

# Getting My Barn Built - It's About Time – A Regional and Producer Perspective

Rich Smith

Manager, Engineering & Environment, Elite Swine Inc., Bay 2, 55 Wheatland Trail, Strathmore,  
AB T1P 1R7; *Email:* rsmith@eliteswine.com

## ■ Introduction

Timing is everything. The requirement of preparing proceedings for this seminar means that papers must be written at least two months before the seminar occurs and yet, the title of this session implies current information. At the time of the original deadline for submission of papers, Elite Swine Inc. was waiting for a decision on our first application under the new Alberta regulatory regime. We finally received notice of our approval on the day before I began writing this paper.

During the coming two months, I will be involved in applications for approvals in Alberta, Saskatchewan, Manitoba, and North Dakota. With the new Alberta regulatory process suffering from what can most charitably be called growing pains and a province full of newly elected Rural Municipal Councils in Manitoba, there is a very good chance that my perspective on regulations will change by January. All this by way of warning that what you read in this paper and what you hear at the seminar may be significantly different.

Time is a key factor in producers' view of regulations. Livestock producers must deal with the vagaries of animal production and fluctuating markets to make an operation profitable, while facing the challenges of ever-changing social and environmental pressures. We simply can't afford to have the added uncertainty of an unpredictable regulatory process. In a cyclical business, not knowing whether a barn will be approved or worse, believing it will be approved, but having no idea when the approval will come, adds too much risk to any proposed development. A six to nine month delay in approval of a project can mean the difference between starting an operation with significant profits or substantial losses.

Contrary to some beliefs, livestock producers do not fear regulations. In fact, responsible pork producers welcome reasonable regulations. Fair, consistent, and timely application of clear and scientifically sound regulations are the best defence against regulatory uncertainty. Very often, producers and regulators are on the same side. We both want to see the development of economically competitive, socially responsible, and environmentally sound hog operations.

## ■ **Regional Regulatory Review**

For the purpose of this session, there is neither the time nor the need to present a detailed description of the regulations in the various regions in which Elite Swine Inc. seeks approvals. Instead, I shall provide a quick summary of the regulatory processes, trying to identify the key features of the regulations and those areas in which the regulations are similar to, or different from, the rules in other jurisdictions. Most importantly, I'll conclude with my assessment of the impact of these regulations on barn development. How are the regulations working now and how can they be expected to work in the future, looking from both a producer and an environmental view? These comments represent my opinion and I willingly defer to those with more knowledge than me.

### **Ontario**

I have not had any direct experience with the Ontario regulatory process, but Elite has established new operations in the province. Ontario has a two-stage process beginning with the acquisition of a building permit from the municipality based on meeting the minimum distance separation (MDS) requirements recommended by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA). A very detailed and comprehensive nutrient management plan must be prepared by a third-party consultant and submitted to the Ministry, along with manure storage plans. The nutrient management plan must be approved by the Ministry and, in some cases, by municipality sub-committees before the operation can be developed.

The Ontario regulations and certainly the development climate have been affected by the Walkerton tragedy. The regulations consider separation distances and have a strong emphasis on manure management, not surprising priorities in a province with a high population density and extensive surface water and subsurface field drainage systems. Development of hog barns in Ontario can be a difficult and expensive process, but the challenges often seem no greater than those faced by producers in areas with far fewer people, much less surface water, and no history of tragic water contamination episodes.

## **North Dakota**

Although North Dakota gives some consideration to separation distances and county land use approval is required, the regulatory process for concentrated livestock operations is largely controlled by a state Department of Health approval. The Department of Health regulations deal almost exclusively with protection of groundwater and surface water. In fact, at the public meeting for two of our approvals, the discussion and questions were strictly confined to these two topics. North Dakota approvals require the services of a professional engineer to prepare a voluminous document for submission to the state Department of Health.

North Dakota has lots of open spaces and very few large livestock operations. Nevertheless, state officials are wary of the bitter controversies that can arise out of hog barn development proposals. I believe this is the reason for the extremely detailed and costly approval application documents. The Department of Health Approval process is expensive, but it can be completed in a few months and it seems to encourage responsible development. Whether this situation reflects acceptance of livestock operations or merely opponents who have not yet been stimulated into action remains to be seen.

