



BOARD DECISION REQUEST FOR REVIEW

RFR 2024-04 / RA23012

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

Ridder Farms Ltd.

June 12, 2024

The Board issues this decision under the authority of the *Agricultural Operation Practices Act* (AOPA or the Act), following its consideration of a request for the Board’s review (RFR) of Decision Summary RA23012.

1. Background

On May 14, 2024, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary RA23012 (the Decision Summary). That decision granted an application by Ridder Farms Ltd. (Ridder) for an NRCB Approval to expand an existing dairy confined feeding operation (CFO). The existing CFO is located at NE 23-43-26 W4M in Ponoka County.

Following the issuance of the Decision Summary, the Board received one request for review (RFR) of the Decision Summary within the filing deadline of June 5, 2024, from Dennis and Leslie Chernick (the Chernicks), parties who had been found to be directly affected by the approval officer. On June 6, 2024, the NRCB sent a Notice of Filed Request for Board Review and provided a rebuttal opportunity to the directly affected parties listed in the Decision Summary. The rebuttal opportunity gives parties that may have an adverse interest to the matters raised in the RFR a chance to submit their views. Ridder submitted a rebuttal on June 6, 2024. NRCB Field Services made a submission on June 7, 2024. All submissions were made within the filing deadlines.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (panel) consisting of Peter Woloshyn (chair), Walter Ceroici, and Earl Graham, was established to consider the RFR and decide whether a review is warranted.

As used here, a “review” is a quasi-judicial hearing or written review 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 oral hearing or written review.¹ References to the “Board” in this document are to findings of the panel of Board Members established specifically for this file.

2. Documents Considered

The Board considered the following information:

- Decision Summary RA23012, dated May 14, 2024
- Technical Document RA23012, dated May 14, 2024
- Approval RA23012, dated May 14, 2024
- Water Well Monitoring Requirements RA23012, dated May 14, 2024
- RFR filed by Dennis and Leslie Chernick, received May 28 and May 31, 2024
- Ridder Farms Ltd. rebuttal, received June 6, 2024
- NRCB Field Services submission, dated June 7, 2024
- Ponoka County Municipal Development Plan, Bylaw 6-08-MDP, October 2018
- North-West Ponoka Area Structure Plan, dated October 25, 2018

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

3. 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.

4. Submissions

4.1 Issues Raised in the RFR

The following concerns about Ridder Farms Ltd. Approval RA23012 were identified in the RFR dated May 28 and May 31, 2024, received from Dennis and Leslie Chernick:

1. *Deemed Permit (Grandfathering Determination)*

The Chernicks questioned why the Ridder operation was not required to abide by the animal numbers specified in their 1996 County permit when the NRCB issued the 2008 authorization. More information was requested by the Chernicks on why a grandfathering decision was required in 2008, who made the decision, and for what reason.

2. *Adequacy of Manure Storage Capacity at the Operation*

The Chernicks expressed concern that there is no "data" to suggest that the existing earthen manure facility has the capacity to hold liquid manure from the permitted operation that will house 240 milking cows (as well as dries and replacements).

3. *Manure Spreading Concerns*

The Chernicks are concerned about how manure is managed at the Ridder operation and that increasing animal numbers would exacerbate the problem. The Chernicks took exception to a statement from the approval officer that liquid manure from an earthen manure storage facility at a CFO is typically land spread once or twice a year and that spreading events are typically of short duration. It was claimed by the Chernicks that manure from the operation had already been applied "twice this year" and that it was not properly incorporated. It was the Chernicks' view that the approval officer should have used "data" to better time manure land spreading events.

The Chernicks also expressed concern that the 150 m setback from a residence for manure spreading was not adequate. It was proposed by the Chernicks that manure from the operation could be loaded into tanker trucks and “disposed of” elsewhere.

4. *Water Well Exemption*

The Chernicks questioned the exemption issued by the approval officer allowing for the proposed barn to be located within 100 m of an existing water well.

