

December 5, 2018

sent by email to [REDACTED]

Richard Hofer
Box 252
Raymond, AB T0K 2S0

Dear Mr. Hofer:

**Re: Application for Amendment LA18058A – Notice of Decision
Nelson Family Ranches Ltd.
NE 07-006-19 W4M**

Please be advised that Application for Amendment LA18058A, which formalizes permitted livestock numbers and clarifies the dust control condition at an existing cattle confined feeding operation, has been approved.

Enclosed you will find a copy of the decision with respect to the application. In accordance with section 23(3) of the *Agricultural Operation Practices Act* (AOPA), written copies of the decision are being provided to all directly affected parties.

Given the proximity of your residence to the operation, I am of the opinion you are a directly affected party. As a directly affected party under AOPA, you have the right to request that the Natural Resources Conservation Board (the Board) review the determination of your directly affected party status and/or this decision. To request a Board review, you must file a written application. Requests for a Board review must contain:

- a) a clear and concise statement of the facts relevant to the application
- b) the grounds on which the application is made
- c) a brief explanation as to the nature of the prejudice or damage that has resulted or will result from the order, decision or direction
- d) a brief description of the remedy sought
- e) the applicant's name, current address, telephone number, fax number and, if available, e-mail address
- f) if the applicant has a representative, the representative's name, current address, telephone number, fax number and, if available, e-mail address

Standard forms for requesting a Board review are available on our website at: www.nrcb.ca or may be obtained by contacting board review staff at 403-297-8269. Completed requests for Board review should be sent to the attention of: Laura Friend, Manager, Board Reviews, Natural Resources Conservation Board, 19th Floor, Centennial Place, 250 5 St. SW, Calgary, Alberta, T2P 0R4, Fax 403-662-3994.

The request must be received on or before the filing deadline of January 4, 2019.

For more information regarding the Board's review process, you are encouraged to contact Laura Friend at 403-297-8269 or by email to laura.friend@nrcb.ca.

Yours truly,

Joe Sonnenberg
Approval Officer

Encl. (2)



Requests for Board Review

(Approvals, Registrations and Authorizations)

Agricultural Operation Practices Act (Section 25)

Fact Sheet

Who can file a request for review (RFR)?

- Parties who the approval officer has determined are directly affected may request a review of the approval officer's decision on the permit application. Operators and the municipality are automatically considered directly affected.
- A party who the approval officer found was not directly affected may file an RFR and ask the Board to reconsider their status. The RFR must include written reasons that explain why they should be considered directly affected and why they wish to request a review of the approval officer's decision on the permit application. If the Board determines that the party is directly affected, it will consider the merits of the party's RFR.

What to include in an RFR

- The RFR must include sufficient information to show that the approval officer's decision did not adequately address an issue, and must clearly state the reasons the party believes that the decision should be reviewed by the Board.
- Forms for requesting a Board review are available on the NRCB website or may be obtained by contacting the Manager, Board Reviews. These forms may be handwritten or typed.
- Information required to request a Board review is prescribed by the *Agricultural Operation Practices Act*. The RFR form prompts applicants to provide the information required by the act. For assistance, contact information is provided on the form along with details for filing the form with the Board.

When must parties file an RFR?

- The RFR filing deadline is set out in the approval officer's decision cover letter. An RFR received after the deadline will not be considered.

Notice of RFR

- On the day following the RFR deadline, the Board issues a letter of notice that the Board has received requests to review the decision. The notice letter is sent to the parties that submitted RFRs, the operator, and the directly affected parties referenced in the approval officer's decision.

Rebuttals

- The notice letter advises that any directly affected parties adversely affected by the positions presented in the RFRs may submit a rebuttal within a specified deadline (typically five working days from the date of the notice letter).
- The Board provides a copy of each rebuttal to all parties when it issues its written decision to dismiss the requests for review or schedule a review. Parties do not have an opportunity to reply to any rebuttals received.

Board decision to deny an RFR or schedule a review

- After the rebuttal deadline is past, but within 10 working days of the RFR filing deadline specified by the approval officer, the Board meets to deliberate on the requests. The Board considers the RFRs, rebuttals received, the requests for directly affected party status, relevant aspects of the approval officer's decision, and the public documents in the approval officer's records.
- Based on the full record, the Board determines whether to dismiss the requests for review or to schedule a review, and issues its reasons in a decision document.
- If a review is granted, the Board outlines the relevant issues that will be considered at the review. If a review is denied, the Board explains why the request was determined to have insufficient merit to proceed to a review.

