

Compliance Directive

AGRICULTURAL OPERATION PRACTICES ACT Revised Statutes of Alberta 2000 Chapter A-7

Directive no.: CD 21-05

Date issued: July 13, 2021

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

Issued to: **John Dunsbergen (lease holder and CFO Operator)**
Monarch, Alberta
and
1227974 Alberta Ltd. (landowner)
1003 – 4 Ave South
Lethbridge, Alberta

This directive relates to unauthorized construction at a confined feeding operation (CFO) leased and operated by John Dunsbergen. The CFO has expanded its manure storage capacity and increased its livestock capacity (that is, its maximum allowed livestock numbers) with the addition of two more livestock species without a permit under the *Agricultural Operation Practices Act (AOPA)*. The CFO is located at SW 13-010-24-W4, in Lethbridge County, approximately 1.5 kilometers northeast of the hamlet of Monarch, Alberta.

John Dunsbergen holds an NRCB-issued permit (LA03045) for 5,000 weaner hogs, 300 feeder hogs, one weaner barn, two hog feeder barns, an EMS, and pits.

The NRCB permit was issued to John Dunsbergen, whom I understand leases and operates the CFO. A land title search for the Dunsbergen facility at the SW 13-010-24-W4 shows that the land is registered to 1227974 Alberta Ltd. of Monarch Alberta.

John Dunsbergen has been responsible for the day-to-day decision making at the CFO, and has the authority to make the decisions and actions to bring this operation into compliance under this compliance directive.

Currently, the only permitted Dunsbergen CFO facilities existing is the 5,000 head hog weaner barn and its associated earthen manure storage (EMS). The two permitted hog feeder barns have been demolished. Non permitted CFO facilities that have been added recently to the Dunsbergen site are a 100 head beef feeder livestock pens with shelters, and a 100 head ewes with lambs sheep facility.

Background

On May 26, 2021, I received a complaint that the CFO had increased the number of livestock by 200 head of cows and was improperly storing solid manure without the required permits. The complainant was also concerned with runoff from the property. It was asserted that runoff had recently occurred and that it had entered the adjacent Township Road (Twp Rd) 102 ditch. The complaint further noted that Twp Rd 102 ditch drains into the Old Man River.

On my review of Google Earth© imagery, I was able to determine what appeared to be one or two livestock pens with three shelters, that had been constructed between 2015 and 2019 in the area southwest of the hog weaner barn. The imagery also showed pens in the area to the east of the hog weaner barn that appeared to be in use for livestock containment. At some point in time between 2006 and 2012 two hog barns to the south east of the weaner barn were demolished. These may have been the two permitted feeder hog barns.

On May 27, 2021, I inspected the CFO site. From the road allowance, there appeared to be relatively recent construction of livestock pens to the southwest corner of the existing hog weaner barn, comprising of two livestock pens and three shelters with an enclosing wind fence. South of the livestock pen area I could see an area that had recently been used to stockpile manure. Along with some residual manure, a small pile of manure remained, approximately 30 metres from Twp Rd 102. There was some evidence of recent runoff from the pen/manure stockpile area, possibly involving manure, towards the Twp Rd 102 ditch, had advanced very close to the property line. I was unable to determine if the possible manure runoff entered the ditch due to heavy vegetation in that area.

That same day I met with John Dunsbergen and his son, Kenny Dunsbergen, in the yard of the CFO. I discussed the complaint with him. Along with the operational hog weaner barn, John told me that he and his son Kenny have ewes, lambs, and beef feeder cattle on site. He added that the two hog feeder barns had been taken down 10 or more years ago. John said that the feeder cattle operation is Kenny's. I asked John if he had a permit for the sheep and feeder cattle livestock facilities. He said that neither he nor Kenny applied for or have a permit for them. John and Kenny said there are 100 head of ewes and their lambs housed on the east side of the hog weaner barn. Additionally, there are about 100 head of beef feeder calves/feeders in the recently constructed pens and shelters to the southwest of the hog weaner barn. John said the solid manure from the feeder calf pens is stockpiled south of the pens. When asked about runoff control from the feeder cattle pen area and manure stockpile area, he said he had none. I told John I will need to assess his newer facilities that are not covered by his permit to see if they need to be permitted.

Under AOPA, the definition of "confined feeding operation" excludes seasonal feeding and bedding sites.

For my assessment of the new facilities, I met with John Dunsbergen the next day and in writing requested detailed information about the new facilities, livestock management and manure management.

On June 4, 2021, I received the requested written reply from John Dunsbergen. John provided a site diagram, as requested. The diagram identified two sheep pens with their associated facility, and the livestock pens and shelters in relation to the hog weaner barn and its associated EMS.

