



BOARD DECISION

2019-03 / LA18053

Review of Decision Summary LA18053

Stronks Feedlot Ltd.

May 10, 2019

Background

This report provides the Natural Resources Conservation Board decision following the review hearing of Approval LA18053.

On January 18, 2019, NRCB approval officer Carina Weisbach issued Approval LA18053 in relation to the expansion of the confined feeding operation (CFO) proposed by Stronks Feedlot Ltd. (Stronks) at NW 33-10-20 W4M in Lethbridge County. Stronks' proposed expansion includes increasing the permitted number of beef finishers from 6,500 to 10,000, constructing two rows of pens, constructing a runoff pump out pit, and permitting one row of already constructed but unpermitted pens. The approval officer approved Stronks' application, subject to a number of conditions.

Pursuant to Section 20(5) of the *Agricultural Operation Practices Act* (AOPA), a Request for Board Review (RFR) of Approval LA18053 was filed by Stronks on January 23, 2019. A Panel (the Panel or Board) consisting of Peter Woloshyn (Panel Chair), L. Page Stuart, Sandi Roberts and Keith Leggat was appointed to conduct the review. On February 22, 2019, Board Decision RFR 2019-02 advised parties that, once it had received an updated nutrient management plan from Stronks, the Panel would conduct an oral hearing to consider revising condition 18 of Approval LA18053. An updated nutrient management plan was filed on March 12, 2019.

The Board hearing was conducted on April 18, 2019, in Lethbridge, Alberta.

Board Deliberations

The approval officer's Decision Summary approved the application by Stronks, and specified a total of eighteen conditions that are included in Approval LA18053. Condition 18 states:

18. If the nitrate nitrogen and EC levels in the natural catchment area (as shown on site plan) still exceed the AOPA nutrient application limits by October 1, 2024 (section 24 and 25, Standards and Administration Regulation and schedule 3) the permit holder shall either:
 - depopulate the feedlot pens and remove all manure from the CFO facilities and runoff from the natural catchment area by December 1, 2024, or alternatively,
 - obtain a permit to implement an alternative runoff control system which addresses the AOPA ground and surface water protection requirements. The implementation of this alternative runoff control system shall be in place prior to December 1, 2024.

The NRCB reserves the right to amend this condition should information become available to support the change.

Stronks submitted that condition 18 should be amended, asserting that the depopulation and manure removal requirement as written was inappropriate. Stronks stated that, prior to receiving Approval LA18053, it had no notice that the approval officer was going to include a condition with the prescribed compliance timeline. The Board agrees with Stronks' assertion that the current timelines in condition 18 providing for obtaining a permit to implement an alternative runoff control system or depopulating the pens by December 1, 2024 are not achievable. Stronks' written hearing submission sought an amendment to condition 18 that would include the Stronks CFO in the "Risk Based Compliance Program" in the event that the facility did not meet the AOPA standards by October 2024.

As stated in Board Decision RFR 2019-02, the Board determined that AOPA requires that the nutrient management plan must satisfy the protection requirements set out in the Standards and Administration

Regulation. At the hearing, Stronks restated that the natural catchment area should have been assessed using the Board's environmental risk screening tool (ERST) as it would provide an understanding of the associated risk. The approval officer stated that the ERST is based on the assumption that a liner exists, and does not apply to areas that use a biological method as the tool to mitigate risk to groundwater. While the Board does not fully understand why the tool does not apply for biological systems without liners, it finds that applying the ERST would not change the requirement that the catchment basin must satisfy the protection requirements set out in the Standards and Administration Regulation. Having regard for Stronks' approved expansion and the use of a biological system incorporating a nutrient management plan to manage feedlot runoff, the Board notes that both active management by the operator, and annual review by NRCB Field Services, are prudent components of achieving compliance.

The Board concludes that condition 18 of Approval LA18053 should be amended in order to adequately assess the performance (over time) of the nutrient management plan in meeting the requirements of s.9(7) of the Standards and Administration Regulation. The Board directs that amendments to the approval will incorporate testing to provide an understanding of the soil type and depth to water table, and require an annual nutrient management plan performance review by the NRCB.

