



BOARD DECISION

RFR 2019-06 / RA19010

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary RA19010

Korova Feeders Ltd.

October 3, 2019

Background

On August 28, 2019, Natural Resource Conservation Board (NRCB) approval officer Francisco Echegaray issued Decision Summary RA19010 (Decision Summary) and Approval RA19010 (Approval) with conditions, to expand an existing beef confined feeding operation (CFO) owned and operated by Korova Feeders Ltd. (Korova), at NE 27-29-26 W4M, in Kneehill County (County). The approval includes:

- A deemed approval for 16,000 head (development permits 1879-98, 1939-98, and 2189-00)
- An expansion of the existing beef CFO from 16,000 to 20,600 head of beef finishers

Pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA), a Request for Board Review (RFR) of Decision Summary RA19010 was filed by Darwin Eaket (Eaket), within the 10-day filing deadline established by AOPA.

Following the receipt of the RFR, all directly affected parties were provided with copies of the RFR, 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 rebuttal submission. The Board received a submission from Korova on September 20, 2019, meeting the September 27, 2019 rebuttal filing deadline.

Under the authority of section 18(1) of the *Natural Resource Conservation Board Act*, a division of the Board consisting of Page Stuart (Panel Chair), Sandi Roberts, and Daniel Heaney was established on September 24, 2019, to consider the RFR. The Panel (Board) convened to deliberate on the RFR on September 26, 2019.

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 RA19010, dated August 28, 2019
- Approval RA19010, dated August 28, 2019
- RFR filed by Mr. Eaket, submitted September 19, 2019
- Rebuttal filed by Korova, submitted September 20, 2019
- Portions of the public record maintained by the approval officer

Board Deliberations

The Board met on September 26, 2019, to deliberate on the following issues raised in the RFR:

- Reduction in groundwater quality and quantity
- Odour
- Decreased property values
- Potential for future expansion
- Negative impacts to health and quality of life
- Increase in traffic and reduced safety
- Transient workers and increased theft and vandalism

Groundwater Quality

The Eaket RFR expressed a concern that water quality will be reduced due to manure contamination.

The approval officer stated that he assessed the CFO's existing facilities using the NRCB's Environmental Risk Screening Tool (ERST), and determined that these facilities pose a low risk to groundwater. Additionally, the approval officer noted that the existing CFO facilities meet or exceed all AOPA technical requirements, which are designed to prevent manure from reaching and contaminating the groundwater. The approval officer also addressed the requirement for operators to adhere to AOPA's soil protection considerations under section 25, AOPA Standards and Administration Regulation (Standards Regulation). The approval officer noted that AOPA requires CFO operators to test soils on farmland to which manure is applied at least every three years, and that these records must be available for inspection by the NRCB.

The Board notes that one of the primary objectives of AOPA and the Standards Regulation is to ensure that manure storage facilities and manure spreading activities address risk to groundwater. The Board accepts that the ERST determination of risk level of the facilities, together with the noted regulatory requirements regarding land application of manure, are sufficient to address risk to groundwater. The Board finds that the approval officer adequately dealt with the concern regarding groundwater quality.

Groundwater Quantity

The Eaket RFR expressed concerns about impacts to water quantity.

In his Decision Summary, the approval officer noted that groundwater supply licensing and monitoring in the province is managed by Alberta Environment and Parks, under the *Water Act*.

Further, the approval officer stated that any expansion prior to receiving a water licence is at the risk of the Korova CFO if the water licence application is denied.

The Board reaffirms that the water supply concern raised in the RFR is outside of AOPA's mandate. The Board agrees with the approval officer's assertion that the signed water licence declaration in the Part 2, Technical Requirements document satisfies the NRCB's requirements. The Board finds that the approval officer adequately dealt with the issue of water quantity.

Odour

The Eaket RFR included a concern about increased odours.

In the Decision Summary, the approval officer considered this concern in Appendix A, describing AOPA's minimum distance separation (MDS) as a means for mitigating odour and other nuisance impact from CFOs. The approval officer acknowledged that potential nuisances such as odour may increase, but confirmed that the application meets the required 884 metre MDS from existing residences.

