



**NORTH & COMPANY**<sup>LLP</sup>  
LAW OFFICES

Our File: 11048.009

May 22, 2018

Michael Wenig, Chief Legal Officer - Operations  
Natural Resources Conservation Board  
19th Floor, Centennial Place  
250 - 5 Street S.W.  
Calgary, AB T2P 0R4

Dear Sir:

**Re: Nelson Feedlot re: Breach of permitted number of cattle**

Denny Puszkas had suggested we get in touch with you. We are also providing a copy of this letter to General Counsel, Bill Kennedy, as the captioned issue was raised at the committee hearing in November 2017, at which he was present, but the Committee found it to be beyond its jurisdiction. However, it is within the NRCB's jurisdiction.

At the November hearing evidence was presented showing the number of animals in the feedlot hit 8,010 head, which exceeded the permitted number of 7,000 head. The Nelsons did not dispute this and Jeff Nelson acknowledged there were 8,100 head in the feedlot, but suggested the 7,000 number applied to animal units, not the number of animals. The Committee did not make a decision on this matter, saying it lacked jurisdiction.

In January, February and March of 2018, more animals kept coming to the feedlot. In addition, the Nelsons have added another large pen to their feedlot which appears to hold around 500 head of cattle. Around March 10, 2018, the Hofers again arranged for aerial photos of the feedlot for cattle numbers and from those photos they counted 9,500 animals.

I recommended that they speak with Denny Puszkas, both with respect to his earlier request of establishing a basis of contact with the Hofers as well as to file a complaint of the head count of 9,500, exceeding the permitted amount of 7,000 by 35% with the resulting increased manure dust. A meeting was arranged for March 23, 2018, at which time Richard and Rod Hofer met with both Mr. Puszkas and the Approvals Officer, Joe Sonnenberg at the NRCB office. Before Richard was able to start the very first thing Mr. Puszkas said was that he was reluctant to approach the Nelsons regarding animal numbers since they have a good relationship with the Nelsons and don't want to do anything that might affect it. Here lies a major issue.

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When Mr. Puszkar then started talking about the Committee Report and mentioned the 7,000 head approved by permit, that's when Richard intervened and said he and Rod had counted them the previous night and there were 9,500 animals in the lot.

This spurred a discussion of number of 'finishers' versus number of 'head'. Based upon Richard Hofer's online calculation of pen space at 1,320,000 sq. ft., the approvals officer, Joe Sonnenberg, using his accepted rate of 200 sq. ft. per finishing animal, indicated the maximum number of finishers in the Nelsons' pen space would be 6,600. This is 400 fewer than the 7,000 head permitted. He apparently concluded that whether by permit or by square footage for finishers the Nelson Feedlot is over its permitted capacity. In addition, Richard showed them before and after pictures taken on the evening of July 21, 2017 and the other on the morning of July 22, 2017, showing significant manure dust which Kevin Seward thought was minimal. Needless to say the Hofers felt otherwise. The Hofers also have picture of an NRCB pickup truck at Nelson Feedlot that is almost obscured by manure dust.

We have been advised by Richard the Nelsons' manure dust control log shows 45 minutes per day of manure dust control. At the November Hearing, Sean Nelson testified that it takes 2, 10-12 hour days to cover the feedlot. Forty-five (45) minutes a day is not enough.

Mr. Puszkar then indicated he was going to open a formal complaint and get back to the Hofers the following week. Richard then called back 2 or 3 weeks later, at which time Mr. Puszkar said they were still discussing it. Again having heard nothing, Richard called back on May 3, 2018, at which time Mr. Puszkar exhibited a clear change of heart from the March 23, 2018 meeting. He indicated that he was in the process of authorizing a change in the permit from 7,000 head to 7,000 finishers based upon the grandfathering clause. This is a clear change to the deemed approval arising from the takeover by NRCB in 2002 from the County of Warner of the County permitted number (7,000) which takes precedence over grandfathering.

In reviewing the *Agricultural Operation Practices Act*, we notice that the Approvals Officer may, upon application, grant a variance if in his opinion a variance would provide a greater degree of protection and safety. No notice is required if there is minimal change to risk or the environment and minimal change to a disturbance. If notice is required, certain procedures are to be followed. If the Approvals Officer feels the no-notice requirements are met he may proceed with the application and make his decision. Either way, where the decision is made without notice or after notice, the written decision must be served upon affected parties and an affected party has ten (10) days to request a review of the decision by the Board.

The Hofers have received no notice of an Application and no notice of a decision. Bearing in mind the waivers required to obtain initial approval for the feedlot and the activities since then, there can be little doubt that the Hofers are an affected party and we submit, entitled to notice upon application and certainly notice of a decision.

Based upon the discussion between Mr. Puszkar and the Hofers, we must express our concern to you 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. Further, we are concerned by the apparent NRCB response to the clear breach of a deemed approval is to seek a way around the breach for the feedlot operator, Nelson, not to protect the health and living environment of the Hofers through proper enforcement. This is especially so in light of the findings of the Practice

Review Committee, which found much is yet to be done before the operator can achieve the status of a generally accepted agricultural practice. Lastly, the reluctance of the local NRCB to seek enforcement of an apparent breach of the authorized number of cattle for fear of jeopardizing their relationship squarely raises the matter of local NRCB bias in favour of the Nelsons and against the Hofers.

We would appreciate this relationship being investigated by persons of authority so that our clients can be assured of unbiased enforcement of the AOPA and its Regulations.

Since the first draft of this letter I have received a further email from Mr. Hofer and a copy of it is enclosed, along with photos from 2017 and 2018, some of which show before and after comparisons.

We would appreciate your response to this letter as soon as possible, as the dust seasons has commenced and nothing appears to be happening at the feedlot except expansion.

Yours truly,

**NORTH & COMPANY LLP**

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

RPMN/amw  
Enclosures

cc: Bill Kennedy, General Counsel, NRCB  
(via email: bill.kennedy@nrcb.ca)  
cc: Richard Ralph Hofer (via email)