



BOARD DECISION

RFR 2018-07 / LA17038

In Consideration of a Request for Board Review filed under the Agricultural Operation Practices Act in relation to Decision Summary LA17038

Stronks Feedlot Ltd.

June 11, 2018

Background

On April 24, 2018, NRCB Approval Officer Carina Weisbach issued Decision Summary LA17038 regarding an approval application by Stronks Feedlot Ltd. (Stronks). The application was to expand an existing beef confined feeding operation (CFO) located at NW 33-10-20 W4M in Lethbridge County, roughly seven kilometres east of Picture Butte, Alberta. The proposed expansion involves:

- Increasing the permitted number of beef finishers from 6,500 to 10,000
- Constructing two new rows of pens
- Permitting one row of already constructed but unpermitted pens, and to reconstruct this row of pens with a new liner
- Permitting use of an existing catchment area to contain runoff from the three new rows of pens

The approval officer denied Stronks' application as she concluded that Stronks did not provide sufficient information to confirm that the runoff control system for the CFO can meet the performance requirements under sections 6, 19 and 24 of the *Standards and Administration Regulation*. Stronks filed a Request for Board Review (RFR) on May 3, 2018 that met the 10-day filing deadline pursuant to section 20(5) of the *Agricultural Operation Practices Act (AOPA)*.

Following receipt of the RFR, the Board sent a Notice of Filed Request for Board Review (the Notice), and a copy of the RFR, to all of the parties found to be directly affected by the approval officer. The Notice advised that any adversely affected parties were being given an opportunity to file a rebuttal submission with the Board, by the deadline of May 23, 2018. No rebuttals were filed.

The Board met on May 24 and June 5, 2018 to deliberate on the RFR.

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, 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 schedule a review.

The Board considers that a party requesting a review of an approval officer's decision has the onus of demonstrating that there are sufficient grounds to merit a review. The information that must be included in each RFR is described in section 13 of the *Agricultural Operation Practices Act Administrative Procedures Regulation*, and is also set out in the approval officer

Decision cover letter dated April 24, 2018.

Documents Considered

The Board considered the following information in arriving at its decision:

- Decision Summary LA17038 dated April 24, 2018;
- AOPA Application Part 2 - Technical Document LA17038;
- RFR filed by Stronks dated May 2, 2018; and
- Portions of the public record maintained by the approval officer.

Board Deliberations

The Board is directed by AOPA to dismiss a request 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 approval officer denial and the Stronks RFR are consistent with the process contemplated by NRCB Operational Policy 2016-4: *Resolving Disputed Permit Information Requirements Between the Applicant and Approval Officer*. In accordance with the policy, the approval officer advised Stronks that he could decline to provide her with the catchment area soil test information resulting in the approval officer issuing a decision summary denying the application. The approval officer denial established the opportunity for Stronks to file an RFR and have the Board make a decision on the need for the disputed permit information. The Board has determined that issues raised by the RFR merit review and that a written review is appropriate.

The Board's review of the RFR and Decision Summary LA17038 identifies two issues that will be considered. Specifically those issues are:

Issue 1 - Grandfathered status of the catchment area

Issue 2 - Risk to the environment

Issue 1 – Grandfathered status of the catchment area (catch basin or vegetated filter strip)

In Decision Summary LA17038, the approval officer states that she does not consider the catchment area to be grandfathered as, in her view, grandfathering relates only to facilities for storing manure or for confining livestock. The approval officer notes "When I deemed Stronks' application to be complete, I tended to view the catchment area as a manure storage facility (or manure collection area) akin to a catch basin. However, I later learned that Stronks was cropping the area as a way to manage nutrients from the runoff. I also learned, while I was considering the application, that heavy motorized earth moving equipment had created significant tire ruts in a portion of the area which would have

damaged any liner in the area. These activities both suggest that the catchment area is not a facility or catch basin.”

The approval officer wrote an email to the operator on September 25, 2018 that stated the catchment area could no longer be grandfathered as a result of heavy soil disturbances during the construction of a fresh water pond. The Board does not accept that the soil disturbances caused by the fresh water pond construction justify the approval officer’s change of mind on grandfathering.