The Korova rebuttal addressed the issue of odour. Specifically, it described the efficiency of Korova's manure spreading practices intended to reduce odour, which include pen scraping, spreading, and pro-tilling into the soil. Additionally, Korova describes its use of Rolled Compacted Concrete (RCC), which is a pen surface amendment. It asserted that research demonstrates a 30 per cent reduction of manure when pen floors are amended with RCC, reducing the volume of manure hauled out of pens.

The Board agrees that the approval officer adequately considered odour nuisance through AOPA's MDS provisions. Since the CFO meets the MDS requirement, the Board finds that the approval officer adequately dealt with the issue of odour.

Property Values

The Eaket RFR expressed a concern about the potential for reduced property values. The siting of CFO's is subject to land use provisions that are established by the municipal authority in its municipal development plan (MDP).

AOPA section 20(1) addresses the requirements around land use provisions:

20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions....

In the Decision Summary Appendix A, the approval officer reviewed land use provisions in the MDP. The approval officer concluded that the application is consistent with the County's land use provisions in the MDP. Additionally, the approval officer had regard for the response of the County's manager of planning and development, stating that the County had no concerns with the application.

The Board and NRCB Field Services have consistently stated that effects on land values are not a subject for the NRCB's review under AOPA. The Board accepts that impacts on property values are a land use issue and therefore a planning matter dealt with by the municipality in its MDP and land use bylaws. The Board finds that the approval officer adequately dealt with the concern regarding property values.

Future Expansion

The Eaket RFR raised a concern that the Korova CFO could expand in the future. This issue was not identified in the statement of concern filed by Darwin Eaket on June 13, 2019, and thus was not addressed by the approval officer in the Decision Summary.

The Board observes that any future expansion of the Korova CFO would need to be evaluated and assessed against the legislative and regulatory framework in place at the time of the application. The Board notes that opportunities to expand would be governed by whatever locational and siting limitations are in place at that time. The Board has no authority to evaluate the likelihood of the success of any future expansion applications.

The Board finds that the issue of the potential for future expansion of the Korova CFO is without merit.

Other Matters

The RFR raised a number of issues relating to family health, quality of life, and traffic safety.

Within the Decision Summary, the approval officer noted that applications are forwarded to a number of authorities for their review and consideration as part of the standard application process. In this case, the Korova CFO application was sent to authorities including Alberta Health Services, Alberta Transportation, and Kneehill County.

The Board finds that the primary jurisdiction for matters related to family health, quality of life, and traffic safety rests with these authorities, and they raised no issues that merit Board review. The Board finds that the approval officer adequately dealt with each of these issues.

The RFR further asserted that the expansion will increase the number of transient workers, increasing theft and vandalism. The Board views community safety and security as an issue that, in its experience, has not been associated with the agricultural workforce. This issue does not merit Board review.

RFR Requested Actions, Conditions and Amendments

The Eaket RFR included a request to restrict the number of animals at the Korova CFO to existing numbers. Additionally, there was a request for surprise visits to ensure strict compliance, suggesting large fines and serious consequences for infractions.

The Board carefully considers mitigations proposed in this section of submitted RFRs, and considers whether the apparent or intended outcome of the mitigations, if warranted by the requirements of AOPA, has been appropriately addressed by the approval officer. In this case, the Board finds that the approval officer adequately addressed the requirements related to an

increase in the permitted number of livestock. The requirement for the Korova CFO to comply with the permitted occupancy of 20,600 head of beef finishers in the Approval is listed as a condition. Additionally, the Board notes that concerns raised regarding the identification and subsequent consequences of non-compliance with AOPA requirements is a matter for the NRCB's Compliance Division, and is addressed by the approval officer in the Decision Summary. The Board finds that the approval officer fully addressed this issue.

Decision

As a result of the Board's deliberations, it has determined that the approval officer has adequately addressed the issues raised in the filed Request for Review, or the issues raised have no merit, and therefore does not direct any matter to a hearing. The RFR is denied.

DATED at EDMONTON, ALBERTA, this 3rd day of October, 2019.

Original signed by:

L. Page Stuart

Sandi Roberts

Daniel Heaney

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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.