Procedures Regulation describes the information that must be included in each request for Board review.

Documents Considered

The Board considered the following information:

- Decision Summary RA20032, dated September 21, 2020
- Approval RA20032, dated September 21, 2020
- Technical Document RA20032, dated September 21, 2020
- RFR filed by John Kowalchuk and Cynthia and James Krywcun (represented by Bishop Law), received October 13, 2020
- RFR filed by Starland County, received October 13, 2020
- Portions of the public record maintained by the approval officer
- Starland County Municipal Development Plan
- Starland County Land Use Bylaw No. 1125
- Starland County Land Use Bylaw Maps for Land Use Bylaw No. 1125

Eligibility to File an RFR

The directly affected parties

The Board must consider an RFR filed by a directly affected party. As noted, the two directly affected parties that filed an RFR were John Kowalchuk and Starland County.

The Board notes that Starland County stated that its RFR was "a joint response made by Starland County as a directly affected party on behalf of landowners and residents of the Hamlet of Rumsey and including John Kowalchuk and neighbouring landowners."

Parties asking for a review of their status

Cynthia and James Krywcun applied to the Board for a review of whether they are directly affected persons by the CFO application. In support of their request they stated that they are the owners and/or users of land within 500 metres of lands that will be used by the CFO for manure spreading. They state that they should be found to be directly affected as:

- there is not sufficient evidence to conclude that there is sufficient water to support the CFO's water requirements,
- manure spreading may contaminate groundwater, and
- manure spreading may contaminate surface water on their lands.

In reviewing the concerns raised, the Board does not find that Cynthia and James Krywcun have established that they would be directly affected. The Board's approach is the same as outlined by the approval officer in Decision Summary RA20032. The onus is on the party requesting status to demonstrate that:

- 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.

The Board is satisfied that the approval officer properly determined that Cynthia and James Krywcun may experience odour and other nuisance issues associated with manure spreading events, but those impacts would be both infrequent and of short duration. Given the approval officer's determination that the CFO will have in excess of 9 months of manure storage capacity, manure spreading events would likely occur no more than twice a year. The identified land base available for manure spreading of 2720 acres is more than sufficient to satisfy the 459 acres required for the calculated manure production.

The Board acknowledges that residences adjacent to manure spreading land will experience odour. However, as the Board has no general control over what lands an operator chooses to spread manure on, the Board does not consider effects from spreading beyond knowing that the operator has secured the right to sufficient spreading acreage for the first year of operation. Adequate and identified spreading lands must be provided by Starland Colony at the time of application. There is no obligation for the identified lands to be used at any time in the future. Consequently, it is not possible to identify parties that may own or reside adjacent to spreading lands with certainty.

The Board concurs with the approval officer's assessment that nuisance effects on these individuals may occur; however, the effects will likely be limited and of short duration. Consequently, the Board does not find that these effects support a finding that the Krywcun's are a directly affected party.

Beyond nuisance odours, Cynthia and James Krywcun have asked the Board to find them to be directly affected because of the risk that manure spreading may contaminate the aquifer or their water wells. They further stated that surface water from the manure spreading lands may flow into their land. The approval officer relied on section 24 of the AOPA Standards and Administration Regulation, which contains provisions to reduce the risk of manure contaminating surface water. The Board also notes that section 25 of that regulation

establishes manure application rates that are consistent with crop uptake of the nutrients from applied manure. The Board finds that these requirements support a conclusion that the risk to surface and groundwater is effectively managed.

Finally, Cynthia and James Krywcun state that there may not be sufficient groundwater to support the CFO development. The CFO's water supply is a water licencing issue that falls within the responsibility of Alberta Environment and Parks (AEP), and consequently is beyond the regulatory mandate of the NRCB.

The Board finds that Cynthia and James Krywcun have not established that they would be directly affected parties in relation to application RA20032.

Board Deliberations

The Board met on October 21, 2020, to deliberate on the issues raised in the RFRs filed by John Kowalchuk and Starland County. The RFRs asked for review of the following issues:

- uncertainty of water supply for the CFO and related effects on the regional groundwater supply,
- risk to surface water and groundwater quality,
- odours and noise from the CFO facilities and operations,
- Starland County's municipal development plan (MDP) identifies the NW 15-33-21-W4 as a CFO exclusion zone,
- Starland Colony's past farming practices, and
- Starland County's request for a road use agreement with the CFO.

As referenced above, the Board must consider whether the party requesting a review has identified sufficient grounds to merit review of the approval officer's decision. This includes a consideration by the Board of whether the issues raised in the RFR were adequately considered by the approval officer.

The Board has reviewed each of the matters raised by the directly affected parties in their RFRs and, in each case, is satisfied that these issues were adequately considered by the approval officer for the reasons stated below.

Water supply

The approval officer confirmed that Starland Colony is aware that they must obtain adequate water supply licencing for their dairy independent of the AOPA application process. When applying to the NRCB, the operator has the option to delink its application for a water license under the *Water Act*, which is issued by AEP, from the NRCB application under AOPA. Starland Colony elected to delink its water licence application from its AOPA application. *Water Act* licence applications require public notice and provide directly affected persons the opportunity to make a submission.

