

## Compliance Directive # 17-08

**Date issued:** December 5, 2017

**Issued by:** Tim Jespersen, Inspector, Compliance and Enforcement Division, Natural Resources Conservation Board (NRCB) Central Region.

**Issued to:** Mr. Dean Penner  
P.O. Box 607  
Linden AB T0M 1J0

This directive relates to unauthorized construction and expansion at a cattle operation, which is currently being managed as a combined feedlot and cow/calf operation. The operation is located on the NE 23-030-25 W4M, in Kneehill County approximately 4.5 kms east of the Village of Linden, Alberta. The current land owner is Dean Penner.

### **Background**

On November 14, 2016 Dean Penner approached me during the Red Deer Agri-Trade convention and inquired about getting his farm practice into compliance with the *Agricultural Operation Practices Act* (AOPA). During our conversation at the convention, Mr. Penner provided the following information:

1. In 1983, Kneehill County issued development permit #632-82 to Marvin Penner (Dean Penner's father) to operate a 40 sow farrow to finish swine facility. Although the hog barns still exists, it has not been active since 2001.
2. He purchased the above noted farm from Marvin Penner in 2006.
3. At the time of the purchase, the farm was being run by Marvin Penner as a 50 head cow/calf operation (breeding herd) plus 200 head of feeder cattle utilizing five pens.
4. Dean Penner began custom feeding cattle in 2006 and increased the size of the operation by adding three more pens adjacent to the original five pens to allow him to accommodate up to 1,000 head of finisher cattle.
5. He continues to maintain a 150 head cow/calf operation as well as backgrounding about 350 heifers from October to March. The cow/calf practice is managed separate to his confined feeding operation and does not use the same penning areas.
6. He had not applied for any permits from the NRCB to begin confine feeding livestock, and this practice was not covered by any existing Kneehill County permits.
7. He confines and feeds the custom finisher cattle from October to early summer annually. In the past ten years, he has had to hold livestock over into the middle of July on at least four occasions to reach targeted weights. All of the finisher cattle are being custom fed. Once the target weights are met, the cattle are shipped to markets for sale.

## **Site Inspection**

On November 15, 2016 I inspected Mr. Penner's farm. During that inspection, I found eight livestock pens being used to confine and feed cattle. The eight pens held approximately 1,000 finisher cattle. Dean Penner informed me during my inspection that he custom feeds all 1,000 head and holds them in the eight pens until they have reached the targeted market weights. All the finishers are then sent to market for sale.

On November 21, 2016 I sent a letter to Dean Penner indicating that conversion of the initial five pens and addition of three pens were in contravention of AOPA and directing him to come into compliance with the act, by submitting a completed part 1 and part 2 application to the NRCB by no later than June 1, 2017.

On April 26, 2017 Dean Penner contacted approval officer Francisco Echegaray to inquire about the application process. On May 26, 2017 Mr. Penner submitted a completed part 1 application to the NRCB.

On November 28, 2017 approval officer Lynn Stone informed me that she had withdrawn Dean Penner's application as he had not met the timeline for submitting a completed part 2.

## **Findings**

Section 13 of AOPA prohibits any person from constructing or expanding a CFO without a registration or approval under the act, if that construction or expansion requires a registration or approval under the regulations. Unauthorized construction is an offence under section 35 of the act.

Sections 2 and 3 of the Agricultural Operation, Part 2 Matters Regulation, provide that an approval or registration is required to construct a new "confined feeding operation" (CFO), or to expand an existing CFO, if the capacity of the new or expanded CFO is above the threshold capacities in Schedule 2 of that regulation. For beef finishers, the Schedule 2 thresholds for registrations and approvals are 150 and 350 head, respectively.

AOPA's permit requirement is intended to reduce the potential for groundwater contamination and surface water runoff and to lessen the nuisance impact of CFOs on neighbors. Thus, construction and use of CFO facilities without the required permit may be creating a risk to the environment or an inappropriate disturbance.

## **Unauthorized Construction**

I am of the opinion that the construction of the three post-2006 pens and the conversion of the five pre-2006 existing pens from a seasonal feeding and bedding site to a confined feeding operation required a permit from the NRCB, under either section 2, 3, or 4 of the AOPA, Part 2 Matters Regulation, Alta. Reg. 257/2001. For these reasons, I conclude that your construction and expansion is a violation of either section 13(1) or 14(1) of AOPA. Read together, those sections prohibit any "person" from "commencing construction or expansion" of a confined feeding operation or manure storage facility, if an NRCB permit is required under the regulation for such construction or expansion. I have included sections 13(1) and 14(1) of AOPA for your reference:

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.

14(1) No person shall commence construction, expansion or modification of a manure storage facility or manure collection area for which an authorization is required pursuant to the regulations or commence construction, expansion or modification of a manure storage facility for manure that is in a predominantly liquid state or manure to which water has been added unless

- (a) the person holds an authorization that authorizes the construction, expansion or modification, or
- (b) the person holds an approval or registration that authorizes the construction, expansion or modification.

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

**DIRECTIVE:**

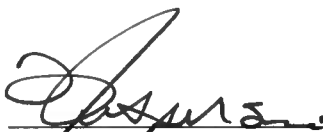
I hereby direct you (Dean Penner) to depopulate the entire cattle feedlot by July 1, 2018 unless you do the following:

- 1) Submit a *complete* approval application (parts 1 and 2) to the NRCB, for all eight pens by July 1, 2018, OR
- 2) Submit a *complete* approval application (parts 1 and 2) for the three post-2006 pens and make a grandfathering claim (as part of your application) for the original five pens by July 1, 2018.

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

**CONSEQUENCES OF NON-COMPLIANCE**

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



Tim Jespersen  
Inspector, Compliance and Enforcement Division  
Natural Resources Conservation Board

cc: Kneehill County Development and Planning  
Lynn Stone, Approval Officer Red Deer office