

# Compliance Directive

## AGRICULTURAL OPERATION PRACTICES ACT (AOPA) Revised Statutes of Alberta 2000 Chapter A-7

**Directive no.:** CD 18-07

**Date issued:** August 30, 2018

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

**Issued to:** Hutterian Brethren of Ewelme  
Box 250  
Fort Macleod, Alberta T0L 0Z0

**Attention: Peter Walter**

This directive relates to the unauthorized construction of feedlot pens at a 5,000 head beef feeder confined feeding operation (CFO) located at NW 7-006-26-W4, in Municipal District (M.D.) of Willow Creek.

The overall size of the constructed pens is roughly 18% larger than the approved dimensions for those pens, in Authorization LA17029. The NRCB issued that authorization on August 16, 2017.

The CFO is owned and operated by the Hutterian Brethren of Ewelme (Ewelme Colony). The CFO was originally permitted by the M.D. of Willow Creek. That permit became a deemed (that is, grandfathered) permit under AOPA, when that act took effect on January 1, 2002. The CFO's deemed permit was replaced by Approval LA10051M, which the NRCB issued in 2011.

### **Background**

Authorization LA17029 allows Ewelme Colony to construct three new rows of feedlot pens, and states that the permitted dimensions of each of those rows are 243.8 metres x 61.0 metres.

Condition 2 of the authorization prohibits the colony from placing livestock or manure in the new feedlot pens until the NRCB has inspected the facilities and stated in writing "that the facilities have been constructed in accordance with the authorization". This inspection is commonly referred to as a "post-construction inspection."

On August 17, 2018, George Hofer, the colony manager, called me and stated that the colony had finished constructing the new pens so they were ready for the post-construction inspection required by condition 2 of the authorization.

On August 21, 2018, I and NRCB approval officer Adria Snowdon conducted the inspection.

As per inspectors' routine practice, we measured the dimensions of the newly constructed pens, using a laser rangefinder. This tool has a margin of error of plus or minus one metre. According to our measurement each of the three new rows of feedlot pens was 288 metres x 61 meters. Although these dimensions coincide with the measurements of the pre-existing feedlot pens, they differ from those dimensions stated in part two of application LA17029 and Authorization LA17029.

Therefore, each row of pens was approximately 44 metres longer (New East Pens), than the permitted length of 244 metres in Authorization LA17029. Based on these measured dimensions, the total area of the new pens is 52,704 m<sup>2</sup>, which is 8,052 m<sup>2</sup> (or roughly 18%) larger than the total permitted area of 44,652 m<sup>2</sup>.

### **Unauthorized construction**

Section 14(1) of AOPA prohibits any person from commencing construction (or expansion or modification) of a manure storage facility (MSF) or manure collection area (MCA), for which an authorization is required pursuant to the regulations under the act, unless they hold the required authorization (Feedlot pens are both a MSF and an MCA, as those terms are defined in section 1(c.21) and (c.3) of AOPA.).

Furthermore, section 14(2) of AOPA requires that a person who holds and authorization must comply with and operate in accordance with the terms and conditions of the authorization.

Section 4(2) of the Agricultural Operations, Part 2 Matters Regulation, in turn, states that an authorization is required to commence construction of a MSF or MCA that is part of a CFO, unless the CFO owner already holds a permit for that MSF or MCA

Under these provisions of the act and regulation, Ewelme Colony was required to obtain an authorization for its three new rows of feedlot pens, and to construct the pens no larger than the permitted dimensions in the authorization.

As noted above, the constructed pens are roughly 18% larger than their permitted dimensions in Authorization LA17029. Therefore, the pens' construction is in violation of the authorization and of section 14(2) of AOPA. Section 39 of the act allows the NRCB to issue an enforcement order to a person who is contravening an authorization, the act, or the regulations.

Under section 35 of the act, a person who contravenes section 14 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.

Under section 33, the fines in section 35 are calculated "for each day ... on which the offence occurs or continues."

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.

Accordingly, this directive is to remedy the violations noted above and to mitigate any possible risks to the environment and to any affected neighbours.

**DIRECTIVE:**

Ewelme Colony shall take all necessary and appropriate measures to comply with AOPA and its regulations with respect to the unauthorized construction described above. In particular:

1. Ewelme Colony shall not populate the New East Pens unless and until the colony obtains a new or amended authorization (or other relevant permit under AOPA) allowing the colony to construct and operate those pens.
2. If, by September 1, 2019, the NRCB has not issued a new or amended permit for the New East Pens, Ewelme Colony shall decommission the New East Pens. This decommissioning must be completed by September 31, 2019.

These September deadlines may be extended by the NRCB, in writing.

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

If the Ewelme Colony fails to comply with this directive, the NRCB may take additional enforcement action.



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

Cc: Cindy Chisholm, M.D. Willow Creek  
Joe Sonnenberg, NRCB Application Division  
Adria Snowdon, NRCB Application Division