

COMPLIANCE DIRECTIVE

AGRICULTURAL OPERATION PRACTICES ACT

Revised Statutes of Alberta 2000 Chapter A-7

Date issued: April 30, 2020

Compliance Directive # CD 20-01

Issued by: David Smejkal,
Inspector, Compliance and Enforcement Division,
Natural Resources Conservation Board (NRCB)

Issued to: Bryan Perkins and Lewisville Pork Farm Inc.
22059 Township Road 420
Sherwood Park AB T8E 1E6

This directive is regarding unauthorized construction of an earthen manure storage (EMS), or manure storage facility (MSF) without a permit under the *Agricultural Operation Practices Act* (AOPA). The unauthorized construction is in relation to a swine confined feeding operation (CFO) located at Pt. NE 05-47-10 W4M, in Wainwright County, approximately 7 kilometres northeast of the Hamlet of Kinsella.

The CFO operates under the name of Lewisville Pork Farm Inc. (the operation) and is owned and operated by Bryan Perkins (the operator). The CFO was originally permitted by Wainwright County. That permit became a deemed (that is, grandfathered) permit under AOPA, when the act took effect on January 1, 2002. The CFO's deemed permit was replaced by Approval RA10005M, which the Natural Resources Conservation Board (NRCB) issued in 2010, to a former owner/operator. While the current owner/operator is in the process of applying for a new EMS facility (RA19039) with the NRCB, the permit has not been issued, and the EMS is the unauthorized construction discussed in this Compliance Directive.

Background

On April 23, 2020, Approval Officer Jeff Froese observed that construction had already been started at the operation for the proposed new EMS facility in NRCB application RA19039. The Approval Officer informed me that the application for the new EMS facility is not finished, and has not been deemed complete, therefore construction of the new EMS should not have been started.

A review of the NRCB database showed that a Part 1 application was submitted to the NRCB by the operator on July 9, 2019, for the proposed new EMS facility. On December 12, 2019, an

extension was requested by DGH Engineering on behalf of the operator to submit the Part 2 application to the NRCB. This request was approved, and on April 14, 2020, a Part 2 application was sent to the NRCB from DGH Engineering. As mentioned, the Part 2 was received by the NRCB, but it had deficiencies and has not been deemed complete by the Approval Officer.

On April 24, 2020, I conducted a site inspection at the operation and met with the operator, the manager of the operation Josh Haitel, and the engineer with DGH Engineering. At the time of the inspection, the unauthorized new EMS measured to be approximately 60 metres in length, 60 metres in width, and about 4.5 meters deep, in size. The new EMS also looked as though it had been compacted on the side walls. The new EMS was not currently being used for manure storage purposes.

During the inspection, the engineer claimed that work was conducted in November 2019 in preparation for the eventual construction of the new EMS facility. The work conducted involved test pitting to find groundwater levels as well as clay, and to soil sample. Excavating was also done to see if there was buried topsoil. Once this work was completed, the construction company proceeded to excavate and build the proposed new EMS without the operator's, manager's and engineer's permission. The engineer wasn't sure if it was built properly, and if/where the clay liner was compacted. The operator informed me that they noticed the construction of the new EMS in November of 2019, but did not self-report the unauthorized construction to the NRCB.

Unauthorized Construction

Section 14 of AOPA prohibits any person from commencing construction (or expansion or modification) of an MSF, for which an authorization is required pursuant to the regulations under the Act. Section 4(2) of the Agricultural Operations, Part 2 Matters Regulation, in turn, states that an "authorization" is required to commence construction of an MSF that is part of a CFO, unless the CFO owner already holds a permit for that MSF.

Section 1(1)(c) of the Part 2 Matters Regulation states that construction does not include "general maintenance" of a structure, CFO, or manure storage facility, or the "clearing and levelling of land." NRCB has interpreted "construction" as including, to dig an EMS for CFO facilities (other than clearing or leveling land). (NRCB Operational Policy 2012-1: *Unauthorized Construction* (updated August 17, 2017), part 2.1.)

AOPA does supply a definition for MSF. Section 1(c.3) indicates that an "MSF" means a facility for the storage of manure.

As noted above, my investigation indicates that the new EMS (or MSF) is considered construction for which an AOPA permit is required, and is not covered by an existing permit. Accordingly, I conclude that Lewisville Pork Farm Inc. and Bryan Perkins conducted unauthorized construction activities by building the new EMS without an authorization.

AOPA's permit requirements are intended to reduce the potential for groundwater contamination and surface water runoff, and to lessen the nuisance impacts of CFOs on neighbours. Without a permit, the regulatory objects in AOPA may be compromised.

Accordingly, this directive is to remedy the violations noted above and to mitigate any possible risks to the environment and to any affected neighbours.

DIRECTIVE:

1. Lewisville Pork Farm Inc. shall take all necessary and appropriate measures to comply with AOPA and its regulations with respect to the unauthorized activities described above.
2. Lewisville Pork Farm Inc. must not continue to construct the new EMS proposed in RA19039, or place any manure in the new EMS until they receive an NRCB permit, for this construction.

If the NRCB issues an authorization, you can use the new EMS according to the terms and conditions of that permit.

If the NRCB denies your application, further enforcement action may be taken including not allowing Lewisville Pork Farm Inc. to use the EMS proposed in RA19039 as an MSF.

These requirements remain in effect until otherwise directed by the NRCB in writing.

If you fail to comply with this directive, the NRCB may take additional enforcement action.

(Original Signed)

David Smejkal
Inspector, Compliance and Enforcement Division
Natural Resources Conservation Board

Cc: Jeff Froese Applications Division, NRCB
Wainwright County Development and Planning