

October 8, 2021

Natural Resources Conservation Board
19th Floor Centennial Place
250 – 5th Street SW
Calgary, AB T2P 0R4

Attention: Ms. Laura Friend

Re: EO 21-01 – Request for Board Review – JS&S

Mr. Cody Metheral, P. Eng. of Linkage Ag Solutions has been retained by John Schooten and Sons Custom Feedyard Ltd (JS&S) to support their request for Board review of Enforcement Order (EO) 21-01 which was issued by Mr. Karl Ivarson, NRCB Inspector, on September 24, 2021. This submission provides a brief overview of the reasons why the review is necessary.

In his EO, Mr. Ivarson suggests that JS&S is non-compliant for operating their Mossleigh feedlot operation above the permit capacity. While Mr. Ivarson suggests he has not completed an official grandfathering determination to determine livestock type, he has set the permitted head number at 41,250. The facility was started in 1996 and then expanded under municipal development permit 98-012 in 1998.

During his investigation, Mr. Ivarson requested livestock inventory information which was supplied by the operator for 2019 and 2020. It was reported that each year the facility was feeding between 44,000 to 51,000 head.

Based on his permitted head determination and the reported livestock inventory numbers, Mr. Ivarson suggests that JS&S operated their facility above permit capacity and therefore decided enforcement action was warranted.

The EO also includes permitted head determinations for other JS&S feedlots, and includes reporting requirements for those facilities too.

The Board is asked to determine:

- If Mr. Ivarson followed the correct process to determined feedlot capacity for the Mossleigh and Diamond City feedlots

If it can be shown that JS&S was operating their facility based on their deemed permit capacity, then Mr. Ivarson has issued an Enforcement Order without merit, and the Board is asked to withdraw the Enforcement Order.

Determining Permitted Head Capacity

NRCB field staff have access to several key policy documents that can help provide clarity and ultimately support the consistent implementation of the Agricultural Operations Practices Act. It is assumed that NRCB field staff would utilize these documents when coming to their decisions.

NRCB Operational Policy 2016-5¹ provides information on how to determine livestock capacity for a grandfathered facility in Alberta. Based on the definitions found in this policy, it appears that Mr. Ivarson made his head determination solely based on the permit capacity (as noted on the municipal permits)

However, policy 2016-5 also suggests that a facility's 'physical capacity' to hold livestock is another key consideration, and further states that:

Field services staff will apply the "physical capacity method" in sub-section 18.1(2)(a) of AOPA to establish the deemed capacity of any grandfathered CFO whose physical capacity on January 1, 2002 was greater than its permitted capacity.

Mr. Ivarson provides no reasoning as to why he did not utilize the policy 2016-5, which is concerning given his intention was to examine the livestock capacity of a grandfathered confined feeding operation (the exact intent of the policy). Had Mr. Ivarson followed NRCB policy, he would have been required to set head capacity based on the 'physical capacity,' not the permit capacity.

In addition, it is understood that JS&S applied to expand the Mossleigh facility (August, 2021) and that the NRCB Approval Officer working on the file will be completing an official capacity determination. It is understood that this application is deemed complete (July 21, 2021) and currently going through the NRCB review process. It would not have been unreasonable for Mr. Ivarson to have waited to receive the capacity information and then decide if an EO was required.

¹ Determining Deemed Capacity for Grandfathered Confined Feeding Operations, Operational Policy 2016-5, Agricultural Operations Practices Act, January 26, 2016

In conclusion, the Board is asked to grant a review of the EO 21-01 to determine if Mr. Ivarson followed the correct process to determined livestock capacity for the Mossleigh and Diamond City feedlots. If it can be shown that JS&S was operating within their deemed permit capacity (based on physical capacity to hold livestock), then the Enforcement Order may not be warranted and the Board will then be asked for the order to be withdrawn.

Based on the records submitted to the NRCB already, JS&S has demonstrated that the Mossleigh feedlot physical capacity to hold livestock is greater that its permitted capacity noted on the development permit. The deemed permit capacity for this facility is more appropriately set at 51,000 head of finisher cattle.

In addition, the Board is asked to suspend the enforcement order until the Board makes its decision(s). Limiting feedlot capacity at this time of year (during the fall calf run) has significant operational and economic implications for JS&S.

Regards,

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