

ENFORCEMENT ORDER No. 21-01

**Made under section 39 of the
*Agricultural Operation Practices Act, RSA 2000, c A-7 (AOPA)***

Date Issued: September 24, 2021

File Number: LC21066

Inspector: Karl Ivarson

Issued to: John Schooten and Sons Custom Feedyard Ltd.
Box 148
Diamond City, AB T0K 0T0

Cody Schooten
Shane Schooten

Basis for Order: **Failure to comply with permit**

I, Karl Ivarson, Inspector appointed by the Natural Resources Conservation Board, issue this enforcement order under section 39(1) of the *Agricultural Operation Practices Act, (AOPA)* against:

**John Schooten and Sons Custom Feedyard Ltd.,
Cody Schooten, and
Shane Schooten**

on the basis that they have failed to operate in accordance with the terms and conditions of their AOPA approval for their Mossleigh feedlot.

Municipal development permit 98-012 (issued by Vulcan County in 1998) allows for a feedlot with a total livestock capacity of 41,250 head. The NRCB has not yet completed an official grandfathering determination to determine the livestock type that the operation has a deemed permit for. Given the passage of time and the references in permit 98-012 to the 1995 Code of Practice, it is unclear whether the deemed permit for this operation is for 41,250 beef finishers or 41,250 beef feeders.

At any rate, John Schooten and Sons Custom Feedyard Ltd. (JS&S), and Cody and Shane Schooten have, on a regular basis since 2019, exceeded 41,250 head at the Mossleigh lot. For this feedlot, inventories in 2019 averaged around 44,000 to 45,000 head, and in 2020 averaged around 45,000 to 46,000 head. Animal inventory maximized at 50,976 head in November 2020. For 2019, animal inventory maximized at 49,434 head in November of that year.

The confined feeding operation (CFO) is located on the north half of Section 5, and the south half of Section 8, Township 21, Range 24, West of the 4th Meridian, in Vulcan County, approximately four kilometers northeast of the town of Mossleigh in the province of Alberta (the JS&S Mossleigh feedlot).

Background:

The JS&S Mossleigh facility is a large beef feedlot, comprised of approximately 162 pens, associated treatment and handling facilities, and several catch basins. Together these facilities cover an area of approximately 265 acres. The feedlot was built in the mid 1990's and received a development permit from the county in 1995 for 30,000 head. Western Feedlots Ltd (WFL) applied for and received development permit number 98-012 from Vulcan County in 1998 to expand the then existing 110 pen beef feedlot by an additional 40 pens at 275 head per pen. The footprint of the feedlot has not changed, but it appears that several pens have been subdivided, resulting in 162 rather than 150 pens.

On June 30, 2021, the NRCB received a public complaint that the JS&S Mossleigh feedlot was currently operating at 60,000 head capacity and had been operating at that number of beef cattle for the last two years. In August of 2021, the NRCB received three more complaints that the JS&S Mossleigh feedlot was over populated.

As mentioned above, the NRCB has until recently not had cause to make a grandfathering (deemed permit) determination to ascertain the type of livestock the JS&S Mossleigh feedlot is deemed to hold a permit for under AOPA. At this time, I am aware of a grandfathering determination being made in conjunction with a permit application at this feedlot, but I am not aware of the final determination. Based on historical and current permitting documents as well as conversations with the operator, I am of the opinion that the permitted head number is 41,250.

Investigation leading up to Enforcement Order

I conducted a review of the permits issued for the CFO facility in the NRCB files and CFO data base at this location. As noted in the **Background** section above, this location previously housed a 110 pen beef feedlot, under Vulcan County permit #95-016 for 30,000 head, in the mid 1990's. (The capacity for this construction is also referenced in WFL's application for permit 98-012.) .

Subsequently, Vulcan County Subdivision and Development Appeal Board (SDAB) issued development permit number 98-012 on July 7, 1998 to WFL to expand by 40 pens at 275 head per pen.

On March 13, 2018, the NRCB received an email from Shane Schooten of JS&S requesting information on the permit status of the Mossleigh Feedyard confined feeding operation at N½ 5 and S½ 8-21-24-W4. Mr. Andy Cumming, Director, Field Services-Applications, NRCB, responded to Mr. Schooten in summary that:

1. There was an existing municipal development permit 98-012 that appeared to be for a feedlot with 150 pens each with a capacity of 275 head for a total livestock capacity of 41,250 cattle feeders.
2. The NRCB had not yet made a formal grandfathering determination, but the county permit appeared to be a deemed (that is, grandfathered) permit under sec. 18.1(1) of AOPA.

According to a Land Title search, JS&S purchased the feedlot in April 2018, although there is no record on file that the NRCB was notified of the transaction.

