



Compliance Directive

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

Directive #: CD 24-02

Date issued: May 27, 2024

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

Issued to: Van Aken Farms Ltd.
Hendrik, Jenneke, and Martin Van Aken
R.R. 3
Ponoka, AB T4J 1R3

Attention: **Martin Van Aken, Manager**

This directive relates to unauthorized construction of a manure collection area (MCA) at Van Aken Farms Ltd., and the conversion from a dairy confined feeding operation (CFO) to a beef feedlot without an NRCB permit. The unauthorized construction consists of four new feedlot pens.

The operation is located at NE-19-42-26 W4M, in Ponoka County, in the Province of Alberta, approximately 8.5 km southwest of Ponoka, Alberta. The CFO is operated by Van Aken Farms Ltd., the land is jointly owned by Hendrik and Jenneke Van Aken, Martin Van Aken manages the operation and makes the day-to-day decisions.

Background and Investigation

On April 15, 2024, Martin Van Aken, on behalf of Van Aken Farms Ltd.¹, submitted a Part 1 application to the NRCB for a conversion from 190 dairy cows to 2,500 beef finishers including the construction of additional pens. While reviewing the application I referenced Google Earth Pro Imagery and it appeared as though feedlot pens had already been constructed. Only three of these pens were constructed on the footprint of existing permitted CFO pens. I spoke with approval officer Lynn Stone about the file and was informed that the operator had already made progress with the Part 2 application by conducting soil testing for the proposed pens and catch basins.

I conducted an internal file review of the NRCB records for this site and found the following information:

- On December 5, 2002, NRCB permit Registration RA02029A was issued to Van Aken Dairy Ltd. to expand an existing 130 cow dairy to a 190 cow dairy (plus

¹ In 2017 the corporation changed from Van Aken Dairy Ltd. to Van Aken Farms Ltd.

associated dries and replacements) located at NE-19-42-26 W4M. It should be noted that on September 5, 2002, Enforcement Order No. 02-28 had been issued due to the initiation of construction prior to receipt of permit RA02029A.

- On February 23, 2021, the NRCB received a Part 1 application for the addition of 2,000 beef calves to NRCB permit RA02029A, this application was withdrawn as a result of a Part 2 application not being received within the six-month legislated deadline.

On April 30, 2024, I spoke with Martin Van Aken about the construction of the four additional pens. Mr. Van Aken informed me that the pens were constructed for backgrounding purposes of beef cattle and that he has only utilized them when grazing was unavailable. His management plans have changed, and he would like to utilize them year-round, therefore he has pursued an application from the NRCB. Mr. Van Aken and I discussed the requirements of seasonal feeding and bedding sites (SFBS) for backgrounding purposes. He informed me that he was unaware of these requirements and admitted that he may not meet all the requirements in Tables 1 or 2 of the NRCB's Operational Policy 2015-2 [Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites \(for Cattle Operations\)](#) (CFO/SFBS Policy).

On May 7, 2024, approval officer Lynn Stone and I met with Mr. Van Aken. We toured the facilities that had been constructed. At the time of inspection, the dairy barn and constructed pens were housing beef calves. Mr. Van Aken informed us that in 2016 he stopped milking cows at the dairy. However, as he was unsure of future plans to either pursue a beef feeding operation or resume the dairy operation, he maintained his facilities and followed the annual permit conditions of RA02029A. Between 2016 and 2022 he managed a cow-calf facility, utilizing the three existing pens (which were previously used as pens for the dairy CFO), as well as other areas of the quarter. In 2022, he began backgrounding beef cattle, modifying the existing three pens as well as constructing the additional four pens (adjacent to the existing three pens). It should be noted that the modifications of the existing three pens appear to be within the 2002 permitted footprint, therefore I am not considering the modifications to be unauthorized construction. Mr. Van Aken also informed me that he has switched his management of the operation and now houses up to 1,000 beef calves which get shipped out around 500 lbs. He does not house cattle in the four constructed pens when grazing is available.

During my site inspection on May 7, 2024, I provided Mr. Van Aken a copy of the Distinguishing Between Confined Feeding Operations and Seasonal Feeding & Bedding Sites (for Cattle Operations) fact sheet. We reviewed the factors in Table 1 and 2. As these pens are adjacent to an existing CFO, it is my determination that all the factors in Table 1 are applicable. Utilizing Table 1, the following factors and characteristics that cannot be met make the constructed pens a CFO facility:

- Feeding area: the facility utilizes fence line feeding with permanent bunks and a concrete apron.
- Manure management: manure is concentrated in the pens and must be removed and spread or stored.

