



Compliance Directive

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

Directive #: CD 21-08

Date issued: October 18, 2021

Issued by: Jason R. Moodie, Inspector
Compliance and Enforcement Division
Natural Resources Conservation Board (NRCB)

Issued to: Hutterian Brethren Church of Cleardale
Albert Stahl
Box 159
Cleardale AB T0H 3Y0

Contact: Albert Sthal

This directive relates to the unauthorized construction of an additional nine new feedlot pens and a catch basin at Hutterian Brethren Church of Cleardale (Cleardale Colony) confined feeding operation (CFO). This construction has been done without a permit under the *Agricultural Operation Practices Act* (AOPA). The CFO is located at SW-32-84-09-W6 (the site), in Clear Hills County, in the Province of Alberta, approximately 10 kilometres south east of Cleardale, Alberta. The CFO land is owned and operated under the name Hutterian Brethren Church of Cleardale.

Hutterian Brethren Church of Cleardale purchased this site around 2002 and operated the feedlot since their ownership.

Part 2 of 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 dated September 24 to October 1, 2001- 2003, (Appendix A) nine pens were identified. These facilities were likely constructed at the site before 2002 and may have been used to confine cattle. 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, sometime between 2020 and 2021 (Appendix B) an additional nine pens and a catch basin were constructed without obtaining a NRCB permit. As the operator at this time did not obtain an NRCB permit for the nine additional pens and catch basin they are considered unauthorized construction.

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

Background

On September 21, 2021, Approval Officer Nathan Shirley received a phone call from Albert Stahl and after some discussion determined that a NRCB permit may have been required for construction completed at their site that took place during the summers of 2020 and 2021. Approval Officer Nathan Shirley indicated that a site inspection would need to be completed to determine what facilities require a permit as there is also a cow/calf operation at the site which generally does not require an AOPA permit.

On September 30, 2021, Approval Officer Nathan Shirley and I completed a site inspection. Mr. Stahl discussed the history of the site and broke down which pens were used for their cow/calf operation and which ones were for the beef finisher operation. Mr. Stahl explained that the pens currently numbered 1-10, north barn pen, and south barn pen existed prior to 2002. In 2002, the existing pens were larger and were used to confine feeder cattle by the previous owner. The existing pens were modified by Cleardale Colony to accommodate finisher cattle in 2012-14. Mr. Stahl indicated that the liner was not damaged during these modification. Mr. Stahl also stated that they have been purchasing cattle to finish and have been finishing their own calves to >900lbs. Mr. Stahl said these pens have been used by Cleardale Colony to finish 3,000 head of cattle annually over the years.

Mr. Stahl indicated that pens 11-13 were constructed in the summer of 2020. Pens 14-19 and the catch basin were constructed in the summer of 2021. Mr. Stahl was unaware that this is considered unauthorized construction. Mr. Stahl was recently made aware that a permit might have been needed for the construction of these additional pens and catch basin. After conducting some research he then made the effort to contact Approval Officer Nathan Shirley. Mr. Stahl made it clear he wanted to do the right thing as their site is now out of compliance.

During our visit Approval Officer Nathan Shirley discussed the application process. At this time Mr. Stahl submitted a Part 1 application to permit the unauthorized construction pens 11-19, catch basin and to determine the grandfathered status and capacity of the existing pens. The Part 1 application FA21002 indicates an intention to increase livestock numbers from 3,000 beef finishers to 6,000 beef finishers.

Unauthorized Construction

Section 13(1) of the AOPA prohibits any person from constructing or expanding a CFO without a registration or approval under the act, if that construction or expansion requires a registration or approval under the regulations. Contravention of section 13 is an offence under section 35 of the act.

Sections 2 and 3 of AOPA, Part 2 Matters Regulation, provide that an approval or registration 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 registrations and approvals are 150 and 350 head respectively.

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.

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. It is also important to acknowledge that the operator has self-reported the non-compliance issue to the NRCB. As this compliance directive addresses unauthorized construction, this document will be posted on the NRCB website.

Directive

The Hutterian Brethren Church of Cleardale shall take all necessary and appropriate measures to comply with the AOPA and its regulations. In particular:

1. After March 31, 2022 you must not use Pens 11-19 and the catch basin to confine livestock, collect or store manure or manure impacted runoff.
2. By March 31, 2022, you must remove all solid manure that has accumulated in Pens 11-19. The manure contents can be placed in a manure storage facility or stockpiled in accordance with short term manure storage requirements until the manure can be land applied in accordance with AOPA.
3. By May 1, 2022, you must remove all the catch basin contents and land apply it in accordance with AOPA. Permission is required to apply catch basin content on frozen or snow-covered land.
4. If the approval officer denies your application numbered FA21002, you shall also submit to me a schedule to reduce the CFO's beef finisher numbers to what is considered deemed from the grandfathering determination, and the NRCB must approve the schedule. Your schedule must be submitted within three weeks of a denial of application FA21002.

These directives will not apply if before these dates the operation has obtained an active AOPA permit for the use of Pens 11-19 and the catch basin for those purposes.

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.

Sincerely,

(Original Signed)

Jason R. Moodie
Inspector, Natural Resources Conservation Board

Cc: Clear Hills County, Planning and Development
Nathan Shirley, NRCB Approval Officer

Appendices

- A. Valtus Imagery September 2001 to October 1 2003: CFO at SW 32-84-09 W6M (Hand annotations by Inspector: Jason Moodie)
- B. Google Earth Imagery: CFO at SW 32-84-09 W6M (Hand annotations by Inspector Jason Moodie)

Appendix A: **Valtus Imagery September 2001 to October 1 2003: CFO at SW 32-84-09 W6M**
(Hand annotations by Inspector: Jason Moodie)



Appendix B: Google Earth Imagery: CFO at SW 32-84-09 W6M
 (Hand annotations by Inspector: Jason Moodie)

