



NRCB | Natural Resources
Conservation Board

**Grandfathering Decision under the
Agricultural Operation Practices Act
Stant Enterprises Ltd. (Stanley Taylor)
NW 18-40-4 W5M**

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1.0 Introduction

This document sets out the written reasons for my determination of the existence and capacity of a deemed permit under the *Agricultural Operation Practices Act* (AOPA). The subject of the determination is a beef operation at NW 18-40-4 W5M (This quarter section will be referred to as “the site.”). This quarter section is roughly 7 km northeast of the Hamlet of Leslieville, on the south side of Highway 12, in Clearwater County. The process of ascertaining existence of a deemed permit, and the capacity under that permit, is known commonly as a “grandfathering” determination.

Under section 11(5) of the Administration Procedures Regulation under AOPA, after completing a grandfathering investigation, an inspector is required to issue a decision report. This is the decision report relating to the deemed status and capacity of the facilities at this operation.

On June 24, 2019, Stanley Taylor (the operator), who owns Stant Enterprises Ltd. (Stant Enterprises) (formerly Hillbrook Feeders) contacted the Natural Resources Conservation Board (NRCB) to get more information about the grandfathering process. I contacted the operator on June 25, 2019, and he informed me that he has plans to sell his operation. Before he sells his operation, he requested a grandfathering determination from the NRCB. During this conversation, he claimed that the operation functioned as a feedlot and existed as a “confined feeding operation” (CFO) on January 1, 2002, with a capacity of 5,000 beef finishers. He also stated that the size of the feedlot (footprint) has not changed since January 1, 2002. He felt that his operation should be grandfathered under section 18.1(1) of the *Agricultural Operation Practices Act*.

On July 31, 2019, Stanley Taylor sent the NRCB a signed letter requesting an official grandfathering for his feedlot. Mr. Taylor stated the feedlot had the capacity for 5,000 beef finishers on January 1, 2002. Please note that a Corporate Title search indicated that both, Stanley Taylor and Dustin Taylor are owners of Stant Enterprises, however Stanley Taylor was our main contact throughout the grandfathering process.

2.0 Context and Definitions

2.1 Legal Context

Under section 18.1 of AOPA, if a confined feeding operation existed on January 1, 2002 with respect to which a licence or permit was not issued, the owner or operator of the confined feeding operation is “deemed to have been issued an approval, registration or authorization under this Act.” The capacity allowed by a deemed approval or registration of an existing operation without a pre-2002 licence or permit is the “capacity of the enclosures to confine livestock at the confined feeding operation on January 1, 2002.”

The Administrative Procedures Regulation under AOPA sets out the process for investigating grandfathering claims. Section 11(1) of the Regulation states that:

11(1) At the request of an owner or operator for a determination related to a deemed permit under section 18.1 of the Act, or in response to a complaint where a determination of the terms or conditions or existence of a deemed permit is required, an inspector shall conduct an investigation to determine the capacity of a confined feeding operation or manure storage facility
(a) that was in place on January 1, 2002, or

(b) that was constructed pursuant to a development permit issued before January 1, 2002.

Before making a deemed permit determination under branch (a), the inspector is required to provide notice to those parties “who would be entitled to notice under section 19(1)” of AOPA for a new confined feeding operation with the same capacity. That capacity is the larger of the claimed or current capacity (see NRCB Operational Policy 2016-6: *Public Notice for Grandfathering Decisions* (updated April 23, 2018) at part 3.1). Section 11(4) of the Regulation sets out requirements for the notice.

Also part of the landscape of grandfathering investigations is the judgment from the Alberta Court of Queen’s Bench in *Unland v NRCB*, 2012 ABQB 501. That was a judicial review of a grandfathering determination in the days before section 11 of the Administrative Procedures Regulation under AOPA provided specific process and a Board review mechanism. The key issue in that case was whether the operation in 2002 had been a CFO or a seasonal feeding and bedding site – one of which can lead to a deemed permit, while the other cannot. The Court found that the investigation was not procedurally fair because the inspector “made a very quick decision based on an inadequate investigation at the outset” and because the fact gathering “seems to have been directed toward justifying” the decision that the operation was a CFO. NRCB inspectors have taken the guidance from the *Unland v NRCB* decision seriously, and grandfathering investigations have become considerably more complex since then.

