

Enforcement Order No. EO 23-03

*Made under section 39 of the
AGRICULTURAL OPERATION PRACTICES ACT, RSA 2000, c A-7 (AOPA)*

Date issued: November 28, 2023

File #: LA15009, LP23006, EO 23-03

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

Issued to: **The Hutterian Brethren Church of Keho Lake - Henry Wurz and
George Wurz**

Basis for Order: Failure to Meet Permit Condition

I, Morgan Schindel, 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 Keho Lake and Henry Wurz & George Wurz

on the basis that that they have failed to operate in accordance with AOPA and its regulations.

Specifically, this enforcement order relates to failure to comply with the terms and conditions of a permit, at the Hutterian Brethren Church of Keho Lake (Keho Lake Colony), which is a multi-species confined feeding operation (CFO). The owner or operator of the CFO did not maintain the liner of their hog earthen liquid manure storage lagoon as was required as a construction condition under NRCB Approval LA15009.

The operation is located at NE-12-12-23-W4M, approximately 4.8 km east of the Village of Barons, in the Province of Alberta. The CFO is owned and operated by The Hutterian Brethren Church of Keho Lake. Henry Wurz is the dairy boss and George Wurz is the field boss and both Henry Wurz and George Wurz make decisions on behalf of Keho Lake Colony.

Background and Investigation

Recently, the Compliance Division of the NRCB implemented the Liner Inspection Program. This program was implemented in an effort to ensure that operators' manure storage or manure collection liners are being maintained as required in their NRCB issued permits. To narrow our focus, the Compliance Division decided to commence the Liner Inspection Program by identifying operators who had installed a synthetic liner in their catch basin, or liquid manure storage lagoon, and who held an NRCB permit issued between 2002 and 2007. As such, a list was created of various operators who installed a synthetic liner. Keho Lake Colony was identified as one of the operations that installed a synthetic liner. As such arrangements were made with Keho Lake Colony to inspect the synthetic liner of their hog lagoon that was required as a construction condition under Approval LA15009.

On March 31, 2015, Keho Lake Colony submitted a Part 1 application to the NRCB to expand an existing multi-species confined feeding operation (CFO).

The Part 2 application was submitted on August 3, 2017, and was deemed complete on August 15, 2017. The delay in completing this application was because the applicant took time to decide which liner was best for their hog lagoon as Keho Lake Colony was given a choice to install either a clay liner or a synthetic liner.

The proposed expansion involved Keho Lake Colony modifying and expanding the existing hog earthen liquid manure two cell storage system to a single cell storage system. Keho Lake Colony chose to install a synthetic liner as detailed in construction condition #2 in Approval LA15009.

On November 9, 2018, a Post Construction Inspection (PCI) was completed by an NRCB Approval Officer and a member of the Keho Lake Colony. The PCI concluded that the synthetic lined liquid manure storage as described in Approval LA15009 was constructed in a satisfactory manner and was constructed in accordance with the engineering report as detailed in the PCI Letter addressed to Keho Lake Colony dated November 16, 2018.

On November 1, 2023, Inspector Denny Puszkas and I attended Keho Lake Colony to conduct an inspection of the Keho Lake Colony dairy Earthen Manure Storage (EMS) and the synthetically lined hog lagoon. Upon arrival we introduced ourselves to Henry Wurz, dairy boss, and Jake Wurz, another member of the colony who was in attendance with Henry Wurz. Although Keho Lake Colony was aware of the reason for our impending visit, Inspector Puszkas and I explained again that this inspection was being completed as part of the Liner Inspection Program and as such we were there to inspect the dairy EMS and the synthetically lined hog lagoon.

When we inspected the hog lagoon it was immediately apparent that there was no synthetic liner visible. I asked Henry Wurz what happened to the synthetic liner. Henry indicated that a couple of years ago Keho Lake Colony started to notice bubbling in the synthetic liner along the banks of the hog lagoon. In the late summer or early fall of 2022, the synthetic liner humped out and got taken by a north wind. At that point, Henry stated that because the synthetic liner was in such a state of disrepair the Colony completely removed the rest of the synthetic liner in the fall of 2022. I asked Henry Wurz why someone from Keho Lake Colony didn't call the NRCB to get some advice or guidance on how to deal with the synthetic liner issue. Henry stated that George, the field boss, attempted to contact the NRCB numerous times and was not able to reach anybody. There is no record in the NRCB CFO database of Keho Lake Colony reporting the liner damage. The NRCB also has a 24-hr response line that can be utilized to report CFO related emergencies. The NRCB has no record of Keho Lake Colony reporting the liner damage using the 24-hr response line.

Inspector Puszkas and I indicated that the synthetic liner was a construction condition of Approval LA15009 and there would have to be remedial action taken by the Colony at some point with respect to bringing the hog lagoon back into compliance. I also explained that Inspector Puszkas and I would be discussing the matter further at our office but that the NRCB would be taking some enforcement action with respect to the hog lagoon given the non-compliance that we identified.

On November 6, 2023, I contacted Henry Wurz to explain that I would be issuing Keho Lake Colony an enforcement order for the hog lagoon not having a liner as required by construction condition #2 in Approval LA15009.

On November 8, 2023, I met with Henry Wurz and George Wurz of Keho Lake Colony to have a discussion with them about how they planned to install a new liner in the hog EMS as required by Approval LA15009. Henry and George verbally committed to installing a compacted clay liner in order to properly line their hog EMS.