- While the Board attempts to meet within 10 working days of the RFR deadline specified by the approval officer, it normally issues its decision to grant or deny the review after the 10 working day deadline. This timeframe enables parties to submit rebuttal submissions and allows for the time the Board requires to prepare the written decision document.
- The Board does not disclose its decision to dismiss a request for review or schedule a review before issuing its written decision on whether to grant or deny the review.

Scheduling a review

- If the Board grants a review, the written decision will state whether the review will be a written review, or if it will be an in-person, public hearing. If the review will be an in-person, public hearing, the Board will communicate the details to the involved parties. The Board attempts to schedule public hearings within the affected community.

Further information

- For more information, or if you have any other questions relating to Board reviews under the *Agricultural Operation Practices Act*, please contact:

Laura Friend, Manager, Board Reviews
Natural Resources Conservation Board

Phone: 403-297-8269

Fax: 403-662-3994

Dial 310-0000 to be connected toll free, or email:

info@nrcb.ca

Fact sheets and other NRCB publications are available at www.nrcb.ca.

May 2018



Total permitted animal capacity from all permits for this site:
7,000 Beef Finishers

In consideration of Decision Summary LA18058A, Approval LA18058A is issued to:

Name: Nelson Family Ranches Ltd. (the "permit holder")
Address: Box 388, Stirling AB T0K 2E0
Contact person: Shawn Nelson & Jeff Nelson

The permit holder shall comply with the requirements of the *Agricultural Operation Practices Act* (AOPA) and the regulations passed pursuant to that act.

The permit holder shall adhere to the descriptions contained in the filed application for municipal development permit #98-25, unless otherwise noted in the following conditions.

The permit holder is responsible for all costs associated with monitoring and reporting requirements.

Operating conditions

1. A dust control program, as approved by the NRCB in writing, must be enacted at the site. The NRCB may amend the dust control plan, from time to time, in writing.
2. Manure shall be worked into the ground within 24 hours of spreading if neighbors deem it a problem, otherwise the manure needs to be incorporated into the soil within 48 hours.
3. The storage of manure can be accommodated within the pens. The manure should be cleaned from the pens as proposed on a six month basis.
4. Manure should not be spread on frozen or snow covered ground.
5. A fly control program will be implemented.

This approval becomes effective immediately. The approval conditions will remain in effect unless amended in writing by the NRCB.

Municipal Development Permit #98-25 is hereby cancelled and is no longer in effect, unless Approval LA18058A is held invalid, in which case the previous permits will remain in effect.

December 5, 2018


Joe Sonnenberg
Approval Officer



Approval LA18024 – Appendix

Construction conditions carried forward from municipal permit 98-25

1. This permit indicates that only the development to which it relates is authorized in accordance with the provisions of the land use bylaw and in no way relieves or excuses the applicant from complying with the land use bylaw or any other bylaws, laws, order and/or regulations affecting such development.
2. If this development permit is issued for construction of a building, the exterior of the building, including painting, shall be completed within twelve (12) months from the date of issue of this development permit.
3. County of Warner: The County waives the minimum distance setback as recommended by the Code of Practice from 2,378 feet to 1,575 from the nearest residence. It also waives the minimum distance from Primary Highway 52 from one half mile to one quarter mile. The distance from the irrigation canal is approved at 100 feet south of it, if proper barriers are in place, otherwise the distance shall be 200 feet. No runoff can be allowed to enter the canal at any time.
4. Alberta Agriculture: The recommendations of Alberta Agriculture shall be adhered to except for those waived by the County of Warner and the information is enclosed in the letter dated September 25, 1998 and it is attached as Appendix A.
5. Alberta Transportation: Due to the feedlot being within 300 meters of Primary highway 52, a permit is required to be obtained from Alberta Transportation.
6. Chinook Health Region: The recommendations of Chinook Health Region shall be adhered to except for those waived by the County of Warner and the information is enclosed in a letter dated September 30, 1998 and it is attached as Appendix B.

Construction conditions carried forward from Appendix A- Alberta Agriculture, Food, and Rural Development Comments – except for those waived by the county (see condition #4 above)

1. Minimum Distance Separation (MDS)

The minimum separation distance from the nearest part of the feedlot to the nearest neighboring residence should be at least 2,378 feet (725 metres) for a category 1, single residence or low sensitivity neighbor. The information supplied with the application, as well as air photo interpretation, shows the actual distance to be approximately 1,575 feet to the nearest neighboring residence from the closest point on the proposed expansion. This does not meet the separation distance criteria as set out in the code.

In addition, a minimum separation of 150 feet must be provided from any irrigation canal/ drainage ditch and adequate measures taken to ensure no contamination of these areas.