2.2 Key Concepts

Under section 18.1 of AOPA, a livestock operation is deemed to have a permit (approval, registration or authorization) under AOPA if the operation existed as a “confined feeding operation” (CFO) on January 1, 2002.

In AOPA, “confined feeding operation” is a defined term in section 1(b.6):

“confined feeding operation” means fenced or enclosed land or buildings where livestock¹ are confined for the purpose of growing, sustaining, finishing or breeding by means other than grazing and any other building or structure directly related to that purpose but does not include ... livestock seasonal feeding and bedding sites....

Before applying this definition to the operation, it is also worth discussing how this definition relates to feedlots, seasonal feeding and bedding sites, and short term handling facilities. These aspects are discussed below.

Feedlots

Stanley Taylor claims to have had an operating beef feedlot on January 1, 2002. The most common notion of a feedlot is as a ‘finishing’ operation—i.e. facilities where cattle are closely confined for 60-120 days and fed a high grain ration that is designed to produce tender, marbled beef. For these cattle (typically 900-1,200 lbs.), finishing feedlots are the final stage before slaughtering. As set out in the NRCB Operational Policy 2015-2 *Distinguishing Between*

¹ In turn, “livestock” is defined in AOPA at section 1(c.1) as “poultry, horses, cattle, sheep, swine, goats, bison, fur-bearing animals raised in captivity and diversified livestock animals within the meaning of the *Livestock Industry Diversification Act*.”

Confined Feeding Operations and Seasonal Feeding and Bedding Sites (for Cattle Operations) (revised July 5, 2018), these feedlots are easily identified by their significant infrastructure including planked fencing, surface water run-on/runoff controls, concrete feed bunks, packed and non-vegetated pen floor, and intensive feeding.

The term “feedlot” is also sometimes used to refer to facilities that confine and feed “backgrounders” instead of or in addition to finishers. This is part of Stanley Taylor’s claim. Backgrounders are beef cattle typically in the 400 to 900 lb. weight range. These animals might be grazing but they might also be confined and fed. There is a wide range of backgrounding management practices, particularly, with respect to the order of feeding and grazing backgrounders. In part due to the challenge in distinguishing confined feeding operations from seasonal feeding and bedding sites, I recognize that I must take care in assessing the operation’s specific management practices and facilities before characterizing the operation (or parts of the operation) as one or the other.

Seasonal feeding and bedding sites

“Livestock seasonal feeding and bedding sites” (SFBSs) are expressly excluded from the definition of CFO. As defined in section 1(j) of AOPA, a SFBS is an “over-wintering site where livestock are fed and sheltered.”

AOPA does not define “over-wintering.” However, in the NRCB’s view, “over-wintering” generally refers to a limited period during which livestock cannot subsist solely or even partially on grazing. This is due to the lack of grass or to other climate-related reasons (e.g. extremely low temperatures or deep snow). During the over-wintering time, the livestock in a SFBS would be grazing if grass was available.

Because of the inherent ambiguity in the term “over-wintering,” to date, the NRCB has distinguished between CFOs and SFBSs by considering the totality or balance of a variety of factors, rather than by relying on some rigid or arbitrary definition of an “over-wintering” period. The “*Factors Used by the NRCB to Differentiate Between Confined Feeding Operation (CFO) and Seasonal Feeding and Bedding Sites (SFBS)*” Table has been used to help with making SFBS determinations (Appendix A). This table, which was in use close to the 2002 period,² has historically been used to distinguish between CFO and SFBS from the grandfathering period, and used for other historical NRCB grandfathering decisions. Thus, for consistency, Appendix A was also considered for this investigation. The number of relevant factors may vary from site to site, but they generally include the length of confinement; livestock type; the density of their confinement; type of infrastructure; vegetation present in the pens; the type of bedding and feeding practices being used; and the concentration of manure being generated.

Short term handling facilities

The NRCB does not view short-term handling facilities as CFO facilities, and does not include short term handling facilities when determining the capacity of a deemed permit.

