



## **BOARD DECISION**

### **RFR 2019-02 / LA18053**

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary LA18053

Stronks Feedlot Ltd.

February 22, 2019

## Background

On January 18, 2019, NRCB approval officer Carina Weisbach issued Decision Summary 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. In Decision Summary LA18053, the approval officer approved Stronks' application, subject to a number of conditions.

Pursuant to Section 22(4) of the *Agricultural Operation Practices Act* (AOPA), on January 23, 2019 a Request for Board Review (RFR) of Decision Summary LA18053 was filed by Stronks, as represented by Mr. Carson Stronks. The RFR was filed within the 10-day filing deadline established by AOPA.

All directly affected parties were provided with a copy 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 RFR were provided the opportunity to make a rebuttal submission in response. The Board did not receive any rebuttal submissions.

The Board convened to deliberate on the RFR on February 12 and 21, 2019.

## Jurisdiction

The Board's authority for granting a review of an approval officer's decision is found in Section 25(1) of the *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 14 of the *Board Administrative Procedures Regulation* describes the information that must be included in each RFR.

## Documents Considered

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

- Decision Summary LA18053 dated January 18, 2019 and its companion technical document;
- RFR filed by Stronks, dated January 23, 2019; and
- Portions of the public record maintained by the approval officer

## Board Deliberations

The AO Decision Summary approved the application by Stronks and specified a total of eighteen conditions that are included in Approval LA18053.

As a preliminary matter, the Board noted that the Stronks RFR states that the survey to the Lanser residence as required by condition 10 of Approval LA18053 is no longer required as Stronks has obtained an MDS waiver from Lanser. The Board finds that this issue does not merit Board review as it is a matter that is more appropriately managed by the approval officer and field services.

The RFR asks the Board to remove two of those conditions (6 and 7), and questions the necessity of two additional conditions (16 and 18). The Board considers that the intent of the RFR is to request the removal of all four conditions, listed below as they appear in Approval LA18053:

- Condition 6

The permit holder shall provide the NRCB with a written construction completion report for the runoff pump out. The report shall be stamped and signed by a "professional engineer" as defined in the Standards and Administration Regulation, who has supervised the construction. The report shall:

- Confirm that the professional engineer was supervising the construction
- Certify that the runoff pump out was constructed at the location specified in the site plan provided with the application;
- Confirm that the concrete used to construct the runoff pump out has a minimum 56-day strength of 32 MPa, that the walls and floor of the pump out are adequately reinforced and that all floor/wall joints and extrusions have been properly sealed to prevent leakage from occurring.

- Condition 7

The permit holder shall not allow runoff to enter the runoff pump out until the facility has been inspected by NRCB personnel and determined by them, in writing, to have been constructed in accordance with the terms and conditions of this permit.

- Condition 16

The permit holder shall conduct annual soil testing in the natural catchment area commencing in 2019. The sampling shall be conducted by a professional agrologist and with the same requirements and at the same locations as directed by the Board in Board Decisions RFR 2018-07 / LA 17038 and 2018-09 / LA 17038. (" ... 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- 60 cm). 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 requirement referenced in Schedule 3 of the Standards and Administration Regulation under AOPA for extractable nitrate-nitrogen and soil salinity."). The soil testing results must be submitted annually by December 15 to the NRCB. The NRCB may revise those requirements as determined necessary, in writing.

- Condition 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.

The Board met on February 12 and 21, 2019 to deliberate on the filed RFR. In its deliberations, the Board considered whether a review was warranted for each of those conditions.

#### **The request to remove conditions 6 and 7**

The Board first considered Stronks' request to remove conditions 6 and 7. Stronks supports its request by stating that "an alternative solution for a pump out site was accepted by the Approval Officer, after the permit was issued". The approval officer's record shows that Stronks forwarded a "runoff pumpsite plan" via email to the approval officer on January 21, 2019, subsequent to the issuance of Approval LA18053 on January 18, 2019. Given that the modification was proposed after the approval was issued, the Board would direct Stronks back to the approval officer to identify steps necessary to obtain an amendment of Approval LA18053, if its intent remains to pursue this alternate pump out plan.

The Board finds that the Stronks' request to have the Board remove conditions 6 and 7 does not merit review by the Board.

#### **The request to remove condition 16**

Condition 16 sets out soil testing requirements in the natural catchment area. In support of Stronks' request to remove this condition, the RFR states that "our Nutrient Management Plan has been accepted by the NRCB ... and that this plan enables us to manage nutrients as we see fit, within a time frame for our operation". As stated in Board Decision 2018-09/LA17038:

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 AOPA Standards and Administration Regulation clearly states that a manure collection area that relies on biological methods must provide equal or greater protection than that specified for a constructed liner. The Board finds, as stated in Board Decision 2018-09/LA17038, that soil sampling is necessary to reliably track catchment area performance.

The Stronks' nutrient management plan prepared by Mr. Lubberts of Complete Agronomic Services, Inc. clearly includes "regular soil testing (at least annually)". The soil testing requirements specified in condition 16 are a necessary component of measuring the effectiveness of the Stronks' nutrient management plan and are necessary for the NRCB field services to determine whether the natural

catchment area is meeting the performance standard required by s.9(7) of the Standards and Administration Regulation.