2. Soils Testing

It is recommended that proper testing of the soils in the area where the proposed pens are to be constructed be undertaken to ensure that the soils contain an adequate clay percentage to ensure that the pen floor permeability will allow no contamination of ground water. No soils information was available at the time of the site inspection.

3. Storage of Manure

The storage of manure can be accommodated within the pens. The manure should be cleaned from the pens as proposed on a six month basis.

4. Land for Manure Nutrient Utilization

In accordance with the Code of Practice, approximately 2,083 acres of cultivated dryland or 1,042 acres of cultivated irrigated land are required for adequate manure nutrient utilization from the entire feedlot (existing area and proposed expansion). These figures are based upon nitrogen utilization. Additional area may be required when phosphorus utilization is considered.

5. All waterways on lands utilized for manure spreading must be contained and prevented from contaminating surface or groundwater. In order to achieve this, it is recommended that:

- Berms be constructed to divert surface run-off water away from the facility and contain run-off originating at the facility.
- Runoff storage ponds be constructed to contain excess runoff from the feedlot area. The storage volume for the proposed expansion should be 5,380 m³ (1.184 million gals) with a minimum of 0.5 metre freeboard on the ponds.
- The storage ponds are to be properly engineered and constructed so as to achieve a hydraulic conductivity of less than 1×10^{-7} cm/sec. The floor of the pond must also be at least one meter above the ground water table. Information on the ground water table, as well as soils, was not available at the time of the site inspection.

Construction Conditions Carried forward from Appendix B- Chinook Health Region Comments– except for those waived by the county (see condition #6 above)

1. The development should meet the distance requirements of the County of Warner #5 Land Use Bylaw and the Alberta Agriculture Code of Practice.
2. All surface drainage should be properly contained on lands owned by the owner/ operator. This should include properly designed catch basins for the proposed and existing feedlot areas.
3. The irrigation canal should be protected from drainage and/or pollution from this operation.
4. There should be written proof of sufficient land base for manure spreading as required by the Code of Practice and/ or the Land Use Bylaw.

Decision Summary LA18058A – Amendment of County of Warner issued permit #98-25

This document summarizes my reasons for issuing Approval LA18058A, an amended version of municipal permit #98-25, for Nelson Family Ranches Ltd. who is the current owner of the confined feeding operation (CFO) located at NE 07-006-19 W4M in the County of Warner. This amended approval is issued under section 23(1) of the *Agricultural Operation Practices Act* (AOPA). My decision is based on the act and its regulations, the policies of the NRCB, and the information contained in the permit file.

1. Background

The Nelson Family Ranches Ltd. (Nelson's) CFO located at NE 07-006-19-W4M was last permitted by the County of Warner under Development Permit #98-25 which was issued on October 20, 1998. The County of Warner permit authorized an "increase in intensive livestock operation from 3,000 to 7,000" [head cattle].

As the feedlot was constructed pursuant to a development permit issued before January 1, 2002, and it was operating above the AOPA threshold minimums, the site is considered to have a "deemed permit" under section 18.1(1) of the *Agricultural Operation Practices Act* (AOPA). This deemed permit includes Development Permit #98-25. The purpose of this amendment is to formalize permitted livestock numbers for the site and to amend a dust control related condition to improve its clarity and enforceability. An official assessment of the CFO's grandfathered footprint will not be made as part of this approval.

On October 4, 2018, I provided a notification letter to Nelson's indicating my intention to amend their permit under Section 23 of AOPA. A copy of the notification letter is attached in Appendix A, attached.

As a courtesy, I also copied this letter to the neighbour who resides immediately adjacent to the CFO. The county waived the recommended setback distances to these residences when municipal permit #98-25 was issued.

2. Approval Officer Amendment

Approval LA18058A is issued as an approval officer amendment, under section 23(1) of AOPA. Section 23(1) allows an approval officer, under their own motion on notifying the holder, to amend an approval, registration, or authorization.

In the issuance of Approval LA18058A, I considered the following:

- Development Permit #98-25 authorized an increase in capacity from 3,000 to 7,000, but does not specify a beef animal category. Further, the Development Permit application included reference to multiple beef livestock types which are not included in the municipal permit. I was not able to find any reference to how these livestock numbers were dealt with in the municipal permit itself. However, an Alberta Agriculture letter dated September 25th, 1998 which accompanied Development Permit #98-25, included information clarifying what was being proposed. It stated that "the proposed expansion is slated for the feeding of weaner calves through to full slaughter weight". As such, I determined it is appropriate to clarify the total permitted livestock capacity at the CFO as 7,000 beef finishers.