5. *Property Boundaries*

The Chernicks questioned the accuracy of the property line information provided by Ridder in their application, specifically:

- use of the pasture in the northwest corner of the Ridder operation
- an inconsistency between the location of fencing along the west side of the Ridder operation and the property line.

6. *Water Usage*

The Chernicks expressed concern about whether there would be enough water available for the expanded operation, especially in drought conditions.

4.2 Submission of NRCB Field Services

NRCB Field Services took no position on the RFR. The Field Services submission included:

- Authorization RA08010 and accompanying Decision Report.
- Response from Dennis Chernick to application RA23012 in the form of two emails.
- Responses from Dennis and Leslie Chernick to application RA23012 in the form of two letters dated March 4 and 6, 2024 and received by the NRCB on March 11, 2024.
- Response from Dennis Chernick to application RA23012 in the form of an email.

The approval officer advised that she used the above information when coming to her decision.

4.3 Ridder Farms Ltd. Rebuttal

The Ridder Farms Ltd. June 6, 2024 rebuttal was submitted by Everhard and Deanna Ridder on behalf of the company. In the rebuttal the Ridders:

- Addressed concerns in the RFR about the EMS capacity. An excerpt from an engineering report was provided that detailed the EMS construction and storage capacity.
- Provided information on how manure land spreading activities are managed at their operation. The Ridders indicated that they meet with an advisor annually to discuss which areas would benefit from manure considering the crop. Further, they indicated that according to AOPA requirements, they document when and where manure is

spread, and how it is incorporated, if incorporation is necessary. They commented that they spread on cultivated and forage land.

- Indicated that, as a condition of their permit, they monitor water quality in water well ID #386874 because it is located within 100 m of a manure storage facility, and that the analytical results are submitted to the NRCB on an annual basis for review.
- Confirmed that the operation has a Water Licence from Alberta Environment and Protected Areas.
- Provided information on the grandfathered status of their operation.

5. Board Deliberations

Upon receipt of an application for review, section 25(1) of AOPA states that the Board must:

- (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.

Following are the Board deliberations and conclusions with respect to the specific questions and concerns raised in the RFR.

5.1 Grandfathering Determination

The Board recognizes that grandfathering determinations can be challenging. Many operations existed before AOPA came into effect on January 1, 2002, and were constructed at time when requirements were different than they are now. To facilitate deemed capacity determinations for these operations, the NRCB created a *Determining Deemed Capacity for Grandfathered CFOs* policy.

The RFR questioned why the Ponoka County 1996 permit for 70 milking cows was not upheld in 2008 when NRCB issued Authorization RA08010 and why a grandfathering decision was required. It is the Board's view that a grandfathering determination of the operation was warranted. It was not uncommon for CFOs to expand after receiving their municipal permit. Further, not all municipalities had the resources to monitor the ongoing operation and construction activities at CFOs. Under the Act, the animal capacity of these operations is deemed to be the capacity of the operations on January 1, 2002, when AOPA was introduced. This is consistent with the NRCB *Determining Deemed Capacity for Grandfathering CFOs* policy. In the Ridder case it was determined that the deemed capacity on January 1, 2002 was 170 milking cows (plus dries and replacements). It is the Board's view that the approval officer was correct in using this deemed capacity in reviewing the current permit application for the Ridder operation.

5.2 Adequacy of Manure Storage Capacity at the Operation

The Ridders, in their June 6, 2024 Rebuttal submission, provided an excerpt from an engineering report that provided construction and volume information for their EMS. The approval officer used this information and the NRCB liquid manure storage volume calculator to conclude that the EMS meets the AOPA requirements for a minimum nine months of storage. The Board notes that the Technical Document (page 21), accompanying the Decision Summary, stated that the EMS meets AOPA storage requirements.

The Board is satisfied that the approval officer adequately dealt with concerns about the capacity of the EMS.

5.3 Manure Spreading Concerns

Based on the information provided by the Ridders in their June 6, 2024 Rebuttal submission and the approval officer's assessment, the Board is confident that the operation has sufficient land base for manure land spreading and that spreading activities will be conducted according to AOPA requirements.

