



## **BOARD REQUEST FOR REVIEW DECISION**

**RFR 2022-15 / RA16006XB**

In Consideration of a Request for Board  
Review filed under the *Agricultural  
Operation Practices Act*

Jos and Dorthy Peters

December 6, 2022

**The Board issues this decision under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a Request for Review of Decision Summary RA16006XB.**

## **Background**

On October 31, 2022, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary RA16006XB (the Decision). The Decision granted an application by Jos and Dorthy Peters (the Peters or the applicants) to amend Registration RA16006XA by deleting permit Condition #4. The CFO is located at SW 32-47-26 W4M in Wetaskiwin County (the County).

The Board received one request for review (the RFR) of the approval officer's decision from directly affected parties Reg and Cathy Minchau (the Minchaus), asking for a reversal of the Decision. The RFR met the filing deadline of November 22, 2022.

On November 23, 2022, the NRCB sent a Notice of Filed Request for Board Review and Rebuttal Opportunity to the directly affected parties to this application, as established by the approval officer. The rebuttal opportunity gives parties that may have an adverse interest to the matters raised in the RFR a chance to submit their views. No rebuttals were received.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board consisting of Peter Woloshyn (chair), Sandi Roberts, Walter Ceroici, and Earl Graham was established on November 24, 2022, to consider the RFR and decide whether a review is warranted. As used here, a "review" is a quasi-judicial hearing in which the parties can submit expert and witness testimony and other evidence, when relevant, to the issues selected by the Board to be considered at the hearing.<sup>1</sup> (References to the "Board" in this document are to findings of the panel of Board Members established specifically for this file.)

Under section 25(1) of the *Agricultural Operation Practices Act (AOPA)*, the Board must determine whether an applicant seeking a RFR has raised issues that warrant a review. The applicant must convince the Board that the grounds for review have merit and/or have not been adequately dealt with by the approval officer; otherwise, the Board will dismiss the request for review.

## **Documents Considered**

The Board considered the following information:

- Decision Summary RA16006XB, dated October 31, 2022
- Technical Document RA16006XB, dated October 31, 2022
- Registration RA16006XB, dated October 31, 2022
- Registration RA16006XA, dated August 11, 2016
- RFR filed by Reg and Cathy Minchau, received November 22, 2022
- Approval officer material, dated November 25, 2022
- Wetaskiwin County Municipal Development Plan 2010, Amended by Bylaw No. 2016/55

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<sup>1</sup> For more information on Board reviews, see NRCB, *Board Reviews & Court Decisions – Board Review Process*, [online](#).

## **Board 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 applicant must convince the Board that the grounds for review have merit and/or have not been adequately dealt with by the approval officer. The Board has examined each of the Minchaus' grounds for review and concluded that the issues raised have been adequately dealt with by the approval officer or are of little merit. The Request for Review is therefore denied. The reasons for this decision follow.

## **Board Deliberations**

### **Grounds for Review #1**

The RFR stated that manure has not been contained on the concrete floor in the goat barn. Instead, it has been stockpiled in a low-lying area to the east of the barn. The Minchaus pointed out that a 2021 engineering report—part of a previous application—stated that naturally occurring material at a proposed compost pad location (where manure has been stockpiled) does not meet the requirements of a natural barrier; therefore, a compacted clay liner or synthetic liner is recommended. The Minchaus contended that the manure stockpile area should be cleaned up and no longer used, that manure should be contained on concrete in the barn, and recommended that a condition be included that restricts short-term manure storage on land that slopes toward Lake A.

### ***Board Views***

The Board has reviewed the Decision and the approval officer's consideration of and response to this issue in Appendix B, section 4 of the Decision. The approval officer indicated that the Peters did not apply for a permit to construct a standalone manure storage facility (MSF) since, as the 2021 engineering report indicated, the naturally occurring material in the area of the proposed MSF did not meet AOPA requirements for a natural barrier. The Peters decided instead to use short-term manure storage, which does not require a permit, for manure storage. The Board notes that AOPA requirements for short-term manure storage are referenced in Condition #2 of Registration RA16006XB. The Board finds that the approval officer adequately dealt with this issue, and additionally emphasized to the co-permit holders the importance of following AOPA short-term manure storage requirements by including permit Condition #2.