Should the permit holder want to operate above this stated livestock capacity, they would be required to obtain an AOPA permit authorizing the desired expansion.

- Development Permit #98-25 has a condition requiring “a dust control program within the feedlot be implemented”. It does not clearly state what would be considered to be an acceptable dust control program. Since 1998 numerous complaints about dust have been received from neighbours to this CFO. The NRCB Compliance division has followed up on these complaints and the operator has been involved in the development of a dust control program for the CFO. In order to clarify this municipal condition I am amending it to include reference to the current written dust control program.
- I am also taking this opportunity to eliminate repetitive permit conditions, and permit conditions which fall outside of the NRCB’s jurisdiction under AOPA. Several of these conditions are now covered by other legislation enforced by other departments and agencies. This is being carried out in accordance with NRCB Operational Policy 2016-7: *Approvals*, part 10.5. A discussion of the conditions being carried forward, amended, or deleted, can be found in Appendix B, attached.

Approval LA18058A therefore:

- Clarifies the permitted animal capacity for the site. Approval LA18058A states that the permitted maximum livestock capacity of the CFO is 7,000 beef finishers.
- Amends the municipal dust control permit condition to state the CFO must maintain an NRCB approved dust control plan. The condition will also require Nelson Family Ranches to revise that plan when required to do so by the NRCB in writing.

All other applicable conditions contained in Development Permit #98-25 will be carried forward to Approval LA18058A, aside from the repeated conditions discussed in Appendix B below which will not be carried forward.

3. Terms and conditions carried forward from municipal permit #98-25

For convenience, I am issuing an entirely new, amended approval and cancelling municipal permit #98-25, rather than issuing a separate amendment and leaving municipal permit #98-25 in place.

Amended Approval LA18058A contains all of the terms in municipal permit #98-25, except the terms that are replicated, or not under the NRCB’s regulatory mandate. The permitted livestock capacity has also been clarified. Construction conditions in municipal permit #98-25 are carried forward as an appendix to Approval LA18058A.

4. Conclusion

Approval LA18058A is issued for the reasons provided above.

Municipal permit #98-25 is therefore cancelled, unless Approval LA18058A is held invalid following a review and decision by the NRCB’s board members or by a court, in which case municipal permit #98-25 will remain in effect.

December 5, 2018


Joe Sonnenberg
Approval Officer

Appendix A: Permit Holder Notification Letter



Agriculture Centre, 100, 5401 - 1 Avenue S
Lethbridge, Alberta T1J 4V6
T (403) 381.5166 F (403) 381.5806
Toll Free 310.0000 www.nrcb.ca

October 4, 2018

Nelson Family Ranches Ltd.
Box 128
Stirling, AB T0K 2E0

Attention: Shawn and Jeff Nelson

Dear Shawn and Jeff:

SUBJECT: NRCB Amendment of Nelson Family Ranches Development Permit 98-25

The Nelson Family Ranches operation, located at NE 7-6-19-W4M, was last permitted by the County of Warner under Development Permit 98-25 which was issued on October 20, 1998. The County of Warner permit was obtained for an "increase in intensive livestock operation from 3,000 to 7,000".

As the feedlot was operating above the AOPA threshold minimums prior to January 1, 2002 the Natural Resources Conservation Board (NRCB) considers the site to have a "deemed permit" under section 18.1(1) of the Agricultural Operation Practices Act (AOPA). This letter is notice of my intention to amend Development Permit 98-25. This will be done by an Approval Officer Amendment under Section 23(1) of AOPA.

The purpose of the amendment is to:

1. Formalize the permitted animal numbers for the site. Development permit 98-25 states an increase from 3,000-7,000, but does not specify a beef animal category. We intend to amend the permit to clarify that the permitted livestock capacity of the CFO is 7,000 beef finishers.
2. Incorporate an NRCB approved dust control plan and the ability to revise that plan when required in writing.

The remaining terms and conditions in Development Permit 98-25 will also be carried forward.

Ordinarily we do not provide notice of an upcoming Approval Officer Amendment to neighbours. In this case, as a courtesy, I have copied this letter to the Hofer's.

Upon receipt of your amended permit, there will be an opportunity to request a review within 10 working days of the date you receive the written decision. This can be requested under Sections 13(1) & 15(1) of the AOPA Administrative Procedures Regulation.

If you have any questions about the Approval Officer Amendment process, please do not hesitate to contact myself or NRCB Inspector Denny Puszkars.

Regards,

A handwritten signature in blue ink, appearing to read 'Joe Sonnenberg', is written over a light blue horizontal line.

