



BOARD DECISION

2018-09 / LA17038

Review of Decision Summary LA17038

Stronks Feedlot Ltd.

August 23, 2018

Background

This report provides the Board's decision following its written hearing review of Decision Summary LA17038.

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 that the approval officer determined to be directly affected by the expansion. 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.

A panel was appointed to conduct the review, consisting of Peter Woloshyn (panel chair), Sandi Roberts, and Keith Leggat. On June 11, 2018, in Board Decision RFR 2018-07 (RFR Decision), the Board determined that it would conduct a written review on the issue of the continued use of the natural catch basin. In directing the matter to written review, the Board focused on the risk to the environment posed by the expanded use of the natural catch basin, stating:

Stronks' application will add considerable additional manure impacted 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.

The Board concluded in the RFR Decision that consideration of this issue required investigative soil testing to assess past performance and an agronomist's report to predict the suitability of the natural catch basin to receive runoff from the expanded CFO; and further specified that Stronks must retain a qualified third party to satisfy the Board requirements, stating:

(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.

Stronks filed soil tests and its argument in support of the natural catch basin on July 26, 2018 and the approval officer's assessment report was filed on August 3, 2018, completing the Board's review record. The Board met August 9, 2018 to consider the submissions.

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;
- Portions of the public record maintained by the approval officer;
- Submission by Stronks dated July 26, 2018; and
- Submission by the approval officer dated August 3, 2018.

Issue

Stronks was required to provide investigative soil testing to assess past performance and to predict the suitability of the natural catch basin to receive runoff from the expanded CFO. The Board specified that Stronks must include a report prepared by a professional agronomist that includes practices and procedures necessary for the natural catch basin to protect groundwater both under the current permitted animal numbers and the expanded numbers in accordance with s. 9(7) of the *Standards and Administration Regulation*.

In the RFR Decision, the Board also provided Stronks with two alternatives that would not require reliance on the biological method contemplated by s. 9(7). The Stronks' submission did not pursue either of those alternatives.

Discussion

AOPA establishes standards for manure management that protect groundwater and surface water and in turn provide communities with assurance that confined feeding operations are subject to regulatory standards that effectively manage risk. As stated in the RFR Decision, the Stronks' application is for an expansion of an existing operation and, as that expansion proposes to increase the manure entering the catch basin, AOPA requires that the catch basin must meet the legislative standards. As the Stronks' catch

basin has neither a constructed liner nor a proven naturally occurring liner, the RFR Decision set out the information that would be required to establish a biological method contemplated by s.9(7) of the *Standards and Administration Regulation*. Included in that required information was that Stronks must provide a professional agronomist's report that sets out the practices and procedures necessary for the natural catch basin to continue to protect groundwater both under the current permitted animal numbers and the expanded numbers.

Board Findings

For the reasons that follow, the Board denies Stronks' application to expand its confined feeding operation.

The Board notes that the Stronks' soil tests performed in the natural catch basin area indicate that there are nitrate-nitrogen levels in the top 60 cm of the soil profile which exceed the limits shown in Table 3 of Schedule 3 of the *Standards and Administration Regulation*, and soil salinity of more than 4 decisiemens per metre as measured by the electrical conductivity in the top 15 cm of the soil also exceed AOPA standards.

The Stronks' hearing submission includes a one-page letter from a third party which provides general information about crops that can be grown to utilize various amounts of nitrogen. It does not include a professional agronomist's report as specified by the RFR Decision, and contains no relevant evidence that supports the approval of the natural basin's use associated with the proposed CFO expansion in accordance with s. 9(7) of the *Standards and Administration Regulation*. Professional agronomists either have the skills necessary to prepare the report required by the Board or have the professional acumen to refer the matter to an agronomist with the requisite skills. The Stronks' submission does not contain even the basic information specified by the Board in the RFR Decision that would allow it to assess the current or potential performance of the natural catch basin.

The Stronks submission dated July 26, 2018, speaks to these issues, stating:

Our catch basin has been used to collect manure for the last 30 years. Of course, we would expect to see nutrient accumulation in the soil profile, no different than any other grandfathered or AOPA designed catch basin. ... It has always been a manure storage which is why we have always disagreed with soil sampling in the catch basin for nutrients.

The Board finds that Stronks' assertion that its catch basin is "no different than any other grandfathered or AOPA designed catch basin" is fundamentally flawed. If this were a catch basin constructed in accordance with the liner requirements that were commonly used by

municipalities at the time this CFO received its pre-AOPA municipal development permit, or if it was constructed to AOPA standards, there would be no need to conduct soil tests. The Stronks' natural catch basin does not have a constructed liner and there is no evidence of a naturally occurring liner.

Furthermore, the Board is concerned that Stronks continues to disagree that soil sampling is necessary in the natural catch basin given that s. 9(7) states that a manure storage facility or manure collection area may be approved 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). In relying on the ability of crops to take up nutrients as the protection system—a biological method as opposed to a physical liner—Stronks must utilize soil sampling and a properly developed plan; otherwise, there is no ability to reliably predict or track catch basin performance.

The Stronks' submission returns to misplaced reliance on the environmental risk screening tool (ERST) the NRCB developed to primarily assess grandfathered manure storage facilities. As the Board has stated earlier, the legislation requires new and expanding manure management facilities to meet AOPA standards. Further, in the face of credible evidence that suggests a risk is present, the NRCB has an obligation to investigate that risk. The soil tests submitted by Stronks and the approval officer's assessment provide clear evidence of the need for further assessment of the current risk posed by the natural catch basin.

Finally, the Board sees there may be value in making some further comments. Stronks asserts that the NRCB has treated it differently than its neighbour feedlots and that its application was not processed on a timely basis. The Board has reviewed the approval officer's application record on this file and is satisfied that the approval officer conducted her review in a professional manner consistent with the legislation and policy in place. The record would suggest that the reasoning behind Stronks' assertions relate to its failure to accept that, when it proposed to add additional manure to the existing catch basin, it must meet AOPA catch basin liner regulations. As a consequence, much time was taken in unproductive exchanges between Stronks, who was relying on the continuing grandfathered status of the natural catch basin, and the approval officer, who determined that soil tests were necessary. The approval officer and Stronks then accepted that it was appropriate for the approval officer to issue a denial decision in accordance with the NRCB policy intended to respond to a dispute on permit information requirements. There was an unfortunate time delay in finalizing and releasing her decision summary after the determination was reached.

Decision

For the reasons set out above, the Board declines to direct the approval officer to issue an approval to Stronks to increase permitted beef finishers from 6,500 to 10,000 or to amend the existing permit to include the unpermitted row of pens.

DATED at EDMONTON, ALBERTA, this 23rd day of August, 2018.

Original signed by:

Peter Woloshyn

Sandi Roberts

Keith Leggat

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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.