John further replied, as written:

1. *sheep corrals were rebuilt in 1994 were originally dry sow corrals and the sheep shelter which was a shelter for dry sows the cattle corral was built in 2012 for Ken to hold his three cows.*
2. *ewes about 100 head for winter feeding. 120 lbs each aprox. cattle winter feeding 100 head, 400-700 lbs*
3. a) *mostly seasonal will be a few TLC animals out of season lambs are sold or put out on pasture.*
b) *cattle are raised and sold to feedlot.*
c) *they do not come back*
d) *there is about 2 acres of grass on the property*
4. *the manure is stockpiled and then spread on rented land 1 mile south*
5. *the pens are hard and scraped regularly*
6. *iso wean pig in and out weekly it is continuous flow*

Unauthorized Construction

In reviewing John's reply it appears that, the sheep containment facilities would be difficult to be managed as a seasonal feeding and bedding site (SFBS) for 100 ewes with lambs with only two acres of grass available for grazing. Confined feeding of the sheep livestock would have to occur all year round. In NRCB *Sheep Confined Feeding Operation Determinations Operational Guideline 2019-1* section 3.2 *facilities that are considered part of a CFO* it states:

An AOPA permit is required for facilities that meet the thresholds set out in Schedule 2 of the Agricultural Operations, Part 2 Matters Regulation, and that fall into one of the following categories:

- *Facilities that are used to confine and feed sheep (feeders) beyond the grazing season (other than for overnight penning, for a short period of time for breeding, or for lambing). This includes single barn facilities that serve multiple purposes and hence do not have a rest period (i.e., the use of this facility continues into the summer months to house and raise feeders).*

Because there already exists an above-threshold CFO (the permitted hog barn) and its associated MSF at the Dunsbergen site, any additional animal numbers or types would require a permit from the NRCB.

John Dunsbergen has also failed to prove that any grazing components to their sheep operation exists and as such, the sheep operation at this site would be considered facilities that are used to confine and feed sheep, as defined above.

The current sheep facilities are not covered by a NRCB permit.

To the question of whether or not the cattle pens could be considered a seasonal feeding and bedding site (SFBS, which are exempt for permitting under AOPA), I referred to the NRCB Operational Policy 2015-2 *Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (For Cattle Operations)*, Agricultural Operation Practices Act, June 11, 2015, revised July 5, 2018.

In referencing the Policy's flow chart to distinguish between a CFO and a SFBS, the fact that the use of the cattle feeder pens to feed cattle between July 1 and September 15 automatically identifies these facilities as a CFO. This assessment therefore determines that the livestock pens are a CFO. Therefore, the livestock pen, or "corral", as John refers to them, constitutes unauthorized construction. On the day of my inspection, May 27, 2021, John said that the cattle facility contained approximately 100 head of mixed feeder calves and feeders. The fact that the feeder cattle are contained, fed, with no provision for grazing over the summer months, and as John notes "*raised and sold to feedlot*" supports the facility assessment that the cattle facilities are being used as a confined feeding operation at the Dunsbergen site. The feeder cattle facility is also determined to be a manure collection area (MCA). Also as stated above, because there already exists an above-threshold CFO (the permitted hog barn) and its associated MSF at the Dunsbergen site, any additional animal numbers or types would require a permit from the NRCB.

This feeder cattle facility and its associated MCA is not covered by a NRCB permit.

The solid manure storage area may also be an issue. AOPA defines short term manure storage as being a cumulative time period of less than seven months over three years. A time period longer than this determines the site to be a permanent manure storage facility (MSF) for which a permit is required.

There is currently no additional permit for this site to function as a MSF under AOPA.

As relevant here, section 13(1) of the AOPA prohibits any person from constructing or expanding a CFO for which an approval or registration is required under the regulations, without an approval or registration. Therefore, the additional pens to contain feeder cattle and ewes with lambs, and populating these facilities, would require permitting under the AOPA. As the owner or operator of the CFO does not hold a permit for the construction of the beef feeder and ewe/lamb pens, they are in violation of section 13(1) of AOPA.

Based on my observations, my inspection of May 27, 2021, my conversations with John Dunsbergen, and the records he provided, I conclude that the owners or operators have contravened section 13(1) of the AOPA under the *Agricultural Operation Practices Act*.

The NRCB has not taken any previous enforcement action with respect to this violation. Therefore, under the NRCB's compliance policy, a compliance directive is appropriate as a first round of enforcement response. Accordingly, the NRCB is issuing this directive to remedy the violation noted above and to mitigate any possible risks from this violation to the environment and to any affected neighbours. As this compliance directive addresses unauthorized construction, this document will be published on the NRCB website until the directives have been fully complied with.

If you continue to violate the regulation, you should be aware that:

- a) Under section 39 of the act, the NRCB may issue an enforcement order to remedy any further violation
- b) Under section 35 of the act, a person who contravenes section 13 of the act is guilty of an offence and is liable for a fine of not more than \$5,000, or \$10,000 if the contravention was done knowingly.

DIRECTIVES

You, John Dunsbergen, and 1227974 Alberta Ltd., shall comply with the following directives:

- 1) By September 1, 2021, you must depopulate the feeder cattle pens, the ewe/lamb pens, and the shelters and barns for the ewes/lambs.
- 2) By October 1, 2021, you must remove all the manure that has accumulated in the feeder cattle pens and shelters and all of the ewe/lamb pens and barns. The manure must be either land applied or stored, in accordance with the AOPA requirements for manure storage and land application of manure.
- 3) After September 1, 2021 you must not use the feeder cattle pens or the ewe/lamb pens, shelters, and barn as a confined feeding operation or to collect or store manure until you have obtained an AOPA permit for the use of those facilities for those purposes.

Upon written request, the NRCB may change the dates in above, in writing. 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 fail to comply with this directive, the NRCB may take additional enforcement action.

(original signed)

Karl Ivarson

Inspector, Compliance and Enforcement Division

Natural Resources Conservation Board