The Board finds that the approval officer adequately dealt with the annual soil testing issues and therefore the Board will not review the Stronks' request to remove condition 16 in Approval LA18053.

### **The request to remove condition 18**

The Board is prepared to grant a review in relation to the Stronks' request to remove Condition 18. The Board understands that, to be successful, the Stronks' nutrient management plan must achieve compliance with the nitrogen and electrical conductivity (EC) application limits identified in s.25 of the Standards and Administration Regulation. That said, the Board has not found any explanation why the approval officer chose the December 1, 2024 date.

The current Stronks' nutrient management plan does not provide sufficient detail for the Board to assess the appropriateness of the December 1, 2024 date. The Board expects that the nutrient management plan and annual testing will provide the information necessary to determine the effectiveness and feasibility of the natural catchment area. To be successful, the nutrient management plan must satisfy the protection requirements set out in the Standards and Administration Regulation. While the Board understands the complexities of forecasting precise timing in which nitrate/EC levels will fall within AOPA standards, it is expected that Stronks provides a reasonable timeframe for successfully implementing a biological control that satisfies s.9(7) of the Standards and Administration Regulation. In doing so, the Board is also interested in what indicators (and timelines) might lead to the conclusion that the nutrient management plan is unlikely to achieve the necessary result.

The Board will conduct a review of condition 18 of Approval LA18053. The Board require Stronks to file an updated nutrient management plan that includes reasonable annual performance objectives, including expected runoff removal volumes (as a percentage of total runoff) from the catchment area, and to identify if these numbers are dependent on the choice of pump out system. Details on the proposed operating criteria for the pump out system(s) should be included. Stronks' updated nutrient management plan must be prepared by a professional agrologist.

The Board expects that the nutrient management plan will identify if and how pump out volumes of manure impacted runoff will impact the efficacy of achieving nutrient loading requirements as set out in the Standards and Administration Regulation. In providing these performance objectives, the Board understands that annual variables may affect short term results. However, the performance objectives should include progressive minimum targets that will achieve the required objectives within a specified and reasonable timeline. The nutrient management plan should also provide for the possibility that it is not achieving the necessary results. In that case, the plan should include the Stronks' commitment to obtain a permit and implement an alternative runoff control system that does not rely on biological methods.

The Board will conduct an oral hearing to consider revising condition 18 of Approval LA18053. The Board will set the date for that hearing once it receives an updated nutrient management plan from Stronks.

In conducting an oral hearing, the Board will have the benefit of evidence from the proponent and the approval officer.

## Decision

As a result of the Board's deliberations, it has determined that a review is warranted to consider whether to amend condition 18 of Approval LA18053.

Issues not warranting Board review:

- Request to remove conditions 6 and 7 (Stronks may apply to the approval officer for an amendment); and
- Request to remove condition 16

## Review Process

The Board will conduct an oral hearing to consider revising condition 18 of Approval LA18053. The Board will set the date for that hearing once it receives an updated nutrient management plan from Stronks. In setting a hearing date, the Board may provide an opportunity for field services to make an advance submission in relation to Stronks' updated nutrient management plan.

Written submissions are to be directed to the attention of Laura Friend at the Calgary offices of the NRCB. The Board will ensure that all materials are circulated prior to the oral hearing.

DATED at CALGARY, ALBERTA, this 22 day of February, 2019.

*Original signed by:*

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Peter Woloshyn

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L. Page Stuart

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Sandi Roberts

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Keith Leggat

Contact the Natural Resources Conservation Board at the following offices. Dial 310.0000 to be connected toll free.

**Edmonton Office**

4th Floor, Sterling Place, 9940 - 106 Street  
Edmonton, AB T5K 2N2  
T (780) 422.1977 F (780) 427.0607

**Calgary Office**

19<sup>th</sup> Floor, 250 – 5 Street SW  
Calgary, AB T2P 0R4  
T (403) 297.8269 F (403) 662.3994

**Fairview Office**

Provincial Building, #213, 10209 - 109 Street  
P.O. Box 159, Fairview, AB T0H 1L0  
T (780) 835.7111 F (780) 835.3259

**Lethbridge Office**

Agriculture Centre, 100, 5401 - 1 Avenue S  
Lethbridge, AB T1J 4V6  
T (403) 381.5166 F (403) 381.5806

**Morinville Office**

Provincial Building, #201, 10008 - 107 Street  
Morinville, AB T8R 1L3  
T (780) 939.1212 F (780) 939.3194

**Red Deer Office**

Provincial Building, #303, 4920 - 51 Street  
Red Deer, AB T4N 6K8  
T (403) 340.5241 F (403) 340.5599

NRCB Response Line: 1.866.383.6722

Email: [info@nrcb.ca](mailto:info@nrcb.ca)

Web Address: [www.nrcb.ca](http://www.nrcb.ca)

Copies of the *Agricultural Operation Practices Act* can be obtained from the Queen's Printer at [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca) or through the NRCB website.