

Compliance Directive

AGRICULTURAL OPERATION PRACTICES ACT Revised Statutes of Alberta 2000 Chapter A-7

Directive no.: CD 19-07

Date issued: August 29, 2019

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

Issued to: Arie and Willemina Muilwijk
Box 1628
Fort Macleod, Alberta, T0L 0Z0

This directive relates to unauthorized construction at a confined feeding operation (CFO), without a permit under the Agricultural Operation Practices Act (AOPA). The CFO is located at NE 10-009-27 W4, in the Municipal District of Willow Creek, approximately 11 kilometers west of Fort Macleod, Alberta. The CFO is owned and operated by Arie and Willemina Muilwijk (Muilwijk's).

Background

This site holds municipal permit 1002-80, issued by the M.D. Willow Creek on December 3, 1980, which allowed construction of a 100 sow farrow to finish swine CFO. This permit is still valid, therefore allowing the Muilwijk's to operate a swine farrow to finish operation.

The site also holds municipal permit 118-98 issued by the M.D. Willow Creek for the modification of a "manure storage lagoon". Later, the NRCB issued permit LA10054N as an amendment to permit 118-98. In error, LA10054N was labelled as an "Approval" when it should have been labelled as an "Authorization" because there was no increase in animals. This error will be further investigated and resolved in the future.

On July 11, 2019 while conducting NRCB inspections in the area I drove past Muilwijk's operation and noticed three newer feedlot type pens. These three pens are situated to the east of the existing hog barn, in a north/south line. The most southern pen, appeared to be recently constructed. It appeared to be approximately the same size as the two adjoining northern pens. The two northern pens were populated with dairy feeder calves. The adjoining southernmost pen was not populated.

Upon further investigation I confirmed that no NRCB permit for any expansion or construction at this CFO had been issued to the Muilwijk's. In referencing Google Earth™, Google Earth™ imagery of July 13, 2013 revealed no constructed pens at the identified new pen location.

The most recent Google Earth™ imagery of June 10, 2015, showed two livestock pens, measuring about 32 metres x 39 metres, constructed to the east of the swine barn. The imagery also showed that both pens appeared to be stocked with feeder calves.

I completed a site inspection of the facility on July 17, 2019. I met with Arie Muilwijk on site, and he provided me with a review of the recent history of his operation, as follows.

Mr. Muilwijk stated his father, Dirk Muilwijk, originally managed the operation as a swine CFO for Marvin Galts. The swine operation ceased production of swine in 2010. Arie Muilwijk then purchased the property in 2012. At that time, he placed about 200 head of dairy feeder calves in the swine barn. The dairy feeder calves were fed out to about 350 pounds and then went to other feedlots. Mr. Muilwijk stated he did not make an application to the NRCB for a change of livestock category, from swine to beef at that time.

Around 2013 the Muilwijk's built the first two pens for the feeding of additional dairy feeder calves outside of the calves being fed in the swine barn. Also around that time some portable calf hutches were added. The Muilwijk's did not apply for a NRCB permit for the construction of the two feeder calf pens constructed in 2013. These two new pens have a capacity of about 160 head of feeder calves each. Including the swine barn, these two new pens, and the calf hutches, the operation confined fed a total of about 726 head of dairy feeder calves at that time. Mr. Muilwijk further added that he had been in contact with a NRCB Approval Officer about expanding the dairy feeder calf operation at the site. At that time there were concerns that the site may not have a suitable naturally occurring liner as required by AOPA.

In 2018 the Muilwijk's added another third pen to the south of the two previously built pens. It too held about 160 head of feeder calves. Again no application to the NRCB was made for a permit for the third pen. Total capacity of the facility with the third pen is approximately 886 dairy feeder calves. Calf hutches are not considered to be part of a CFO due to their temporary siting ability. Therefore, excluding the 200 head housed in the portable calf hutches, the site currently has a total capacity to confine feed 686 dairy feeder calves.

Unauthorized construction

Section 13(1) of the *Agricultural Operation Practices Act* provides:

13(1) No person shall commence construction or expansion of a confined feeding operation for which an approval or registration is required pursuant to the regulations unless that person holds an approval or registration.

Section 1(1)(d) of the *AOPA Part 2 Matters Regulation* defines "expansion" in part as

- (i) with respect to a confined feeding operation, means the construction of additional facilities to accommodate more livestock,

Under NRCB Approvals Policy 2016-7 (updated May 8, 2018) sec. 4.5, the NRCB interprets "facilities" in the "expansion" definition to include increased animal numbers.

Section 3 of the *AOPA Part 2 Matters Regulation* sets out when a registration is required for a confined feeding operation:

3(1) Subject to this section, a registration is required for an owner or operator to commence construction or expansion of a confined feeding operation for the containment of the number of animals set out in column 2 of Schedule 2 for the type of livestock to be present at the confined feeding operation.

Column 2 of Schedule 2 of the *AOPA Part 2 Matters Regulation* shows threshold levels at which an owner or operator must hold a permit. The Regulation states that when dairy calves are housed away from a dairy, they are to be treated as beef feeder calves. The threshold for which a NRCB permit (Registration) is required for a beef feeder calf operation, for animals less than 550lbs, is 360 head.

Based on my observations, my conversations with Arie Muilwijk, and my site inspection of July 17, 2019, I have formed the opinion that the Muilwijk's are contravening section 13 of the *Agricultural Operation Practices Act* because:

- Municipal permit 1002-80, which is still valid, was for the construction of a 100 sow farrow to finish swine CFO.
- None of the subsequent permits for this CFO facility were for the addition of feeder calves or associated facilities.

Mr. Muilwijk advised me that the initial two feeder calf pens constructed in 2013 were constructed without applying for or receiving a NRCB permit. He also advised me that the third feeder calf pen, constructed in 2018, was also constructed without applying for or receiving a NRCB permit.

As noted above, my investigation indicates that the Muilwijk's conducted unauthorized construction activities by constructing three pens for the confinement and feeding of dairy feeder calves, and by increasing the number of confined fed calves above the threshold. The Muilwijk's did not hold a permit under AOPA for the construction of the new feeder calf pen facilities, for the change in livestock category, or for the confinement of feeder calf animal numbers over the threshold.

For these reasons, constructing the new feeder calf pens, and populating them with calves, without a permit is unauthorized construction, and therefore is a violation of section 13 of the act. If you continue to violate section 13 of the act, you should be aware that:

- a) Under section 39 of the act, the NRCB may issue an enforcement order if the NRCB has the opinion that a person is contravening the act or the regulations.
- b) Under section 35 of the act, a person who contravenes section 13 of the act is guilty of an offence and is liable for a fine of not more than \$5,000, or \$10,000 if the contravention was knowingly done.

This is the first enforcement action that this owner/operator has received under the NRCB compliance policy. Therefore a compliance directive is being issuing rather than an enforcement order at this time. Accordingly, this directive is to remedy the violations noted above and to mitigate any possible risks to the environment and to any affected neighbours.

DIRECTIVES:

- 1) By September 30, 2019, Arie and Willemina Muilwijk must depopulate their confined feeder calf operation to below 360 head (not counting the calves in the moveable hutches), the threshold at which a permit is required. The Muilwijk's cannot exceed this threshold unless they obtain the appropriate NRCB permit.
- 2) This date can be changed, if requested in writing, by the NRCB.

These requirements shall remain in effect until otherwise directed by the NRCB in writing.

If you fail to comply with this directive, the NRCB may take additional enforcement action.



Karl Ivarson
Inspector, Compliance and Enforcement Division
Natural Resources Conservation Board

Cc: M.D. Willow Creek
Adria Snowdon, NRCB