A review of Google Earth satellite imagery from July 2002 to September 2019, showed that there was no discernable change in the pen footprint over that time period. Furthermore, there have been no permits issued by the NRCB allowing an increase beyond the 41,250 head capacity of the existing facilities.

After receiving the complaint of over-capacity on June 30, 2021, on July 14, 2021 I requested documentation from Shane Schooten to determine the JS&S Mossleigh lot inventory. From mid-July 2021 through to early September, I was in contact with Shane Schooten for the inventory of the feedlot and in addition, the feedlot's 2019 and 2020 monthly inventories. I received the 2019 and 2020 monthly inventories by email from Shane Schooten on September 13, 2021. The inventory print out showed that monthly inventories ranged from 40,000 head to almost 51,000 head for 2019/2020. Feedlot inventories averaged around the 44,000 to 45,000 head range fairly consistently over the 2019 and 2020 calendar years. The monthly inventories showed that the feedlot peaked out in November of 2019, at 49,434 head and at 50,976 head in November of 2020.

On September 13, 2021, I met with Cody Schooten at the JS&S Mossleigh lot and asked him if he could provide to me the inventory of the feedlot as of that day. Cody went into the office and returned, providing me with a printout dated for that day with the feedlot inventory and average weights by pen. I toured the feedlot with Cody, I observed that the majority of the pens were heavily populated. From the inventory list, a large number of the pens had counts of well over 300 head of beef finishers, 900 lbs+, and that counts of 350 head or more per pen were quite common. I selected four pens that had a pen count of under 200 head to facilitate a head count to test the accuracy of the Mossleigh lot pen inventory report. As my head counts were fairly close to the reported pen inventories I accepted the Mossleigh lot inventory of 46,894 head for September 13, 2021 as true.

From the JS&S Mossleigh lot 2019 and 2020 monthly inventory documentation provided and the site inspection of September 13, 2021, I have concluded that this feedlot has been managed without adherence to its permitted capacity.

Reasons:

Section 13(2) of the *Agricultural Operation Practices Act* provides:

13(2) A person who holds an approval or registration must comply with and operate in accordance with the terms and conditions of the approval or registration.

In this case, JS&S holds a deemed approval under section 18.1 of AOPA, since on January 1, 2002 the operation existed and held municipal development permit 98-012.

Based on my conversations with both Shane and Cody Schooten, the documentation they provided, and my site inspection of September 13, 2021, I have formed the opinion that JS&S have contravened section 13(2) of the *Agricultural Operation Practices Act* because:

- The JS&S Mossleigh lot, has been operating under permit 98-012, allowing 41,250 head of cattle.
- The feedlot has been shown to have operated at numbers considerably over the permitted capacity.
- JS&S are the holders of the deemed permit, having purchased the CFO in 2018. As the deemed permit stays with the land, the owners of the land are holders of the permit.

- Cody Schooten is a director of JS&S and provided me with the September 13, 2021, inventory at the Mossleigh feedlot. Shane Schooten is a director of JS&S and provided me with the 2019 and 2020 inventories.
- JS&S are aware of the head capacity of permit 98-012. In the NRCB's March 2018 letter, the number of 41,250 and 150 pens was referenced. On following up with a complaint of the same nature at the Mossleigh lot I inspected the facility on November 5, 2019. I met with Cody Schooten and explained the complaint. He said they were under the 41,250 head maximum and provided me with a pen inventory print out showing 40,818 head that day. Of note, inventory report for the feedlot month end inventory for November of 2019 was at 49,434 head, approximately 3 weeks after my meeting with Cody Schooten at the feedlot where we discussed the overpopulation issue. In Part 1 of their recently (June 2021) filed application to the NRCB, JS&S identify their permitted number as 41,250.
- In May 2021, JS&S was found to have exceeded its permitted capacity at one of their feedlots in the Picture Butte area. Cody Schooten told me at our meeting of September 13, 2021, that the depopulation of that feedlot and moving those cattle to the Mossleigh lot was part of the overpopulation issue at the Mossleigh lot.
- I understand that the relocation of cattle from a different JS&S feedlot in the Diamond City area to their Mossleigh lot added to the overpopulation issue as well.

In the case of this operation, I note that on May 7, 2021 I issued compliance directive CD 21-01 in relation to exceeding permitted capacity at one of the JS&S's other feedlots. I also note that during resolution of the complaint of November, 2019 of overpopulation at the Mossleigh lot, the operator has been made aware of the issue that exceeding one's permit capacity is in non-compliance with their permit, and therefore is in non-compliance with AOPA. An Enforcement Order is warranted under these circumstances.