Having regard for the available evidence, the Board finds that the catchment area is a natural catch basin formed by a depression in the land surface that Stronks utilizes to collect surface runoff from the feedlot pens. The natural catch basin is not a vegetated filter strip. The existence of a naturally occurring protective layer for this natural catch basin is unknown. Stronks’ management practices along with the overall character of the catchment area, strike more of the catch basin characteristics than those associated with a vegetated filter strip. Stronks states in his December 5, 2017 email to the approval officer ‘that the catchment facility should not receive a definition such as a “vegetated filter strip”’, and goes on to state “A filter strip would suggest the runoff would move through vegetation to its final resting place which is not the case here. The catchment facility holds water until it can be evaporated or pumped onto surrounding farmland”.

While challenging, the Board recognizes that the use of a “natural catch basin” is unique and merits a unique approach. In addition, the Board finds that run-on and runoff control systems are routinely incorporated in permits. The natural catch basin employed at Stronk’s is part of a run-on and runoff control system.

The approval officer considered whether the 1994 municipal permit condition requiring a constructed catch basin formed part of the deemed AOPA permit and concluded that the municipal condition did not carry forward to the deemed permit. Grandfathering assessments are sometimes challenging and require careful assessment of a number of factors. The Board finds that the approval officer made the correct decision in determining that the municipal permit requirement to construct a catch basin does not form part of a deemed AOPA permit for Stronks. The Board accepts that the catchment area existed and was part of the CFO as of January 1, 2002. As such, the Board is satisfied that it is grandfathered as part of the deemed permit. Therefore, this component of the operation does not need to meet AOPA technical standards for the continued operation under the deemed permit *unless* the CFO operation is creating a risk to the environment or an inappropriate disturbance.

Issue 2 - Risk to the environment

(a) Risk and continued use of the natural catch basin for the existing feedlot

The approval officer record and Decision Summary LA17038 clearly state that the approval officer had concerns about the environmental risk associated with the use of the catchment area. Under AOPA s. 20 (1.2) in considering whether an application for an approval meets the requirements of the regulations, an approval officer is required to assess the risk of existing facilities to confirm whether they pose a risk to the environment. The Board finds that the approval officer request for additional information to assess the risk of the natural catch basin is necessary and appropriate.

(b) Use of the natural catch basin for the expansion

Stronks' application will add considerable additional manure runoff to the natural catch basin. Given the unique attributes and management system of the natural catch basin, the Board finds that a reasonable interpretation of AOPA would allow Stronks to continue to use the natural catch basin for the expanded facilities so long as the natural catch basin meets the regulations for run-on and runoff control systems in AOPA's standards and administration regulation.

Both the approval officer and Stronks are in agreement that run off from manure storage facilities needs to be understood and managed in order to protect surface and groundwater. Stronks asserts that through either, or both, a naturally occurring liner and crop nutrient uptake, that the risk to the environment is low and that he should be allowed to continue to use the catchment area for his current operation and the proposed expansion. The approval officer stated that without soil testing that demonstrated that groundwater was adequately protected, she would not proceed with finalizing the Stronks application. Having regard for the entire record, the Board finds that the approval officer correctly determined that the continued use of the natural catch basin or its use with the expanded facilities may pose a risk to the environment, and that this risk needs to be properly assessed.

AOPA manages risks to the environment by containing manure at CFO facilities and through manure spreading activities that manage crop nutrients. These provisions take advantage of the manure's nutrient properties while protecting important surface and groundwater resources. Stronks asserts that the catchment area protects the groundwater resource through a combination of nutrient uptake and some circumstances holding runoff until it can be evaporated or pumped onto surrounding farmland. Soil tests as proposed by the approval officer would provide the necessary information to determine whether the combination of these management practices are adequate to protect the groundwater resource.

The NRCB's risk screening tool was not applied by approval officer to the catch basin area. In relation to the Stronks' application, the Board has concluded that there is limited value in applying the risk screening tool to the catchment area. The Board finds that the available evidence fully supports the approval officer's conclusion that the natural catch basin requires investigative soil testing to demonstrate that the natural catch basin has met and can continue to meet performance standards that will protect groundwater.