Non-Compliance with Permit Condition

The *Agricultural Operation Practices Act* (“AOPA”) at section 13(2) requires a person who holds an approval or registration to comply with and operate in accordance with the terms and conditions of the permit.

Based on my observations, my conversations with Henry Wurz and George Wurz and based on my site inspection on November 1, 2023, I conclude that The Hutterian Brethren Church of Keho Lake Colony have contravened section 13(2) of AOPA for the reason that the hog lagoon that was required to have a synthetic liner, as required by construction condition #2 in Approval LA15009, does not currently have a liner and hasn’t had any liner since the fall season of 2022.

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. Given the non-compliance with construction condition #2 in Approval LA15009, the regulatory objectives in AOPA may be compromised.

Under Section 39(1) of AOPA, if in the opinion of the Natural Resources Conservation Board, a person is contravening or has contravened AOPA or its regulations, the Board may issue an enforcement order:

- (a) directing the person to create a plan to ensure compliance with this Act, the regulations and the approval, registration, authorization, variance or cancellation;
- (b) 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;
- (c) directing the person to undertake any investigation, construction, alteration, repair or other measures specified in the enforcement order, within the time specified in the enforcement order;
- (d) specifying the measures that must be taken in order to effect compliance with the approval, registration, authorization, variance, cancellation, this Act or the regulations.

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:

- (a) Keho Lake Colony did not comply with the terms and conditions of Approval LA15009. Specifically, Keho Lake Colony removed the synthetic liner from their hog lagoon and therefore did not have any liner as required by Approval LA15009 to prevent the migration of manure and potential groundwater contamination.

- (b) The absence of the synthetic liner (or any liner) seriously compromises the objectives of AOPA and undermines the risk management function of the NRCB as a regulator of confined feeding operations.
- (c) Keho Lake Colony did not self-report the destruction of the liner to the NRCB and ought to have known that the complete removal of the synthetic liner should have been immediately reported to the NRCB. This is evidenced through verbal communications with Keho Lake Colony members on November 1, 2023, who confirmed that the synthetic liner started bubbling a few years ago and then was completely removed by Keho Lake Colony in the fall of 2022 after the synthetic liner was found to be irreparable.
- (d) Keho Lake Colony requires clear and enforceable direction moving forward on how to adequately address the absence of a liner in the hog lagoon and to mitigate any possible risks to the environment. Although the absence of the liner has been deemed to be high-risk by NRCB Science and Technology Division, there is no imminent risk and as such this enforcement order is being issued rather than an emergency order.

ORDERS:

To mitigate any possible risks to the environment and potential nuisances to any affected neighbours, Keho Lake Colony shall take all necessary and appropriate measures to comply with Approval LA15009. In particular Keho Lake Colony shall:

1. By December 13, 2023, submit a detailed plan to the NRCB on how the liner will be replaced. The plan must include:
 - i. The type of replacement liner to be installed (e.g., compacted clay, synthetic)
 - ii. Timelines for the liner replacement
 - iii. How AOPA liner requirements will be met and verified in accordance with Section 9(3) and 9(6) of the Standards and Administration Regulation under AOPA
 - iv. Who will install the liner and who will verify installation and AOPA requirements. This information shall include confirmation of a construction contract from a reputable construction company and confirmation that Keho Lake Colony has retained a professional engineer who is in good standing with the Engineering and Geoscience Professions Act.

The detailed written plan must also confirm the capacity of the hog EMS, is either the same or greater than the original capacity of the hog EMS.

The plan will not be acceptable until the NRCB has reviewed and approved it.

2. By June 17, 2024, if a new liner has not been installed, Keho Lake Colony must
 - a. cease using the hog lagoon and
 - b. one week later (June 24, 2024), submit a plan for NRCB approval for the storage of liquid hog manure from the hog operation going forward. If an acceptable plan is not received the NRCB will require a depopulation plan for the hog operation.

- c. By September 9, 2024, if Keho Lake Colony has not received an NRCB permit to reflect the changes to the EMS, then cease using the hog lagoon and submit a plan for NRCB approval for the storage of liquid hog manure from the hog operation going forward. If an acceptable plan is not received the NRCB will require a depopulation plan for the hog operation.

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

Keho Lake Colony shall allow the NRCB access at any reasonable hour, with or without advance notice, to the CFO's 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 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.

Construction condition #2 is to be managed and maintained as required by Approval LA15009, unless the permit condition is amended or replaced by the NRCB.

The NRCB posts all enforcement orders on the NRCB public website.

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 the *Agricultural Operation Practices Act*.

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 the *Agricultural Operation Practices Act*.

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 the *Agricultural Operation Practices Act* for the offence with respect to the facts that gave rise to this enforcement order.

(original signed)

Morgan Schindel
Inspector, Compliance and Enforcement Division
Natural Resources Conservation Board

Cc: Hilary Janzen, Lethbridge County

Appendix:

- A. Google Earth Map, July 24, 2023, Imagery: NE-12-12-23-W4. Labeled by Morgan Schindel

SERVICE OF ORDER:

Delivered to: George Wurz	Delivered to:	Delivered to:
Method of Delivery: Personally	Method of Delivery:	Method of Delivery:
Date of Delivery: November 28, 2023	Date of Delivery:	Date of Delivery:

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. The deadline for you to file a request for review by the Board is **4:30 p.m. on December 12, 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. 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 Keho Lake Colony – NE – 12 – 12 – 23 - W4