Decision Summary RA20032 states that water supply issues are a water licencing issue falling within the regulatory mandate of AEP. The Board finds that this statement concisely states the regulatory scheme; as such the Board is satisfied that the approval officer adequately considered this issue, and it does not warrant further consideration on review.

Surface water and groundwater quality

The RFRs each raise the contamination risk to groundwater and surface water from both the CFO facilities and the project-related manure spreading. The approval officer considered the proposed CFO's ability to meet the AOPA regulations related to manure storage. The Board notes that the liners for the manure storage facilities are described in Technical Document RA20032, and that Approval RA20032 requires written documentation confirming that all constructed manure storage facilities meet the prescribed requirements. The Board notes that the approval officer conducted a risk assessment of the proposed facilities through the environmental risk screening tool (ERST). A summary of the conclusions are contained in Technical Document RA20032. As the CFO manure storage facilities would all be new facilities, constructed to AOPA standards, it is not surprising that the ERST would return a low potential risk to surface water and groundwater.

The approval officer also considered risks associated with manure spreading, noting the manure spreading requirements set out in the AOPA Standards and Administration Regulation. The Board is satisfied that the approval officer adequately considered this risk for the same reasons provided above in the Board's consideration of the concerns expressed by Cynthia and James Krywcun. Manure from CFOs is a valued crop nutrient that is land applied to support and enhance crop growth. NRCB's compliance division manages issues related to manure application and/or runoff should they arise.

Odours and noise

The Kowalchuk RFR states that the nuisance impacts, including odours and noise, should be considered by the Board at a hearing. The Board notes that the Kowalchuk residence is located in SW15-33-21 W4 and is 1048 metres from the nearest proposed CFO manure storage facility.

The approval officer calculated that the required category 1 minimum distance separation (MDS) for this CFO was 349 metres. MDS is the primary means by which AOPA addresses nuisance odour mitigation from CFO sites to neighbouring residences. Based on these calculations, the approval officer concluded that "odours and other nuisance effects on the parties are not only acceptable, but would probably also be minimal". The Board is satisfied that the approval officer adequately considered the issue of odours and noise.

Does the County MDP identify the NW 15-33-21 W4 as a CFO exclusion zone?

Both RFRs assert that NW 15-33-21 W4 should be considered as being in the exclusion zone pursuant to Starland County MDP Section 8.3(c). The Board does not believe the plain language meaning of Section 8.3(c) supports a finding that the CFO is located in an exclusion zone. MDP Section 8.3(c) states:

8.3 In respect to Exclusion Zones identified in this section and on Map 6, the Exclusion Zone shall be:

- (c) Any quarter section that touches any area identified on Map 6 as being an Exclusion Zone.

Both RFRs provided essentially the same map that showed the relevant lands and the detail of the high risk areas from map 6 of the MDP at a scale that was helpful. That map detail delineates the area identified as high risk of groundwater determination as covering portions of the NE and S ½ of section 15-33-21 W4. Should the high risk area (depicted as 'green' on the map) have overlaid any portion of the NW ¼ of section 15, section 8.3(c) would direct the entire quarter as an area identified on map 6 as an exclusion zone. As no portion of the NW of section 15 touches on the area delineated as high risk on the map, the Board finds that it is not in an exclusion zone.

Other matters

The Kowalchuk RFR also asks that a Board hearing should be conducted to assess if further approval conditions are warranted. The Board has reviewed the suggested conditions and determined that there is not sufficient rationale provided to support a consideration of the proposed conditions at a hearing. One proposed condition asks for oversight review of the poured cement manure storage liners; the Board is satisfied that the requirements currently specified in Approval RA20032 are adequate, in terms of both construction and post-construction confirmation. Another proposed condition would require noise suppressors on the dairy barn fans; the Board does not see any need for such a condition given the distance of the dairy barn from the nearest residence. The other two requested conditions relate to water quantity and quality, both of which are addressed elsewhere in this decision report.

Both RFRs assert that the Board should consider Starland Colony's past farming practices. Specifically, each states that Starland Colony has altered water flow patterns to the detriment of neighbouring lands. The approval officer found no causality between alleged past farming practices and the CFO application; the Board reaches the same finding and adopts the approval officer's reasons.

Finally, Starland County references requirements that are included in its MDP section 8.11; section 8.11(i) provides for road use agreements. The NRCB has consistently stated that road use agreements are matters outside its regulatory mandate and are matters for Alberta Transportation and municipal government authorities.

Board Decision

As a result of its deliberations, the Board finds that each of the issues raised in the filed Requests for Review were adequately considered by the approval officer. The RFRs are denied.

DATED at EDMONTON, ALBERTA, this 27th day of October, 2020.

Original signed by:

Peter Woloshyn

Sandi Roberts

Keith Leggat

Earl Graham

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

Calgary Office

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

Lethbridge Office

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

Morinville Office

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

Red Deer Office

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

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.