



Compliance Directive

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

Directive #: CD 23-06

Date issued: September 15, 2023

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

Issued to: Craig Ference and
Ference Land & Cattle Corp.
Box 707
Kirriemuir AB T0C 1R0

Attention: Craig Ference

This directive relates to the unauthorized construction of a confined feeding operation (CFO) consisting of two feedlot type pen rows (12 pens) at the Ference Land & Cattle Corp. CFO. This construction has been done without a permit under the *Agricultural Operation Practices Act* (AOPA). The CFO is located at E1/2 17-34-02 W4M (the site), in Special Area 4, in the Province of Alberta, approximately 4 km east of Kirriemuir, Alberta. The CFO land is owned and operated under the name Ference Land & Cattle Corp. (FLCC).

The site has operated under the FLCC name since July 30, 2015. According to the operator, the land was previously operated and managed by members of the Ference family. To date, 12 pens have been constructed that are considered unauthorized construction. Prior to construction of these pens, the site operated as a cow-calf facility. This cow-calf operation is still present at the time of this compliance directive. According to Craig Ference (a shareholder and operator of FLCC), the previously utilized cow-calf pens will be utilized for CFO purposes in the future.

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 taken on a date in-between 1999-2003 (Appendix A), seven pens were likely constructed at the site before 2002. According to Mr. Ference, these pens were utilized for a cow-calf operation. Cow-calf facilities are considered seasonal feeding and bedding sites and not regulated under AOPA. Therefore, these pens are not considered to be a grandfathered CFO facility.

Sometime between 2013 (Appendix B) and 2018 the eastern feedlot pen row (consisting of six pens) was constructed. The 2015 aerial photograph (Appendix C) shows four pens, and an additional two pens were constructed before 2018 (Appendix D). According to Mr. Ference, around 2020 the western feedlot pen row (consisting of six pens) was constructed (Appendix D). As the operator did not obtain an NRCB permit for the two feedlot pen rows (consisting of 12 pens), the two feedlot pen rows are considered unauthorized construction.

Background and Investigation

On August 9, 2023, the NRCB received a complaint regarding surface water runoff and the possible unauthorized expansion of a CFO facility.

Prior to contacting the operator, I reviewed aerial imagery from 1999-2003, 2013, 2015, and 2018. Based on this review there was a potential for unauthorized construction of feedlot pens on the northern portions of the site. I contacted Craig Ference on August 15, 2023, and discussed the complaint I received as well as potential unauthorized construction. Mr. Ference verbally confirmed that feedlot pens had been constructed and that he was unaware of the permitting requirements. As Mr. Ference was out of the province we agreed to meet at site on August 29, 2023, to conduct an inspection and review the next steps regarding unauthorized construction.

I conducted a site inspection and met with Craig Ference on August 29, 2023. I confirmed that he had constructed and populated two feedlot pen rows (consisting of 12 pens) without receiving a permit from the NRCB. Mr. Ference stated that at the time of construction he was unaware of the requirements under AOPA and did not know that FLCC was required to obtain a permit. According to Mr. Ference the unauthorized feedlot pen rows have the capacity to confine 4,000 beef finishers.

In addition to the feedlot, FLCC manages a cow-calf operation of approximately 800 cows. At the time of the inspection, the cow-calf pens were being recontoured (Appendix D). Mr. Ference stated that he is considering converting the cow-calf pens to feedlot pens which would allow him an additional 2,000 beef finishers. Due to limited grazing available this season, FLCC has placed cow-calf pairs in over-wintering sites located adjacent to the two feedlot pen rows (Appendix D). Mr. Ference informed me that this is the first season he has had to utilize the over-wintering pens.

Mr. Ference informed me that runoff from his feedlot pens goes to the north and does not leave his property. Runoff from his cow-calf pens goes to the south and has the potential to flow through a culvert connecting to the neighbouring property to the south. One of the reasons why FLCC is recontouring the cow-calf pens is to re-direct runoff to a collection area west of the cow-calf area.

CFO Permit Required

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

The *Agricultural Operation Practices Act* (“AOPA”) at section 13(1) prohibits a person from constructing a CFO for which an approval or registration is required unless they hold that permit.

“Confined feeding operation” is defined in AOPA as:

fenced or enclosed land or buildings where livestock are confined for the purpose of growing, sustaining, finishing or breeding by means other than grazing and any other building or structure directly related to that purpose but does not include residences, livestock seasonal feeding and bedding sites, equestrian stables, auction markets, race tracks or exhibition grounds;

Under section 2 of the Part 2 Matters Regulation, an approval permit is required for a CFO containing 350 or more head of beef finishers. Based on my observations, my conversations with Craig Ference, and my site inspection on August 29, 2023, I conclude that Ference Land & Cattle Corp. has contravened section 13(1) of AOPA for the reason that they have constructed and are operating a CFO without a permit, when a permit is required.

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. 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.

Directive

To mitigate any possible risks to the environment and potential nuisances to any affected neighbours, Craig Ference and Ference Land & Cattle Corp. shall take all necessary and appropriate measures to comply with AOPA and its regulations. In particular, Craig Ference and Ference Land & Cattle Corp. shall:

1. After April 15, 2024, you must not use the two feedlot pen rows (12 pens) to confine livestock or collect or store manure if an NRCB permit for this facility has not been obtained; and,
2. By April 30, 2024, you must remove all the manure and decommission the two feedlot pens rows according to Technical Guideline Agdex 096-90 *Closure of Manure Storage Facilities and Manure Collection Areas* for a solid manure storage facility, if an NRCB permit has not been obtained. The manure can be either short term stockpiled according to section 5 of the Standards and Administration Regulation under AOPA, or land applied if the land is not considered snow-covered or frozen.

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

Craig Ference and Ference Land & Cattle Corp. are reminded of the following:

1. If you plan to convert the under-construction cow-calf pens to feedlot pens a permit from the NRCB must be obtained prior to any conversion.

2. Over-wintering pens adjacent to the unauthorized feedlot rows may only be utilized for cow-calf purposes. If you plan to over-winter any beef backgrounders or feeders, you must adhere to the seasonal feeding and bedding requirements or obtain an NRCB permit for use of these facilities. Seasonal feeding and bedding requirements can be found in NRCB Operational Policy 2015-2 *Distinguishing Between Confined Feeding and Seasonal Feeding and Bedding Sites (For Cattle Operations)*.

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

The NRCB may access the land and structures for the purpose of assessing compliance with this directive.

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

If Ference Land & Cattle Corp. and Craig Ference fail to comply with this directive, the NRCB may take additional enforcement action.

(Original signed)

Fraser Grant
Inspector, Compliance and Enforcement Division
Natural Resources Conservation Board

Cc: Special Areas No. 4, Development and Planning

Appendices

- A. Valtus Air Photo 1999-2003: CFO at E1/2 17-34-02 W4M
- B. Google Earth Imagery September 2013: CFO at E1/2 17-34-02 W4M
- C. Valtus Air Photo 2015: CFO at E1/2 17-34-02 W4M
- D. Google Earth Imagery October 2018: CFO at E1/2 17-34-02 W4M