

Compliance Directive

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

Directive #: CD 23-01

Date issued: February 1, 2023

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

Issued to: Justin Tateson, landowner/confined feeding operation (CFO) owner
Box 93
Scandia, Alberta T0J 2Z0

Attention: Justin Tateson

This directive relates to unauthorized construction of a catch basin at a livestock site that may have formerly operated as a seasonal feeding and bedding site for a cow-calf herd as well as a CFO. The site is now being used as a CFO to feed both purchased beef feeders, and home raised feeders which are part of the operator's cow-calf herd. While the status of the pen areas is unclear at this time, the catch basin is certainly unauthorized construction.

The operation is located at SE-17-15-15-W4M, in the County of Newell, Province of Alberta, approximately four kilometers southeast of the Town of Scandia. The operation is owned and managed by Justin Tateson.

Background and Investigation

On January 16, 2023, the NRCB received a complaint regarding the possible unauthorized construction of a confined feeding operation feedlot at this site. Of concern was that Justin Tateson had illegally expanded a CFO without an *Agricultural Operation Practices Act* (AOPA) permit from the NRCB.

A site inspection and interview with the operator on January 24, 2023, confirmed that Justin Tateson is feeding approximately 800 beef feeders, 400 of which are purchased feeders and not part of the cow-calf herd. The cattle arrived at the feedlot in the fall of 2022 and are planned to leave in the spring of 2023 once they reach 850-900 pounds.

The operator stated that it is his belief that his operation is grandfathered as some of the original footprint of the operation existed on January 1, 2002. The operator also stated that he would like to continue confined feeding beef animals at the site year-round. He is aware that an AOPA permit (whether issued by the NRCB or deemed through a grandfathering determination) will be required to operate a confined feeding operation. He submitted a

Part 1 application to the NRCB on August 31, 2022 (LA22042) for 6,075 fat cattle, and changes to drainage, lagoons, and pens.

However, the focus of this Compliance Directive, is the unauthorized construction of the catch basin located on the south end of the property adjacent to the existing livestock pens. This is the same location that was illustrated in the operators Part 1 Application documents submitted to the NRCB on August 31, 2022.

The NRCB has not issued any permits to this site and has not yet made a grandfathering determination. Historical imagery from Google Earth Pro shows that a catch basin was absent as of June 15, 2015. As well, the operator indicates by his own admission that the catch basin was constructed in September 2022.

I understand that a grandfathering determination for the operation will be considered by an NRCB Approval Officer as part of the operator's permit application. However, the catch basin could not be contemplated for a grandfathering determination as it was constructed in September 2022, well beyond January 1, 2002. As such, this Compliance Directive will focus exclusively on the unauthorized construction of the catch basin.

Unauthorized construction of a manure storage facility or manure collection area

Section 14 of AOPA prohibits a person from construction, expansion or modification of a manure collection area unless they hold a permit. AOPA includes a catch basin in its definition of a "manure collection area." In turn, the Standards and Administration Regulation under AOPA defines "catch basin" as "an excavation...that is designed to intercept and store runoff..." Mr. Tateson stated he constructed the catch basin to prevent manure runoff from the livestock pens flowing into the county roadway ditch.

Under section 4 of the Part 2 Matters Regulation under AOPA, an authorization (type of permit) is required to construct a manure collection area that is part of a CFO. It is not in dispute that the CFO catch basin constructed by Mr. Tateson in 2022 required a permit under the regulations.

AOPA's permit requirements are intended to reduce the potential for groundwater contamination and manure runoff, and to lessen the nuisance impacts of CFOs on neighbors. 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.

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 neighbors.

DIRECTIVES:

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

1. Within 2 days of receiving this Compliance Directive, remove all existing run-off from the unauthorized constructed catch basin.
2. Once the catch basin reaches 50% level, empty the catch basin within 2 days. This directive shall commence immediately and remain in place until the catch basin has an AOPA permit.
3. If by May 25, 2023, no AOPA permit for the catch basin is received, you must on a permanent basis:
 - a. Cease using the catch basin,
 - b. Construct berms at the edge of your property that runs adjacent to Highway 530 to ensure runoff remains on your property,
 - c. Fill in the catch basin with soil back to its original state.

You shall allow the NRCB access at any reasonable hour, with or without advance notice, to the land and structures for the purpose of assessing compliance with this Compliance Directive.

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

Given the seriousness of unauthorized construction, the NRCB posts compliance directives for unauthorized construction on the NRCB's public website.

If Justin Tateson fails to comply with this directive, or if the NRCB has cause to identify a risk to the environment or an inappropriate disturbance, the NRCB may take additional enforcement action.

Any of the deadline dates contained above may be extended in writing, but only by the NRCB, at the sole discretion of the NRCB.

(original signed)
Morgan Schindel
Inspector, Compliance and Enforcement Division
Natural Resources Conservation Board

Cc: Maria Jackson, County of Newell