

# ENFORCEMENT ORDER No. EO 23-01

*Made under section 39 of the  
Agricultural Operation Practices Act, RSA 2000, c A-7 (AOPA)*

**Date Issued:** May 9, 2023

**File Number:** LC22601

**Inspector:** Karl Ivarson

**Issued to:** The Hutterian Brethren Church of Cayley  
and  
Eli Walter  
Box 25  
Cayley Alberta T0L 0P0

## **Basis for Order: Failure to comply with permit contrary to section 13(2) AOPA**

I, Karl Ivarson, Inspector appointed by the Natural Resources Conservation Board, issue this enforcement order under section 39(1) of the *Agricultural Operation Practices Act* (AOPA) against:

### **The Hutterian Brethren Church of Cayley and Eli Walter**

on the basis that they have failed to operate in accordance with AOPA and its regulations. Specifically, The Hutterian Brethren Church of Cayley and Eli Walter carried out unauthorized construction of a manure collection area (catch basin) at a confined feeding operation (CFO). Both the location and the dimensions of the catch basin, as constructed, are substantially different than permitted under Approval LA15026, issued under the *Agricultural Operation Practices Act*.

### **Background**

The agricultural operation is located on E ½ 31-16-29-W4M, in the Municipal District (M.D.) of Willow Creek, roughly 13.5 km northwest of the Town of Nanton in the province of Alberta. The E ½ 31-16-29-W4M is owned by The Hutterian Brethren Church of Cayley (Cayley Colony). Eli Walter is the person who makes day-to-day decisions at the CFO. Cayley Colony purchased the property the CFO is located on from Mesabi Ranches Inc. in early 2020.

On September 26, 2016, Approval LA15026 was issued to Mesabi Ranches Inc. for the expansion of an existing CFO operation, located at E½ 31-16-29-W4M. Approval LA15026 allowed Mesabi Ranches Inc. to construct additional pens (rows 7+), construct a new catch basin #3 (see Appendix A), and decommission an existing unpermitted catch basin (#2). The

permit also allowed for the expansion of livestock numbers to 8,400 beef finishers. The permit specified dimensions for the new catch basin #3, and the construction condition for catch basin #3 required third party certification of the location of the catch basin.

Mesabi Ranches Inc. also received an NRCB permit (Authorization LA16053) in January 2017, for catch basin #2 that, under LA15026, was to be decommissioned.

The CFO expansion, permitted by LA15026, was not started prior to the construction completion date of November 30, 2019. This deadline was later extended to November 30, 2022, upon request from Mesabi Ranches Inc.

Cayley Colony resumed construction of the CFO, including the construction of catch basin #3, in the fall of 2022.

On October 12, 2022, Cayley Colony submitted an application for amendment to the NRCB (LA15026A) for a change in layout of the feedlot pens, change in location and dimensions of catch basin #3, and to extend the construction completion deadline to November 30, 2023. No decision on this application has yet been made.

I first become aware of the catch basin construction at the CFO on April 25, 2023, following up on the status of Approval LA15026.

### **Investigation leading up to Enforcement Order EO 23-01**

In September of 2022, while dealing with a manure stockpile issue at the CFO, I was on site and observed Cayley Colony's construction of the additional feedlot pens permitted in LA15026. At that time, I informed Mr. Walter that the landscaping for those pens appeared to be in the wrong direction. The slope was graded to the west instead of to the north where the new catch basin #3 was to be located according to their NRCB permit. Also, at that time I directed Mr. Walter to contact the NRCB Approval Officer dealing with his file.

On April 25, 2023, a site inspection indicated that catch basin #3 had considerable work done. I estimated that it had been constructed late last fall. The catch basin was located directly east of catch basin #2 (see Appendix B), not to the north of the catch basin #2, as proposed and permitted under Approval LA15026. In addition, the constructed catch basin was approximately 70 m X 70 m and 6 m deep. This was a significant change from the permitted catch basin dimensions of 200 m X 150 m X 0.9 m. I could see that the catch basin was unfinished. I took photographs of the catch basin, and the excavate.

I met Mr. Walter on site at the catch basin and told him there was a problem with the relocation of the catch basin. He said there was an application for a permit amendment in at the NRCB to deal with the relocation. At the time of my inspection and to date, no decision has been made and no permit issued for amendment application LA15026A.

I instructed Mr. Walter to cease all further construction and excavation work at the site until he has the necessary permit(s) in place. Mr. Walter said he would be in contact with the Approval Officer at the NRCB to sort this out.

## **Reasons for the Enforcement Order**

Section 13(2) of AOPA requires a person holding an approval to comply with and operate in accordance with the terms and conditions of the approval.

Based on my observations, my review of the permitting documents, and my discussion with Eli Walter, I have formed the opinion that Cayley Colony, and Eli Walter, are contravening section 13(2) of AOPA because:

Approval LA15026 does permit the construction of catch basin #3, but at a substantially different location and size. The engineer's report supporting Approval LA15026 was based on a specific condition and map relating to the location of catch basin #3, not the location where the catch basin has actually been excavated.

I find that Cayley Colony has clearly not adhered to the express terms of their permit, Approval LA15026. The reasoning relating to the specific location and dimensions of catch basin #3 is contained in Decision Summary LA15026.

Under Section 39(1) of AOPA, if in the opinion of the Natural Resources Conservation Board, a person is contravening or has contravened an approval under AOPA, the Board may issue an enforcement order directing the person to stop engaging in anything that is described in the enforcement order, subject to any terms or conditions set out in the order or specifying the measures that must be taken in order to effect compliance with the approval.

The Board has delegated me, as an Inspector, the authority to form opinions and issue enforcement orders under section 39.

