



Compliance Directive

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

Directive #: CD 21-03

Date issued: May 7, 2021

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

Issued to: Curtis McKelvie (lease holder and CFO operator)
RR#2
Ponoka AB TRJ 1R2

Richard and Linda McKelvie (co-landowners)
RR#2
Ponoka AB T4J 1R2

This directive relates to the unauthorized construction of nine new pens and two catch basins at the Curtis McKelvie confined feeding operation (CFO). This construction has been done without a permit under the *Agricultural Operation Practices Act (AOPA)*. The CFO is located at W1/2 1-44-25 W4M (the site), in Ponoka County, in the Province of Alberta, approximately 10 kilometres northwest of the Town of Ponoka. The CFO is operated under the name Curtis McKelvie. The land is owned by Richard and Linda McKelvie and currently leased to Curtis McKelvie.

Curtis McKelvie has leased this land since 2005, and has operated a CFO at this site since 2005. Though the co-landowners are named in this directive, it is Curtis McKelvie who has been responsible for day-to-day decision making at the CFO. He was responsible for the construction of the nine pens and two catch basins, and for populating the CFO with the livestock he chose. As he is currently the operator of the CFO, Curtis McKelvie also has the authority to make the decisions and actions to bring this operation into compliance under this compliance directive. For this reason, the directions at the end of this document are addressed to Curtis McKelvie.

The AOPA came into effect on January 1, 2002. The CFO did not receive a municipal development permit prior to that date, nor a Natural Resources Conservation Board (NRCB) permit for expansion of the CFO after that date. According to a Valtus air photo taken at a date in-between 1999-2003, six pens (Appendix A) were constructed at the site before 2002. Under section 18.1(1)(a) of the AOPA, the owner or operator of a confined feeding operation that

existed on January 1, 2002 with respect to which a development permit was not issued is deemed to have been issued a permit under the AOPA. However, between 2008 and 2016, nine pens and two catch basins (Appendix B) were constructed without obtaining an NRCB permit. As Curtis McKelvie did not obtain an NRCB permit for the facilities constructed after 2002, pens 7 to 15 and catch basins 1 and 2 (Appendix B) are considered unauthorized construction.

For clarity, this compliance directive does not function as a determination of deemed permit status of this operation.

Background

On April 28, 2021 the NRCB received a complaint regarding the possible unauthorized construction of CFO feedlot pens at the site. Of specific concern was that Curtis McKelvie had illegally expanded without a permit from the NRCB.

I conducted a site inspection and had discussions with Curtis McKelvie on April 29, 2021. I confirmed that he had built and populated nine pens and two catch basins from 2008 to 2016, without receiving a permit from the NRCB. Curtis McKelvie stated that at the time of construction he was unaware of the requirements under the AOPA and did not know that he was required to obtain a permit from the NRCB. I asked Curtis McKelvie how many cattle he currently has in the feedlot and he replied he was currently confining approximately 2,000 beef finishers and had the capacity to confine up to 4,000 beef finishers. Of the 2,000 beef finishers, Curtis McKelvie owns 1,000 head and custom raises 1,000 head. Mr. McKelvie utilizes the nine unauthorized pens to hold cattle until they have reached market weights, then all finishers are sent to the market for sale.

Unauthorized Construction

As relevant here, section 13(1) of the AOPA prohibits any person from constructing or expanding a CFO for which an approval is required under the regulations, without an approval.

Section 2 of the Agricultural Operations, Part 2 Matters Regulation, provide that an approval is required to construct a new CFO, or to expand an existing CFO, if the capacity of the new or expanded CFO is above the threshold capacities in Schedule 2 of that regulation. For beef finishers, the Schedule 2 thresholds for approvals are 350 animals. The construction of pens 7 to 15 allowed Curtis McKelvie to increase animal numbers above the threshold that would require an approval. Therefore, Curtis McKelvie's expansion of the CFO by constructing pens 7 to 15 required an approval under the AOPA, pens 7 to 15 are not permitted by an approval, and therefore is a violation of section 13(1) of AOPA.

Section 14 of the AOPA prohibits any person from constructing (or expanding or modifying) a manure storage facility (MSF) or manure collection area (MCA), for which an authorization is required pursuant to the regulations under the Act. (Section 1(c.21) of the AOPA defines an MCA as including "a catch basin where manure collects".) Section 4(2) of the AOPA Part 2 Matters Regulation, in turn, states that an "authorization" is required to construct an MSF or MCA that is part of a CFO, unless the CFO owner already holds a permit for that MSF or MCA.

Catch basins 1 and 2 are considered MCAs and are not covered by any NRCB permits. Therefore Curtis McKelvie's construction and use of these facilities to collect livestock manure required an authorization, was not permitted by an authorization (or an approval), and is therefore a violation of section 14(1) of the AOPA.

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

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

Under Section 39(1) of the 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.

However, 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. As this compliance directive addresses unauthorized construction, this document will be published on the NRCB website until the directives have been fully complied with.

Directive

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

1. By September 1, 2021, you must depopulate the feedlot pens identified as 7 to 15 on Appendix B.
2. By September 17, 2021, you must remove all manure that has accumulated in pens 7 to 15 and all catch basin contents in catch basins 1 and 2. The manure and catch basin contents must be either land applied or placed in a manure storage facility, in accordance with the AOPA requirements for manure storage and land application of manure.
3. After September 1, 2021 you must not use pens 7 to 15 or catch basins 1 and 2 to confine livestock or collect or store manure until you have obtained an active AOPA permit for the use of those facilities for those purposes.
4. Not confine more than 2,000 beef finishers in pens 7 to 15. If an NRCB permit is received Curtis McKelvie must adhere to the animal numbers stated in the permit.

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

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

Sincerely,

(Original Signed)
Fraser Grant
Inspector, Natural Resources Conservation Board

Cc: Ponoka County, Development and Planning

Appendices

- A. Valtus Air Photo 1999-2003: CFO at W1/2 1-44-25 W4M
- B. Google Earth Imagery July 2018: CFO at W1/2 1-44-25 W4M

Appendix A: Valtus Air Photo 1999-2003: CFO at W1/2 1-44-25 W4M

Appendix A: Valtus Air Photo 1999-2002



Appendix B: Google Earth Imagery July 2018: CFO at W1/2 1-44-25 W4M

