



NRCB | Natural Resources
Conservation Board

4th Floor – Sterling Place
9940 – 106 Street
NW
Edmonton T5K
2N2
T (780)422-1977 F (780)427-0607
Toll Free 310-0000 www.nrcb.gov.ab.ca

SENT VIA EMAIL

June 1, 2018

R. Philip M. North, Q.C.
North & Company LLP
600 Chancery Court
220 – 4th Street South
Lethbridge, Alberta T1J 4J7
Email: p-north@north-co.com

Dear Mr. North:

Re: Nelson Feedlot

I write in response to your letter dated May 22, 2018. As advised in my letter of May 25, 2018, I am the new Chief Legal Officer – Operations for the Natural Resources Conservation Board (“NRCB”). I understand you act for Richard and Rod Hofer. I have now had the opportunity to seek instructions from my client. The purpose of this letter is to address the concerns set out in your letter.

Background

The Nelson feedlot is to the west of where the Hofers reside.

As you are aware, the Hofers initiated a proceeding against the Nelson feedlot with a practice review committee under Part 1 of the *Agricultural Operation Practices Act* (“AOPA”). I understand that the practice review committee recommended that Mr. Nelson to follow a dust control plan, which included water, upgrades to equipment, and record keeping of sprinkling and scraping manure.

The practice review committee tasked the NRCB with reporting in fall 2018 as to compliance with that plan. The NRCB is in the process of documenting actions and observations in preparation for that report.

Since the practice review committee’s recommendation, there have been meetings and conversations between the NRCB and Mr. Nelson, and between the NRCB and the Hofers.

Responses to Concerns about Animal Numbers and Dust

In your letter of May 22, 2018, you expressed the Hofers’ concerns over manure dust from the Nelson feedlot, and the number of animals. I can advise that the NRCB has opened a complaint file relating to animal numbers and manure dust.

In relation to the number of animals, I draw your attention to section 2(2) of the *Agricultural Operations*,

Part 2 Matters Regulation under AOPA. This section provides:

2(2) Subject to subsection (3), an owner or operator of a confined feeding operation who holds an approval is not required to apply for an amendment to the approval or for another approval when the owner or operator wishes to change the type of livestock within the same category, and as a result, change the number of animals, at the confined feeding operation unless the change will increase the amount of manure produced, on an annual basis, at the confined feeding operation beyond the amount of manure produced by the type of livestock and number of animals allowed by the owner's or operator's approval.

Schedule 2 of the *Agricultural Operations, Part 2 Matters Regulation* identifies Category of Livestock in the first column on the left, and Type of Livestock in the second column. It is the NRCB's understanding that Mr. Nelson has adjusted the types of livestock within the category of "Beef" in a way that does not increase the amount of manure produced on an annual basis beyond that allowed in the grandfathered approval. As such, Mr. Nelson is not required to apply for an approval amendment.

Section 2(3), referred to in section 2(2), requires the owner or operator to notify an approval officer in writing of the intended change in the type of livestock and number of animals before the change takes place. Mr. Nelson has not, to date, provided the NRCB approval officer with written notification of the intended change. The NRCB is following this up with Mr. Nelson.

You also expressed concern over "another large pen ... which appears to hold around 500 head of cattle." On May 28, 2018, Mr. Nelson advised Kevin Seward, Acting Compliance Manager, NRCB, that he had removed these 500 cattle.

Following the recommendation from the practice review committee, the NRCB's aim is to ensure that Mr. Nelson is following the dust control plan.

Response to Concerns about Notice

In your letter of May 22, 2018, you observe that the Hofers "have received no notice of an Application and no notice of a decision." This is simply because no application is required, and there has not yet been any decision.

An approval officer of the NRCB has the authority to amend the county permit. For clarity, in this case, it would be an amendment of a deemed approval under section 23 of AOPA, not a variance under section 17. Section 23 provides in part:

23(1) Despite section 18, an approval officer may, on the approval officer's own motion on notifying the holder, amend an approval, registration or authorization.

(2) Section 20(1) and (3) apply to the amendment of an approval and section 22(1) and (2) apply to an amendment of a registration or authorization under this section.

(3) The approval officer must provide a written copy of the decision to the directly affected parties, and a directly affected party may apply to the Board for a review of the amendment in accordance with section 20(5) or section 22(4).

I understand that the approval officer is planning to amend the deemed approval in order to provide greater clarity of the dust control condition and what type of livestock the grandfathered permit is for. I also understand that the Hofers will be a directly affected party, and so will receive notice of the decision under section 23(3) of AOPA as set out above.

Response to Concerns about Bias

In your letter of May 22, 2018, you express concern about “the relationship between the local NRCB and the Nelsons, and NRCB’s ability to carry out its inspection and enforcement obligations in an unbiased manner.” You asked that the relationship be “investigated by persons of authority.”

It is unclear whether this allegation relates to any one individual, or to the Lethbridge NRCB field office in general. On either interpretation, the NRCB takes your concerns very seriously.

Kevin Seward, Acting Compliance Manager, NRCB, has initiated a preliminary investigation into your concerns. The acting Chief Executive Officer, NRCB, is presently away, but Mr. Seward will draw your concerns to his attention upon his return.

Yours truly,



Fiona N. Vance
Chief Legal Officer – Operations, NRCB

cc. Kevin Seward, Acting Compliance Manager, NRCB