This enforcement order is being issued because:

- Unauthorized construction seriously compromises the objectives of AOPA and undermines the risk management function of the NRCB as a regulator of confined feeding operations.
- Cayley Colony and Mr. Walter ought to have known that Approval LA15026 set out the location and dimensions of catch basin #3, and that a condition of Approval LA15026 required a third party to certify catch basin #3's location. Yet, they still proceeded with construction at a different location and dimensions.
- This operator had recent interactions (fall 2022) with both an NRCB Inspector and an NRCB Approval Officer. In fact, the operator applied for an amendment to reflect the actual excavated location of catch basin #3, and is aware that an amended permit had not yet been issued.
- I have concerns that the operator may continue the unauthorized construction work on catch basin #3 without taking this enforcement action.

The NRCB generally uses two options for enforcement: a Compliance Directive or an Enforcement Order. A Compliance Directive is used for minor or inadvertent infractions of AOPA or permits, that are usually self-reported. In this case, an Enforcement Order is more appropriate because:

1. Cayley Colony and Mr. Walter did not self-report this unauthorized construction of catch basin #3;

2. The change in location and dimensions of catch basin #3 is not minor. For example, the depth of the catch basin went from 0.9 m (permitted) to 6.0 m (constructed).
3. Cayley Colony and Mr. Walter knew that a permit is required to build manure collection areas;
4. While Cayley Colony and Mr. Walter did begin an application in October 2022 for a permit amendment, they have not gotten beyond filing a Part 1 application; and
5. Upon receiving an Enforcement Order, the operator has a right to request a review.

This enforcement order is to remedy the violations listed above and to mitigate any possible risks to the environment and to any affected neighbours.

### **ORDERS:**

For the reasons provided above, Cayley Colony and Eli Walter shall take all necessary and appropriate measures to comply with AOPA and its regulations, and with Approval LA15026. In particular, Cayley Colony and Eli Walter shall:

1. Immediately cease all further construction of catch basin #3, until an NRCB permit is obtained authorizing the construction of catch basin #3 in its current location and at its current dimensions.
2. Ensure no manure contaminated run-off or manure in any other form enter the unauthorized catch basin #3 until a necessary permit is in place.
3. At any rate, if by October 13, 2023, an NRCB permit for catch basin #3 in its current location and dimensions is not in place, completely fill in all of catch basin #3 back to surface ground level such that it cannot be used to contain run-off in any manner.

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

Cayley Colony, and Eli Walter, 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 the orders contained in this enforcement order.

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.

## **CONSEQUENCES OF NOT COMPLYING WITH THIS ORDER**

If any person to whom this enforcement order is directed fails to comply with any part of this enforcement order, the Natural Resources Conservation Board may apply to the Court of King's Bench for an Order of the Court directing those persons to comply with the enforcement order, under section 42 of AOPA.

When an enforcement order is issued to more than one person, all persons named in the Order are jointly responsible for carrying out the terms of the Order, under section 43 of AOPA.

**NOTE:** Under section 39(3), if a person to whom this enforcement order is directed complies with the Order, no prosecution may be commenced under AOPA for the offence with respect to the facts that gave rise to this enforcement order.

(original signed)

**Karl Ivarson**

Inspector, Compliance and Enforcement Division  
Natural Resources Conservation Board

**SERVICE OF ORDER:**

<b>Delivered to:</b> Eli Walter	<b>Delivered to:</b>
<b>Method of Delivery:</b> In Person	<b>Method of Delivery:</b>
<b>Date of Delivery:</b> May 9, 2023	<b>Date of Delivery:</b>

**INFORMATION: RIGHT TO REQUEST A REVIEW OF THIS ENFORCEMENT ORDER**

Under section 41 of AOPA, you may request that the NRCB’s board members (the “Board”) “review and confirm, vary, amend or rescind” this enforcement order. The Board has discretion whether to hold a review or not.

Please note that, under section 41(2), this enforcement order takes effect at the time prescribed in the order. This enforcement order will remain in effect unless the Board suspends the operation of this enforcement order.

Under section 13 of the AOPA Administrative Procedures Regulation, AR 106/2017, your request, must include:

- a) a clear and concise statement of the facts relevant to your request
- b) the grounds on which your request is made
- c) a brief explanation of the harm that has resulted or will result from the enforcement order addressed in your request
- d) a brief description of the remedy you seek; and
- e) the name, address in Alberta and telephone number, and the fax number and email address, if any, of you or your representative (if you have one).

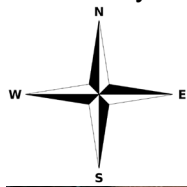
If you want the enforcement order suspended until the Board’s review is completed, you must also be clear about this in your written request for review and provide your reasons for asking for a suspension of this enforcement order.

Under section 15(2) of the AOPA Administrative Procedures Regulation, a request for a review of the enforcement order must be filed with the Board within 10 working days of the date you received the enforcement order or by any later date specified in the order.

Because this enforcement order does not extend the 10 working day deadline in section 15(2) of the Regulation, the deadline for you to file a request for review by the Board is **May 24, 2023**.

If you wish to have the Board review this order, please submit a written request to Laura Friend, Manager, Board Reviews by email at [laura.friend@nrcb.ca](mailto:laura.friend@nrcb.ca). If you have any questions about requesting a review or about the review process, please call Ms. Friend at 403-297-8269.

**Appendix A: Google Earth Imagery of E½ 31-16-29-W4, August 29, 2021:**  
Labeled by Karl Ivarson



**Appendix B: Google Earth Imagery of E½ 31-16-29-W4, August 29, 2021**  
Labeled by Karl Ivarson.