Under section 39(1) of the *Agricultural Operation Practices Act*, the Natural Resources Conservation Board may, if in the opinion of the Board a person is contravening the *Agricultural Operation Practices Act*, issue an Enforcement Order to that person.

The Board has delegated me, as an Inspector, to form opinions and issue enforcement orders under section 39.

Orders:

1. The persons named in this Enforcement Order shall:
 - a. Provide to the NRCB quarterly reports (January 15, April 15, July 15, October 15), commencing on October 15, 2021, showing month-end total feedlot pen inventories for the three months preceding the report, and average weights, for the following CFO feedlots that are listed in the NRCB's CFO database, namely:
 - i. The Mossleigh feedlot at N½ 5 and S½ 8-21-24-W4 (with permitted capacity of 41,250 head or whatever the NRCB soon determines as the permitted capacity).
 - ii. The East feedlot at NW 21-10-21-W4 (with permitted capacity of 9,500 beef finishers based on an NRCB-issued permit).
 - iii. The Diamond City feedlot at NE 12-10-22-W4 (assuming a permitted capacity of 4,700 head, based on a municipal development permit from 1987).

- iv. The North feedlot at SW 2-11-22-W4 (assuming a permitted capacity of 6,000 head, based on a municipal development permit from 2001).
- v. Order 1(a) shall continue for a term no less than two years from the date of this Enforcement Order, and until the NRCB, in writing, suspends or adjusts the order.

Neither of the assumed permitted capacity numbers in order 1(a)(iii) or (iv) constitutes a grandfathering determination.

- b. If you dispute the assumed permitted capacity numbers stated in order 1(a)(iii) and (iv), you may seek a grandfathering (deemed permit) determination from the NRCB, with a claimed capacity and livestock type in writing, no later than October 15, 2021, in relation to the Diamond City feedlot and the West feedlot. If you do not meet this deadline, the NRCB will enforce these orders assuming the permitted capacity at the numbers stated in order 1(a).

- 2. You shall allow the NRCB access at any reasonable hour, with or without advance notice, to the land and structures of all the feedlots identified in order 1(a) for the purpose of assessing compliance with the orders contained in this Enforcement Order and any documentation submitted to the NRCB as part of those orders.

CONSEQUENCES OF NOT COMPLYING WITH THIS ORDER

If you do not comply with any part of this Enforcement Order, the Natural Resources Conservation Board may apply to the Court of Queen’s Bench for an Order of the Court directing the person to comply with the enforcement order, under section 42 of the *Agricultural Operation Practices Act*.

NOTE: Under section 43, if an enforcement order is issued to more than one person, all persons named in the order are jointly responsible for carrying out the terms of the order.

NOTE: Under section 39(3), if a person to whom this Enforcement Order is directed complies with the Order, no prosecution may be commenced under the *Agricultural Operation Practices Act* for the offence with respect to the facts that gave rise to this Enforcement Order.

Karl Ivarson
Inspector, Natural Resources Conservation Board

SERVICE OF ORDER:

Delivered to: _____

Method of Delivery: _____

Date of Delivery: _____

INFORMATION: RIGHT TO REQUEST A REVIEW OF THIS ENFORCEMENT ORDER

Under section 41 of AOPA, you may request that the NRCB's board members (the "Board") "review and confirm, vary, amend or rescind" this Enforcement Order. The Board has discretion whether to hold a review or not.

Please note that, under section 41(2), this Enforcement Order takes effect at the time prescribed in the Order. This Enforcement Order will remain in effect unless the Board suspends the operation of this Enforcement Order.

Under section 13 of the *AOPA Administrative Procedures Regulation*, AR 106/2017, your request, must include:

- a) a clear and concise statement of the facts relevant to your request;
- b) the grounds on which your request is made;
- c) a brief explanation of the harm that has resulted or will result from the Enforcement Order addressed in your request;
- d) a brief description of the remedy you seek; and
- e) the name, address in Alberta and telephone number and the fax number and e-mail address, if any, of you or your representative (if you have one); and
- f) if you want the Enforcement Order suspended until the Board's review is completed, you must also be clear about this in your written request for review, and provide your reasons for asking for a suspension of this Enforcement Order.

Under section 15(2) of the *AOPA Administrative Procedures Regulation*, a request for a review of the Enforcement Order must be filed with the Board within 10 working days of the date you received the Enforcement Order or by any later date specified in the order.

Because this Enforcement Order does not extend the 10 working day deadline in section 15(2) of the Regulation, the deadline for you to file a request for review by the Board is October 8, 2021.

If you wish to have the Board review this order, please submit a written request to Laura Friend, Manager, Board Reviews by e-mail to Laura.Friend@nrcb.ca. If you have any questions about requesting a review or about the review process please call Ms. Friend at 403-297-8269.