In amending condition 18, the discretion available to the Board is constrained by the legislative directive. The approval officer's direct evidence was that she chose the October 1, 2024 date for condition 18 as the Stronks' nutrient management plan projected that, by that date, it would achieve below threshold levels for nitrate nitrogen and electrical conductivity. While Stronks expressed confidence that the nutrient management plan would achieve the statutory objective within that timeframe, it also stated that excessively wet weather conditions could cause setbacks in some years that would potentially delay reaching the statutory objective. Stronks recognizes that a biological system requires active ongoing management, and that it will need to conduct and provide annual soil tests to the NRCB for the life of the natural catchment area. The Board also recognizes that biological control systems are, by nature, variable and somewhat unpredictable.

The approval officer's evidence was that the wording of condition 18 was intended to provide for adjustments that would accommodate unpredictable events and respond to trends. Indeed, the approval officer stated at the hearing that even if the soil tests continued to show exceedances of the specified standards, the 2024 deadline could be extended if the annual soil testing results established that the nutrient management plan had established a high likelihood of success. The Board finds that the approval officer's statements at the hearing, in relation to how she saw the NRCB interpreting and applying the flexibility in condition 18, was consistent with Stronks' submission of what would be necessary and appropriate for assessing the nutrient management plan. The Board's revised language in condition 18(2a) captures that common vision.

When asked to provide alternatives should it become clear that the nutrient management plan is not working, Stronks' submission was that it would prefer to continue to pursue options with biological methods and a nutrient management plan. The Board finds that the revisions to condition 18 support a flexible approach to monitoring and assessing the success of the biological system, and provide appropriate opportunity for its evaluation. Nonetheless, the Board also notes that the legislation invariably requires compliance. Should it be determined that the biological approach to nutrient management does not have the potential to meet statutory objectives, the Board finds that the revision of condition 18 provisions must include the option to obtain a permit to implement an alternative runoff control system or, failing that, depopulate the pens. However, the Board further finds that the current language used in condition 18 should be clearly restated to provide either sufficient time to apply for

and construct an alternative runoff control system, or sufficient time for the orderly depopulation of pens. The Board amends condition 18 such that, should Stronks pursue the option of constructing an NRCB approved alternative runoff system, that runoff system must be constructed by December 1, 2025. The Board also provides that a one year timeframe be established for any depopulation order pursuant to condition 18.

Even if the nutrient management plan has not fully achieved the statutory requirement by 2024, there will be an adequate record available for the approval officer to determine the likelihood of meeting statutory objectives and whether a time extension is appropriate.

In order to identify the prescribed legislated objective for the biological runoff control system at the Stronks' site, the Board notes that Stronks must provide information that identifies the soil texture to a depth of 60 cm, as well as the depth to water table. This information is necessary to determine which values apply from schedule 3 (table 3) in the Standards and Administration Regulation. The Board will require the approval be amended so these tests are performed at the time Stronks contracts its 2019 soil tests.

The Board notes, without comment, that Stronks has indicated an intention to apply for an amendment to its Approval LA18053 in relation to the natural catchment area pump-out. At the date of the hearing, that application had not been received by the approval officer.

Decision

The Board directs that Approval LA18053 be amended to require the permit holder to provide the results of a soil texture test (to 60 cm depth) and test for depth to water table at a location in the natural catchment area specified by the approval officer, and that the NRCB will conduct and share the results of an annual nutrient management performance review with the permit holder based on the annual soil tests.

As a result of the Board's deliberations, it has determined that condition 18 of Approval LA18053 should be amended to read:

18. Within one month of receiving the soil tests required by December 15, 2024:
 1. The NRCB shall determine whether nitrate nitrogen and electrical conductivity levels in the natural catchment area (as shown on site plan) are achieving the nutrient application limits (section 24 and 25, Standards and Administration Regulation and schedule 3).
 2. If the soil test results remain in exceedance of the AOPA standards:
 - a. The NRCB shall determine whether the nutrient management plan has resulted in sufficient reductions in nitrate nitrogen and electrical conductivity levels to warrant continued operation. If so, the NRCB shall provide the permit holder a reasonable extension period up to, but not exceeding, five years (to December, 2029).
 - b. If, in the opinion of the NRCB, sufficient reductions in nitrate nitrogen and electrical conductivity levels have not been achieved to warrant an extension, the permit holder shall either:

- i. obtain a permit for a constructed runoff control and storage system that meets AOPA ground and surface water protection requirements and have it constructed by December 1, 2025, or
- ii. depopulate and remove all manure from all CFO pens within one year of receiving direction from the NRCB.

The NRCB reserves the right to amend this condition should information become available to support the change.

DATED at EDMONTON, ALBERTA, this 10th day of May, 2019.

Original signed by:

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Keith Leggat

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