Under s. 20(1.2) of the Act an approval officer must consider whether the proposed expansion or alteration of an existing building or structure or any proposed new building or structure meets the requirements of the regulations. In this case, Stronks proposes to expand use of the existing natural catch basin for the expansion and therefore must meet the performance standards in the regulations. The Board notes that s. 9(7) of the *Standards and Administration Regulation* provides an approval officer the authority to issue an approval for a manure collection area if it has a liner or a protection system that uses biological methods, monitoring or performance standards that provide equal or greater protection than that provided by subsection (6).

Decision

Upon reviewing the submissions from all parties, the Board finds that the approval officer acted reasonably and applied sound reasoning in concluding the need for exhaustive soil testing. The Board, however, finds that Stronks' assertion on the grandfathering status of the natural catch basin and its continued use for the expansion warrants a review. This RFR came to the Board under NRCB Operational Policy 2016-4: *Resolving Disputed Permit Information Requirements Between the Applicant and Approval Officer*. In granting the RFR and directing the matter to a Board hearing, the application may continue to move forward without having to restart a new application process.

Review Process

The Board has determined that it will conduct a written review on the issue of the continued use of the natural catch basin. The details for the review process are set out in this section.

The Board has concluded that consideration of this issue requires investigative soil testing to assess past performance and to predict the suitability of the natural catch basin to receive runoff from the expanded CFO. As the applicant, Stronks must retain a qualified third party to satisfy the Board requirements described below.

(a) Soil sampling and use of a biological method to protect groundwater

In conducting the sampling, the third party must divide the catchment area into four equally large sections with five samples per section at two sample depths (0 cm – 15 cm; 15 cm – to 60cm). The five samples per section can be combined into two composite samples of 0 cm –

15 cm and 15 cm – 60 cm for soil analysis (total of eight samples). Follow the soil analysis requirements referenced in Schedule 3 of the *Standards and Administration Regulation*, under AOPA for extractable nitrate-nitrogen and soil salinity. As part of its report, the third party shall include a map illustrating the locations for each soil sample taken.

Once completed the soil tests shall be filed with both the Board and the approval officer. In the event that Stronks is relying on the surface soil tests to demonstrate groundwater protection, the Board also requires that a report by a professional agronomist accompany the soil test results. The agronomist's report must address practices and procedures necessary for the natural catch basin to continue to protect groundwater both under the current permit animal numbers and the expanded numbers in accordance with s. 9(7) of the *Standards and Administration Regulation*. The approval officer shall, no later than 7 working days after receiving the soil tests and agronomist's report, file a report assessing the suitability of the catchment area as a means to protect ground water from pen runoff.

(b) Alternatives

1. In the alternative to relying on surface soil tests, the applicant may provide qualified third party testing and analysis to determine whether a natural occurring protective layer in the entirety of the natural catch basin area meets the requirements of section 9(5)(b) of the *Standards and Administration Regulation*. The approval officer shall file a report assessing the applicant's filing no later than 7 working days after receipt.
2. Should Stronks determine that it wants to construct a new catch basin rather than continuing to use the catchment area, it must provide an engineer's design and site plan. Any new catch basin must include a liner or protective layer that meets the hydraulic conductivity requirements in the *Standards and Administration Regulation*. If Stronks chooses this alternative, the engineer's design and site plan shall be filed with both the Board and the approval officer. The approval officer shall file a report assessing the suitability of the catch basin to meet AOPA standards within 7 working days of receiving the catch basin plan.

The Board will determine next steps once it has received the described filings from both Stronks and the approval officer. In determining those next steps, the Board will canvas both the applicant and the approval officer with a view to expeditiously completing the record and proceeding to a decision.

Finally, the Board finds that the uncertainty associated with the groundwater protection afforded by the natural catch basin merits soil testing by the NRCB compliance division

should Stronks choose to abandon its plans for expansion. In the event that Stronks elects not to pursue its expansion application or to defer its application, the Board will refer the matter to the NRCB compliance division.

DATED at EDMONTON, ALBERTA, this 11th day of June, 2018.

Original signed by:

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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.