

# Compliance Directive

*AGRICULTURAL OPERATION PRACTICES ACT, RSA 2000, c A-7*

**Directive #:** CD 20-04

**Date issued:** July 16, 2020

**Issued by:** Karl Ivarson, Inspector  
Compliance and Enforcement Division  
Natural Resources Conservation Board (NRCB), Lethbridge Office

**Issued to:** Ken Slingerland  
Box 1001  
Picture Butte Alberta T0K 1V0

**Attention: Ken Slingerland**

This directive relates to the unauthorized construction of four new pens and the widening of three other pens, at the Ken Slingerland confined feeding operation (CFO). This construction has been done without a permit under the *Agricultural Operation Practices Act* (AOPA). The facility is located at NE-31-011-21-W4M, in Lethbridge County, in the Province of Alberta, approximately 10 kilometres northwest of Picture Butte. The facility is operated under the name Ken Slingerland, and is owned and managed by Ken Slingerland. The CFO was originally permitted by the County of Lethbridge in 1998 (permit 98-33) for a feedlot expansion of 900 head. To quote the approval: "This approval effectively brings the total capacity of this feedlot to 1,900 head." This would indicate the feedlot contained 1,000 head prior to the 900 head expansion. Since then, the operation has received no other permits from the County of Lethbridge nor the NRCB.

By about 1999, Ken Slingerland had built two pens under permit 98-33. The four new pens were part of the initial proposal under permit 98-33 but were not constructed until about 16 years later.

AOPA came into effect on January 1, 2002. I am finding that, with the passage of time, Ken Slingerland abandoned his right to build the four new pens under the 1998 municipal permit. As he did not obtain a new NRCB-issued permit, the newly constructed pens and the widening of the three pens are considered unauthorized construction."

## **Background**

On June 4, 2020 the NRCB received a complaint regarding the possible unauthorized construction of additional CFO feedlot pens at the site. Of specific concern was that Ken Slingerland had illegally expanded without a permit or prior consent from the NRCB.

A site inspection and discussion with Mr. Slingerland on June 12, 2020 confirmed that he had built and populated four new pens since 2015, without receiving a permit from the NRCB. Mr. Slingerland also confirmed he realigned the three easternmost pens of the older portion of the feedlot. This realignment increased the width of the pens by approximately 20 feet for both the northern and middle pens, and approximately 30 feet for the southernmost pen. Mr. Slingerland said he was of the understanding that he was still working under his County of Lethbridge permit 98-33 and did not know that an NRCB permit was required for the additional pens prior to construction. I asked Mr. Slingerland how many cattle he currently had in the feedlot and he replied he was feeding over 1,900 head. I called Mr. Slingerland on July 9, 2020, to determine when he could have the new pens depopulated and cleaned of manure. He told me they are just about empty now, so he could have them depopulated at any time. As for manure removal, it was agreed that two weeks should provide enough time to complete.

### **Unauthorized Construction**

The issue at hand is the construction of the four additional pens along with the widening of three pens 16 years after permit 98-33 was issued for their construction. As a question of fact, under AOPA, sec 18.1(1), the Slingerland CFO existed and therefore had a deemed permit as of January 1, 2002. The question to be answered is; what was the status of the four remaining pens 16 years after permit 98-33 was issued? Put another way, was that portion of the permit abandoned when the remaining pens were not constructed until 2015?

To answer this I refer to NRCB Operational Policy 2016-3 "Permit Cancellations under AOPA Section 29". This policy provides how the unconstructed pens are to be considered. Under the policy's section 1.2:

#### ***CFOs with both abandoned facilities and facilities that have not been abandoned***

*... abandonment also needs to be considered when a CFO has a single permit for several facilities and one or more of the facilities were abandoned or never constructed, or were constructed and are not being used but have not been abandoned.*

*In this case, the approval officer **should not cancel the CFO's entire permit**. Rather, the approval officer should consider whether the permit needs to be amended to exclude use of the abandoned facilities. (This may require reducing the CFO's permitted livestock capacity.) This amendment must be carried out under the approval officer's authority to amend permits on their own motion, under section 23 of AOPA. (See operational policies 2016-2: Approval Officer Amendments under Section 23 of AOPA and 2015-1: Construction Deadlines.)*

In considering whether the right to build the last four pens was abandoned in the years between 1999 and 2015, I weighed the reasons for the owner stopping building. Mr. Slingerland advised that he built the first two pens by about 1999, and started building the more recent four pens in 2015. The operation did not change ownership since Mr. Slingerland obtained permit 98-33. Mr. Slingerland spoke of the years between 1999 and 2015 as including the BSE crisis, financial challenges and personal loss. Taking this into account, I still feel the unbuilt facilities in permit 98-33 were abandoned because they were not constructed until 16 years after the permit was issued. Mr. Slingerland made no inquiries to either the NRCB or Lethbridge County to verify if the construction of the four pens and the widening of the other three was still authorized under his 98-33 permit. In accordance to NRCB policy 2016-3, quoted above, I consider the four pens and the

widening of the other three to be unauthorized construction as that portion of permit 98-33 is hereby considered abandoned.

In summary, I believe the NRCB policy, as above, is clear that:

- With some of the pens from permit 98-33 built and some not built (until recently), cancelling a permit is not appropriate.
- Rather, permit 98-33 is to be amended, on an approval officer's own motion, to take into consideration the abandonment of the four pens that were originally proposed but were not constructed until 2015. This will also reduce the permitted animal numbers proportionately.
- Accordingly, six pens were proposed for the 900 head expansion under permit 98-33. This would have provided for 150 head of cattle per pen. As only two of the proposed six pens were constructed under permit 98-33, this would allow for 300 head giving a total capacity of 1,300 head.
- The four recently constructed pens are considered to be unauthorized construction by reason of abandonment after 16 years.

Section 13 of AOPA prohibits a person from constructing or expanding a CFO that requires a permit under the regulations unless they hold a permit. It is not in dispute that the Slingerland CFO requires a permit under the regulations.

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.

Under Section 39(1) of AOPA, the NRCB may issue an enforcement order to a person if, in the NRCB's opinion, the person is, among other things, contravening the act or its regulations.

As this is the first enforcement action at this site and following the NRCB Compliance and Enforcement Policy, a compliance directive is being issued at this time rather than an enforcement order. Accordingly, this directive is to remedy the violations noted above and to mitigate any possible risks to the environment and potential nuisances to any affected neighbours.

**Directive:**

For the reasons provided above, Ken Slingerland shall take all necessary and appropriate measures to comply with AOPA and its regulations. In particular, Ken Slingerland shall:

1. By July 29, 2020, cease to operate the four unauthorized pens for the confined feeding of livestock, if the operation does not hold an AOPA permit for the pens. This includes the removal of all animals and manure. This deadline is in agreement with Mr. Slingerland, as noted above.
2. By July 29, 2020, depopulate the CFO facility to 1,300 head.

3. If by November 1, 2020, an AOPA permit is not received for the widening of the three east pens of the old feedlot, those three pens must be restored to their previous dimensions by July 1, 2021.

All actions required above shall be in compliance with AOPA and its regulations, and shall not violate any other law. These requirements remain in effect until otherwise directed by the NRCB in writing.

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

Sincerely,



Karl Ivarson  
Inspector, Natural Resources Conservation Board

Appendices:

- A. Site map: Ken Slingerland CFO at NE 31-011-21-W4