Joe Sonnenberg
NRCB Approval Officer
joe.sonnenberg@nrcb.ca
403-381-5822

cc. Richard Hofer
Rodney Hofer
Denny Puszkars, NRCB Inspector

Appendix B: Explanation of conditions in Approval LA18058A

Approval LA18058A includes several conditions, discussed below, and carries forward a number of conditions from municipal permit #98-25 (see sections 2 and 3 of this appendix).

1. Conditions carried forward from municipal permit #98-25 with modification

The portion of an unnumbered condition in municipal permit #98-25 is as follows:

“A dust control program within the feedlot will be implemented”

Approval LA18058A revised condition:

“A dust control program, as approved by the NRCB in writing, must be enacted at the site. The NRCB may amend the dust control plan, from time to time, in writing.”

2. Conditions not carried forward from municipal permit #98-25

Conditions not carried forward from Appendix A- Alberta Agriculture, Food, and Rural Development Comments

Portion condition d)

Manure should be incorporated within 48 hours of application, weather permitting. Due care and consideration should be exercised when spreading manure on lands near neighboring residences by maintaining an adequate separation distance.

This was a recommendation from Alberta Agriculture, Food, and Rural Development. The Development Permit #98-25 stated that these recommendations should be adhered to except for those waived by the County. Because the County imposed its own manure incorporation condition in condition d) of Development Permit #98-25, this recommendation was not a condition.

Condition f)

Water Provisions

The provision of drinking water for the animals, with the appropriate permits, as detailed in the development application should be adequate for the feedlot and expansion. It is estimated that the peak water demand will be approximately 375m³/ day (75,000 gal/day) for the entire feedlot.

Water licensing and usage is under the jurisdiction of the Water Act which is administered by Alberta Environment and Parks. As such, the NRCB has no authority under the AOPA to enforce this condition. The permit holder is reminded it is their responsibility to ensure adequate licenced water is available for their operation. As such, this condition will be deleted in accordance with section 2.2.5 of Operational Policy 2016-1 “Amending Municipal Permit Conditions”.

Condition g)

Dead Animal Disposal

Dead animals are to be disposed of in a prompt and acceptable manner in accordance with the Livestock Diseases Act and Public Health Act. Dead animals should be properly handled, stored and/or disposed of within 48 hours of death to minimize odors, flies, transmission of disease and threat of pollution. The existing feedlot uses a rendering service for dead animal disposal which is an acceptable method of disposal.

The disposal of dead animals is directly regulated by Alberta Agriculture and Forestry under the *Animal Health Act*. Concurrent oversight of dead animal disposal under AOPA would be inefficient and might lead to inconsistent approaches (In addition, the requirements in these regulations arguably provide an appropriate benchmark for defining “acceptable” disposal practices.).

This condition has none of the prescribed regulatory distance setbacks, terms, or definitions, as provided in the *Animal Health Act*; it is arguably less stringent than existing regulations. For these reasons, and pursuant to the NRCB policies referenced above, this condition will not be carried forward. (See Operational Policy 2016-1: *Amending Municipal Permit Conditions*, section 2.1 and *Conditions related to dead animal disposal*, section 2.2.4.)

Conditions not carried forward from Appendix B- Chinook Health Region Comments

Condition #5

1. *Manure should be incorporated within 48 hours after application.*

This was a recommendation from the Chinook Health Region. The Development Permit #98-25 stated that these recommendations should be adhered to except for those waived by the County. Because the County imposed its own manure incorporation condition in condition d) of Development Permit #98-25, this recommendation was not a condition.

Condition #6

“There should be containment area for deads, and provision for removal or burial within 48 hours.”

The disposal of dead animals is directly regulated by Alberta Agriculture and Forestry under the *Animal Health Act*. Concurrent oversight of dead animal disposal under AOPA would be inefficient and might lead to inconsistent approaches (In addition, the requirements in these regulations arguably provides an appropriate benchmark for defining “acceptable” disposal practices.).

This condition has none of the prescribed regulatory distance setbacks, terms, or definitions, as provided in the *Animal Health Act*; it is arguably less stringent than existing regulations. For these reasons, and pursuant to the NRCB policies referenced above, this condition will not be carried forward. (See Operational Policy 2016-1: *Amending Municipal Permit Conditions*, section 2.1 and *Conditions related to dead animal disposal*, section 2.2.4.)

Condition 7:

“A fly control program is required”

This condition was superseded by another added by the municipality in permit #98-25. As such it will not be carried forward. The county condition which supersedes the above now appears as operating condition #5 in Approval LA18058A.