## **Manitoba**

The Manitoba regulatory process has been designed to provide a clear separation between the technical aspects of manure management and the social considerations involved in land use decisions. Local governments make land use decisions under the Planning Act, while the provincial government provides technical recommendations through Technical Review Committees and enforces the Livestock Manure and Mortalities Regulation under the Environment Act. Most hog operations require conditional use approval from the municipal council, a process that involves a public meeting and for which there is no prescribed appeal process. All manure storage structures require a permit from Manitoba Conservation and large livestock operations must prepare and register annual manure management plans with Manitoba Conservation.

While the provincial government has both guidelines and regulations, local governments are able to establish their own standards, for factors such as separation distances, in zoning bylaws or development plans. Furthermore, the election of a municipal council that is opposed to large livestock operations can result in a virtual or absolute moratorium on hog barn development. Provincial government officials also are becoming more cautious in their recommendations and more demanding in their enforcement of regulations. The time required for a technical review has increased substantially in the past year.

The Manitoba regulatory process has worked well for the industry and facilitated sustained growth in hog production. However, much of this growth has occurred in an area of the province where livestock operations and a person's right to farm without interference from neighbours are accepted very well. As the industry moves into areas where swine operations are relatively new and unknown, the opposition to these developments may increase and there is a real risk that this process will become much less effective in the future.

### **Saskatchewan**

Saskatchewan first began regulating intensive livestock operations in 1971 and is the venerable veteran in the area of provincial legislation. Approvals for intensive livestock operations are now issued under the Agricultural Operations Act. The key factors affecting the approval are manure storage, manure utilization, and dead animal management, although the province also places a high priority on site selection and public consultation. Applications are submitted to Saskatchewan Agriculture, Food and Rural Revitalization and then forwarded to other agencies through a broad and time-consuming referral process. Some intensive livestock operations require a further approval from the local municipality, but Saskatchewan has many rural municipalities in which intensive livestock operations are accepted readily or even welcomed.

The Saskatchewan regulatory process is certainly not quick, but it is generally rational and predictable. The SAFRR staff members are experienced, knowledgeable, and helpful. Although SAFRR is following the general trend toward increasingly conservative regulatory judgements, I don't believe the Saskatchewan process will be a significant barrier to the development of hog operations.

### **Alberta**

The new Alberta regulatory process is discussed in detail by Andy Cumming so I will confine my comments to a few general remarks. Before January 1, 2002, the provincial government had provided technical guidelines based on Codes of Practice for intensive livestock operations, while local municipalities were responsible for approving these operations through a development permit process. On this date, the Natural Resources Conservation Board was given the mandate for approval, compliance monitoring and enforcement activities related to confined feeding operations. This dramatic change was implemented because the previous process was quite simply not working.

The NRCB is to base its decisions on new regulations under the Agricultural Operation Practices Act. These regulations are relatively clear and generally sound, but the application of these regulations has been more uncertain and

inconsistent than producers expected. The approval process also is taking much longer than was anticipated by producers or promised by the NRCB. However, we see the advent of this process as a positive step and we are still hopeful that the process will be improved to the point where it will enhance the province's commitment to sustainable growth in the livestock industry.

## ■ **Producer Perspective on Regulations**

In the regional review of regulations, certain common features and trends are apparent. All hog producers seeking development approvals in North America will face these challenges to a greater or lesser extent. In order to be successful with development applications, producers must be aware of the potential regulatory pitfalls and have a clear strategy for dealing with them.

### **Regulatory Agencies**

Regulations are generally administered by local (municipal/county) and provincial/state governments, although the federal governments likely will play a more prominent role in the future. Provincial/state regulations tend to be broader and more technical, while local government decisions are more likely to reflect the political and social demands of the community. Provincial regulations are usually more consistent and can be more or less stringent than local rules depending on how favourably a community views hog operations. The variations among local regulations may not be a major problem for producers who can be flexible in their development locations, but certainly can affect producers wanting to develop in their own community.

