



# NORTH & COMPANY<sup>LLP</sup>

LAW OFFICES

Our File: 11048.009

September 19, 2018

Fiona Vance  
Natural Resources Conservation Board  
4th Floor - Sterling Place  
9940 - 106 Street N.W.  
Edmonton, AB T5K 2N2

Dear Madam:

**Re: Nelson Feedlot**

Thank you for your letter of June 1, 2018, which we are now responding to since we have also received a letter dated July 19, 2018, from Walter Ceroici, Acting Chief Executive Officer of the NRCB. Both are in response to different matters raised in our letter of May 22, 2018 to Michael Wenig, Chief Legal Officer – Operations, of the NRCB. Although neither you nor Mr. Ceroici have apparently provided copies of your letters to each other, but because our response to both of them involves matters raised in each of the letters, copies are being provided to the other.

In your letter of June 1, 2018, you indicated that a complaint file has been opened regarding the annual numbers and manure dust. You go on to advise that because of section 2(2) of the Agricultural Operations, Part 2 Matter Regulation under AOPA, the Nelsons' can, without need for NRCB approval, change the number of approved animals by changing the type of livestock within the category, unless it increases the amount of manure on an annual basis. However the Nelsons are obliged by section 2(3) to give written notice to the NRCB in advance. You acknowledge this was not done; it cannot be done now since the animals are already in the feedlot (and perhaps out by now).

According to the Hofer count from aerial photos, there were approximately 2,000 head more in the feedlot than the approval permitted. Mr. Seward was advised by Nelsons on May 28 that 500 head were removed from the newly added pen but the concrete bunk of the pen has not been removed. What about the other 1,500 head in excess of the approval? All of this appears to have been accepted by NRCB without comment. Hofers have received no explanation. This appears to be a recurring practice of breach by Nelson, complaint by Hofer and acquiescence and non-enforcement by NRCB.

You also advise that the approval officer has authority to change the number of animals on his own initiative pursuant to section 23(1) of AOPA. In fact, Denny Puszkas in telephone conversation with Richard Hofer in late April or early May, advised Richard that he was going to do just that. But there has been 6 months in which to do this, but apparently nothing has been decided as no written notice has been received by the Hofers as required by 523(3) AOPA. If it is proceeding, please provide particulars of the changes of type and numbers of animals and the calculation of the no manure change in spite of more animals.



**Reply To: Lethbridge Office**  
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The next point is notice of a decision. On June 1<sup>st</sup> you said no decision had been made in response to a complaint of March 23, 2018. It is now September 19, 2018 and the Hofers, which you acknowledge are a directly affected party, have received no written copy of a decision as required by section 23(3) of the AOPA and it is noted that this requirement for a written copy of a decision applies whether or not the decision comes from a Nelson application or the approval officer's own initiative.

Meanwhile, the dust continues notwithstanding the dust control plan recommended by the Practice Review Committee, the number of animals increases notwithstanding failure to comply with the AOPA and its regulations and the non-enforcement thereof, and the irrigation water needed for dust control will be shut off in less than one month.

We would appreciate a response to the points raised herein, together with an up-to-date explanation of how the Practice Review Committee recommended dust control has been implemented so far in 2018. Our understanding is that the dust control measures were to have been fully implemented by September 15, 2018.

The Hofers have numerous photos, videos and aerial photos showing the dust. Mr. Seward himself in late August attended at the Nelson Feedlot and on the way in stopped and spoke to Hofers who were taking photos of the dust. At that time, he acknowledged that the dust was terrible.

We note your response to the bias concern has resulted in a preliminary investigation by Kevin Seward, Acting Compliance Manager, NRCB. As he is one of the sources of concern, we do not believe his selection to do the investigation is in any way appropriate. He is perhaps the person of greatest concern and we have raised this in our letter to Mr. Ceroici.

Yours truly,

**NORTH & COMPANY LLP**

  
**PER: R. PHILIP M. NORTH, Q.C.**

RPMN/amw  
Enclosures

cc: Walter Ceroici, NRCB  
cc: Richard Hofer