- Infrastructure: there are permanent feed bunks and fencing that surround each pen.
- Vegetation: the pens are not annually cropped or turned to pasture.

Aerial Imagery from Valtus 1999-2003 (Appendix A) shows the existing pens associated with the dairy operation. The 2021 Google Earth Pro Imagery (Appendix B) shows the facilities used for confining the cow-calf operation. The newly constructed unauthorized feedlot pens are shown in the 2023 Google Earth Pro Imagery (Appendix C).

Unauthorized Construction

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 a permit for the unauthorized pens (numbered four to seven), the regulatory objectives in AOPA may be compromised.

Pens four to seven (Appendix C) are constructed immediately adjacent to the existing CFO pens and are being used to feed lightweight cattle (<500 lbs). I referenced the NRCB CFO/SFBS Policy and determined the newly constructed pens would need to meet all the factors in Table 1 of the CFO/SFBS Policy. When assessing pens four to seven to the factors in Table 1 they fail to meet all the factors due to their construction design and management practice, therefore are considered unauthorized construction and require a permit under AOPA.

The *Agricultural Operation Practices Act* (AOPA) at section 14 prohibits a person from constructing, expanding, or modifying a manure storage facility (MSF) or manure collection area (MCA) that requires a permit under the regulations unless they hold a permit.

A MCA is defined as the floor of a barn, the under-floor pits of a barn, the floor of a feedlot pen and a catch basin where manure collects but does not include the floor of a livestock corral.

Refer to NRCB Operational Policy 2012-1: Unauthorized Construction, and to the Livestock Pen Floor Repair and Maintenance Fact Sheet, for details on what constitutes "construction."

Under section 4(2) of the Part 2 Matters Regulation, an authorization is required for an MSF or MCA that is part of a CFO unless the owner or operator already holds a permit authorizing the construction, expansion, or modification. Van Aken Farms Ltd. does not hold a permit for pens four to seven.

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. While NRCB Registration RA02029A was similarly the result of unauthorized construction, this prior unauthorized construction occurred almost two decades ago. The operator has been cooperative and has already initiated the application process for the required permit. There also did not appear to be any immediate environmental risk posed by the construction of the new pens. In accordance with the NRCB Compliance and Enforcement Policy and the reasons I have identified above, a compliance directive is being issued at this time, rather than an enforcement order.

Change in Livestock Category

Under section 3(2) of the Part 2 Matters Regulation, an owner or operator of a CFO who holds a registration is not required to apply for an amendment to the registration when the owner or operator wishes to change the type of livestock within the same category (e.g. beef finishers to beef feeder calves) unless the change will increase the amount of manure or odour produced. Otherwise, a change in category (e.g. dairy to feedlot animals) requires a permit or amendment to a permit.

Van Aken Farms has switched from operating a 190 cow dairy (including dries and replacements) to a 1,000 beef feeder calves CFO without obtaining a new NRCB permit. The conversion does not increase the amount of manure or odour produced. A dairy CFO and a beef feedlot CFO are not considered the same category of livestock, therefore an NRCB permit is required to make this change.

DIRECTIVE:

To mitigate any possible risks to the environment and potential nuisances to any affected neighbours, Van Aken Farms Ltd. and Hendrik, Jenneke, & Martin Van Aken shall take all necessary and appropriate measures to comply with AOPA and its regulations. In particular, Van Aken Farms Ltd. and Hendrik, Jenneke, & Martin Van Aken shall:

1. By August 31, 2024, depopulate pens four to seven as identified on the Google Earth Pro Aerial Imagery from April 2023 (Appendix C), if an NRCB permit for the new manure collection area(s) of pens four through seven has not been obtained; and
2. By August 31, 2024, pens four to seven, as identified on the Google Earth Pro Aerial Imagery from April 2023 (Appendix C), must be permanently closed in accordance with Technical Guideline Agdex 096-90 Closure of Manure Storage Facilities and Manure Collections Areas for a solid manure collection area, if an NRCB permit for the manure collection area(s) of pens four through seven has not been obtained. This includes removal of all the manure.

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

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.

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

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

If Van Aken Farms Ltd. or Hendrik, Jenneke, & Martin Van Aken fail to comply with this directive, the NRCB may take additional enforcement action.

(Original signed)

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

Cc: Ponoka County

Appendices

- A. Valtus Aerial Imagery 1999-2003 (labelled by F. Grant)
- B. Google Earth Pro Aerial Imagery March 2021
- C. Google Earth Pro Aerial Imagery April 2023 (labelled by F. Grant)