### **Separation Distance (MDS)**

Most regulations include some separation distance requirements with the intent of reducing the odour nuisance for neighbours of livestock operations. While I understand the rationale behind MDS calculations and odour dispersion models, I question the value of trying to apply science and arithmetic to personal and subjective reactions to an odour. In twenty years of working with MDS calculations, I have never seen a situation where meeting the MDS prevented a conflict or failing to meet the MDS caused a conflict.

We should recognize that separation distance is only marginally effective as a nuisance management tool. Furthermore, I have a fundamental problem with the implication, inherent in all separation distance regulations, that residential use of agricultural land is more important than using this land for livestock operations. I believe that neighbours of livestock operations would be more willing to accept odours if land use policies clearly stated that confined feeding operations are a permitted use on all agricultural land. Hog producers also

must take responsibility for adopting practical and economical odour control measures.

### **Manure Storage**

Storage of manure is essential for proper management of this resource. Hog producers have a wide range of environmentally sound manure storage options available to them, although regulators and opponents often try to limit these options. Producers recognize that manure storages must provide protection for surrounding soil and water. As long as regulatory decisions are truly based on protection of the environment, producers will be able to select the manure storage option that is best for both the site and the operation. Problems arise when regulators make uninformed, ill conceived or blatantly political decisions about manure storages and then use environmental protection as the justification for imposing these requirements on hog operations

### **Manure Management**

Entrepreneurs selling systems for treating, refining, processing, and making fuel from manure abound, but the vast majority of hog manure is still applied to agricultural land as a source of plant nutrients and organic matter. Farmers have been putting manure on agricultural land for centuries and recent research indicates that hog manure coming out of long-term storage really is just a low-grade organic fertilizer with very few pathogens. As well, nearly all problems caused by manure application have been the result of some combination of poor planning and bad management. Despite these conditions, land application of manure is evolving into a process that is only slightly less complicated than manned space flight.

This evolution has been encouraged by scientists, bureaucrats, and consultants who find that the growing complexity of manure management leads to lucrative opportunities. Hog producers know that sound manure management is an essential component of sustainable operations and Elite Swine Inc. has always tried to be a leader in this area. Why, however, does a hog producer need to prepare a comprehensive nutrient management plan before applying manure on a field, using the latest in GPS and GIS technology, when the person farming the adjacent field can apply large volumes of nitrogen and phosphorus fertilizer year after year while doing no soil testing or monitoring?

### **■ Regulatory Trends**

The trends in regulatory processes can be summed up in one word: *more*. There will be *more* regulations and these regulations very likely will be *more* strict and demanding. Producers applying for development approvals will be

spending *more* time and *more* money on this process, while making *more* use of independent consultants. They will be forced to pay *more* attention to social and environmental issues in their development applications. They will be doing *more* monitoring and record-keeping.

With all of this pressure, North American producers will be facing more competition from producers in countries where the principal priority will be reaping the economic benefits of hog operations. Although our genetics, nutrition, crop production systems and production knowledge will help our operations maintain a competitive advantage, there is a limit to the amount of money that can be spent acquiring development approvals. Our regulators must balance the desire to address social concerns and protect the environment with the need for our operations to remain competitive in a global market.

## ■ Regulatory Strategy

The key component of a successful regulatory strategy will be knowledge. Producers must know the regulations and know the regulators. They must know the critical issues that will drive or stall the approval process. Although there are features that are common to almost all regulations, the relative importance of the various factors will vary from jurisdiction to jurisdiction.

Producers must learn about the communities in which they wish to establish operations, find out the important issues and priorities of the citizens. Finally, producers must know their neighbours and establish the best possible relationship with people living near the operation. I am not aware of any regulatory process that does not move more smoothly if the neighbours are on side with the development.

## ■ Conclusion

Getting my barn built is not easy and won't be getting easier or faster, but with patience, perseverance, good site selection, and a sound plan, it will be possible!