## **Grounds for Review #2**

The RFR stated that the 2016 NRCB Environmental Assessment for this site is inaccurate, as the 2016 assessment conducted by the NRCB asserted the landscape around the barn location slopes to the south and west, but a 2021 engineering report that accompanied a previous application stated that the site generally slopes to the north. This concerned the Minchous because they believed water quality in Lake A could be impacted by runoff from the operation since the lake is located down-gradient, north of the CFO site.

### ***Board Views***

The Board notes that the topography in the vicinity of the CFO is mentioned in section 1(a) of the Decision. It is stated that the terrain where the goat barns are located is undulating with a general slope to the south and southwest, and that the rest of the land, including the land on which the *Rhodiola rosea* and Saskatoon berries are planted on SW 32-47-26 W4M, slopes to the north towards Lake A. The Board acknowledges that the local topography is complex, but finds that the approval officer was aware of this complexity and adequately dealt with this issue through the permitting process.

## **Grounds for Review #3**

The Minchous claimed that the number of acres listed as being available for manure spreading on SW 32-47-26 W4M is over estimated as it does not discount the yard area and peat lowlands.

### ***Board Views***

The Board has reviewed the Decision, Appendix B, section 5 as well as Technical Document RA16006XB regarding this issue. Although the Decision does not specifically discount the number of acres at SW 32-47-26 W4M unavailable for manure application, the Technical Document stated that the Peters have another quarter section of land where alternatively they can apply manure and therefore meet the land base requirements.

The Board notes that Condition #1 of the permit requires the co-permit holders to maintain records of manure spreading. The condition states that records must be kept for a minimum of five years and must be available for inspection by the NRCB. As a follow-up to the approval officer's Condition #1, the Board encourages Field Services to require that soil analyses for soils in the *Rhodiola rosea* and Saskatoon berry fields be submitted to the NRCB on an annual basis when they are used for manure spreading. Should nutrient limits be exceeded on any of the currently identified spreading lands, the Peters will be required to locate other lands for spreading. The Board finds that the approval officer adequately dealt with this issue.

## **Grounds for Review #4**

The RFR noted that Condition #3 of Registration RA 16006XB requires a 60 m setback for manure application from Lake A, and references a map in a 2015 study of the wetland area that is included in the Technical Document. The Minchous suggested that the 60 m setback should be measured from the normal high-water mark of Lake A rather than from a wetland boundaries map drawn in 2015, which was a drought year.

### **Board Views**

The Board appreciates that the approval officer has not been able to address this specific suggestion from the Minchaus as it was presented after Condition #3 was written. However, section 7 of the Decision suggested that the approval officer took a precautionary approach in requiring a 60 m setback from the common body of water for manure spreading. This setback is greater than that required by the Standards and Administration Regulation (the Regulation) for this operation (in the Regulation, manure spreading setbacks are based on the slope of the land).

The Decision, Appendix B, section 3, discussed surface water quality (runoff) and the rationale for including Condition #1 in Registration RA16006XB. The Board notes that the “blue line” in the image on page 11 of the Technical Document denotes the “wetland boundaries” rather than a “high water mark”. The Board is confident that regardless of nomenclature, the NRCB field staff will use the blue line identified on the map (page 11 of the Technical Document) to measure the 60 m manure spreading setback condition (which is greater than that required in the Standards and Administration Regulation based on slope of the land). The Board finds that the issue of manure spreading setbacks and the potential for manure contaminated runoff to enter Lake A has been adequately dealt with by the approval officer.

### **Grounds for Review #5**

The RFR questioned whether Condition #4 was included to lessen opposition to the CFO location when the application for this goat dairy was originally submitted to the NRCB. The Minchaus do not believe that the financial benefit the Peters will realize from being able to dispose manure at the CFO site is a viable reason to remove Condition #4.

### **Board Views**

The Board observes that the Decision, section 1, stated that Condition #4 was originally included because the applicants committed to not spread manure on SW 32-47-26 W4M to address concerns from neighbours.