Dennis Chernick expressed a concern that land spread manure was not properly incorporated into the soil resulting in unacceptable odour conditions. Further Mr. Chernick took exception with the approval officer's statement that manure from storage facilities at CFOs is typically applied to land twice per year and any odour concerns are of short duration. The Board agrees with the approval officer's statement that land spreading typically occurs twice per year at most operations and assessment that the Ridder's manure spreading activities are compliant with AOPA requirements. The Board notes that AOPA does not restrict the number of manure applications and only requires incorporation on cultivated land. Incorporation is not required on forages, or on no-till cropland, but there is an increased setback requirement. The Ridders in their rebuttal indicated that they apply manure on land that is cultivated and forage, so it makes sense that not all the manure is incorporated.

The Board acknowledges that the approval officer indicated in the Decision Summary that manure spreading complaints can be reported to the NRCB's 24-hour reporting line for follow-up by an NRCB inspector.

The Board is satisfied that the approval officer adequately dealt with the issue of manure spreading and is convinced that the activity will be conducted in accordance with AOPA requirements.

5.4 Water Well Exemption

AOPA stipulates that a manure collection facility must not be located within 100 m of a water well. At the Ridder operation the proposed dairy barn is located 61 m from an existing water well (EPA well ID #86874). The Board notes that AOPA provides the authority for approval officers to approve manure storage facilities located within 100 meters of a water well if an aquifer into which the water well is drilled is not likely to be contaminated. The Board agrees with the approval officer that an exemption is warranted because the water well's construction

and location upslope from the dairy barn reduce the likelihood that water quality from the well will be impacted by operation activities. The Board notes that the water well monitoring condition previously in Authorization RA08010 will continue to be in effect. The condition requires annual water sampling of the well and submission of analytical results of the NRCB for review.

The Board is satisfied that the approval officer adequately dealt with this issue.

5.5 Property Boundaries

The approval officer stated that property line adjustment, road allowance usage, and fence line development and maintenance are outside the scope of the NRCB. However, the location of CFO facilities and assessing whether these facilities meet property line setbacks are the jurisdiction of the NRCB under AOPA. The Board agrees with the actions taken by the approval officer to limit cattle access to the pastureland in the northwest corner of the property. Actions included requiring the operator to install a fence between the outdoor pens and pasture to limit cattle access and directing the operator not to use the pastureland as a CFO site.

The Board notes that the approval officer discussed the misalignment of the western property fence of the Ridder operation within the road allowance of the County of Ponoka. The County agreed that there was an inconsistency and indicated that a surveyor would be required to assess and mark the property line to resolve the issue. The County recommended that the survey work not be completed until the status of the road allowance along the western boundary of the CFO is addressed. The Board appreciates that this issue is being dealt with by the County since it is not in the NRCB's jurisdiction.

The Board is satisfied that the approval officer addressed the property issues that are under the jurisdiction of the NRCB under AOPA, and that any inconsistencies between the fence line along the western side of the Ridder operation and property line should be dealt with by the County.

5.6 Matter Beyond the Board's Mandate: Water Usage

The approval officer correctly pointed out that Alberta Environment and Protected Areas is the agency responsible for the licensing of groundwater and surface water under the *Water Act*. During the application review process the approval officer confirmed that the Ridders had water licenses and reminded Ridder that they are responsible for obtaining any future applicable licences and permits from Alberta Environment and Protected Areas. The approval officer also stated that any additional water licencing applications would likely include a notice period that would allow directly affected parties to provide input.

The Board finds that the approval officer adequately dealt with this issue.

6. Board Decision

As a result of the Board's review of the documents under consideration for this RFR and its deliberations on the issues raised in the RFR, the Board finds that the approval officer adequately dealt with the issues raised in the RFR that pertain to the issuance of RA23012. The RFR is denied.

DATED at EDMONTON, ALBERTA, this 12th day of June, 2024.

Original signed by:

Peter Woloshyn (chair)

Walter Ceroici

Earl Graham