NRCB Operational Policy 2016-7: Approvals, Part 9.4, provides approval officers guidance about dealing with applicant commitments that are more stringent than AOPA requirements. Part 9.4.1 discusses amending permit conditions from an applicant’s previous commitments and states:

An applicant may apply to amend an existing permit, to delete a condition that resulted from their previous commitment to a more stringent standard. Approval officers will review these amendment applications by considering all relevant factors, including: the context in which the commitments were originally made; whether the reasons for those commitments still apply; any practical challenges the applicant has had in meeting the commitments; whether the commitments have been reasonably enforceable; and, whether directly affected parties object to removing the commitments. An applicant should try to address as many of these factors as possible in their application.

The Board has reviewed the Decision, section 7, which explained how the approval officer considered the relevant factors. The approval officer stated that Condition #4 has become

impractical or unfair and explains that the operating conditions in Registration RA16006XB have been included to address some of the neighbours' concerns.

The Board finds it reasonable that after about six years of operation, the Peters have learned more about the quality of manure generated by their operation and manure management. For example, in section 7 of the Decision it is stated that the manure generated is very dry and could be used as an organic fertilizer on the Saskatoon berry and Rhodiola rosea fields. The Board notes that the approval officer commented in section 7 of Appendix B of the Decision that Peters' organic certifier "has identified that the proposed matured (composted) goat manure, would meet the organic certification; and therefore, it could be used as an alternative organic nutrient amendment." The Board finds that the approval officer has adequately dealt with this issue.

The Board takes seriously commitments made by operators to neighbours and think it is important that CFO operators also take these commitments seriously. The Field Services policy regarding removing operator-imposed commitments demonstrates that NRCB approval officers require sufficient grounds for removing or amending these types of conditions. In this case, the Board finds that the Minchaus have not demonstrated how they have relied upon Condition #4 since the Peters have commenced operations, nor how removing Condition #4 will directly affect them in a material way. The Board finds that the approval officer's imposition of a 60 m setback for manure spreading adjacent to Lake A and soil testing requirements sufficiently address the Minchau's concerns related to the CFO lands at SW 32-47-26-W4.

#### **Grounds for Review #6**

The Minchaus expressed that they are frustrated with the NRCB's lack of policing regulations once a CFO is approved, and that utilizing the complaint line to bring issues to the attention of the NRCB creates animosity in the community. As an example, the RFR stated that there are additional buildings on site that contain goats besides the goat barn and pole shed listed in Registration RA16006XB.

#### ***Board Views***

The Board notes that the NRCB has received three non-compliance complaints about the Peters' operation since 2016. The complaints related to illegal stockpiling of manure, algal growth in surface water, burning of a manure pile, and unauthorized construction. According to the approval officer, NRCB compliance staff responded to all of the complaints and they were resolved to the satisfaction of the NRCB.

The Board is aware that there was a Compliance Directive for unauthorized construction of a pole shed that was subsequently permitted. The Board notes that Compliance Directive #CD 22-05 was issued on November 29, 2022, for unauthorized construction of a white hoop fabric building located east of the existing barn to house livestock, requiring the operator to obtain an AOPA permit for the facility or depopulate the unauthorized facility by March 15, 2023. The Board finds that the approval officer and an NRCB inspector have adequately dealt with this issue.

Responding to complaints about an operation is a priority for the NRCB to ensure that operators comply with terms of their permits and AOPA requirements. The Board finds that compliance action taken at the Peters' operation was appropriate and timely. The Board does

expect that the Peters will work diligently to follow all conditions imposed within the permit and respect all AOPA requirements.

**Grounds for Review #7**

The Minchaus expressed concern about a lack of weed control, including invasive species, at the site.

**Board Views**

Weed control at CFOs is not within the NRCB’s jurisdiction; therefore, this issue has little merit.

**Grounds for Review #8**

The RFR questioned the organic status of the operation.

**Board Views**

Organic certification is not within the NRCB’s jurisdiction; therefore, this issue has little merit.

**Board Decision**

As a result of its deliberations and for the reasons stated in this document, the Board has determined that the issues raised in the Request for Review were either adequately dealt with by the approval officer or are of little merit. Therefore, the Request for Review by Reg and Cathy Minchau is denied.

DATED at EDMONTON, ALBERTA, this 6<sup>th</sup> day of December, 2022.

Original signed by:

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Peter Woloshyn (chair)

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Sandi Roberts

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Walter Ceroici

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Earl Graham