Short term handling facilities are used for things like sorting, processing, treating, shipping, quarantining or receiving. Both pure grazing and CFO operations usually include one or more

² In contrast, to assess an operation on today’s terms, an NRCB inspector would apply NRCB Operational Policy 2015-2: *Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (for Cattle Operations)* (revised July 5, 2018).

short term handling facilities. They are “livestock corrals” and can be “directly related” to a CFO (included in definition of “confined feeding operation”). Due to their temporary use, however, the NRCB does not consider the size and number of directly related short term handling facilities in setting the deemed capacity of a grandfathered CFO.³ Livestock temporarily held in these facilities would come from, or be sent to, other facilities within a CFO that are considered for purposes of determining the CFO’s overall capacity.

2.3 Standard of Proof

Section 11 of the Administrative Procedures Regulation under AOPA simply states that an inspector shall conduct an investigation to determine capacity of a CFO in place on January 1, 2002. The investigation is a fact-finding task. Whether a confined feeding operation existed on January 1, 2002, above threshold, is a question of fact.⁴ Similarly, the capacity of the enclosures to confine livestock on that date is also a question of fact.

I understand that, in an administrative investigation such as this one, the standard of proof is on a ‘balance of probabilities.’⁵ I understand that “standard of proof” refers to the degree of certainty of a fact. So basically, the question is whether a certain fact is more likely than not. Stanley Taylor is claiming his operation existed on January 1, 2002 as a confined feeding operation with capacity to confine 5,000 beef finishers. My task is to assess whether, on a balance of probabilities, Stanley Taylor’s claimed facts are more likely true than not. In performing this task, I considered relevant evidence from various sources including Stanley Taylor.

2.4 The Scope of Issues Considered

The livestock operation operated by Stant Enterprises was not constructed pursuant to a development permit issued before January 1, 2002. However, under section 18.1(1) of AOPA, an operation is grandfathered—i.e. it is considered to have a ‘deemed permit’—if it “existed” as a CFO on January 1, 2002. In addition, the NRCB interprets AOPA as grandfathering only those CFOs that existed on January 1, 2002 at a size that was at, or greater than the permit threshold sizes under AOPA. Thus, my investigation was aimed to determine three factual questions:

- 1) was there a CFO at the site on January 1, 2002?
- 2) if so, was the CFO operating above the AOPA permit thresholds?
- 3) if so, what was the capacity of the enclosures at the the CFO to confine beef finishers?

For purposes of this decision, I refer to the facilities at the site (areas A1 to A12) as the “facilities in question.” (see the photo of the site at Appendix B)

The factual questions listed above are focused on facts as they existed on the precise grandfathering date of January 1, 2002. However, I generally sought evidence as to the nature of the operation between 2000 and 2003.

³ Section 18.1(2)(a) states that the deemed capacity of a grandfathered CFO (without a municipal permit specifying its capacity) is the “capacity” of the CFO’s “enclosures to confine livestock” as of January 1, 2002. The NRCB does not count the capacity of the CFO’s short term handling facilities in this calculation.

⁴ See as support, *Unland v NRCB*, 2012 ABQB 501 at para 50.

⁵ Unlike “beyond a reasonable doubt,” which is the more onerous criminal law standard of proof.

Considering the operation for at least one year past the January 1, 2002 grandfathering date seemed useful because witnesses might not remember what occurred on the exact date of January 1, 2002. Also, considering how an operation functioned over a range of dates might shed additional light on how the operation functioned on a given day within that range.

In addition, the NRCB generally uses a pragmatic and flexible approach toward applying the January 1, 2002 grandfathering date. This approach is reasonable because a more rigid or stricter application of the January 1, 2002 grandfathering date could lead to unfair results if, for example, an operation happened to have emptied its enclosures on January 1, 2002, or was half-way through rebuilding or constructing the enclosures on that date, or had shut down temporarily due to short-term market crises. Thus, the 2000-2003 range was meant to generate sufficient evidence to apply this pragmatic and flexible approach.

I will refer to the 2000-2003 date range as the “grandfathering period.” This term is simply for ease of reference; it is not meant to re-write or re-define the January 1, 2002 grandfathering date in section 18.1 of AOPA.

2.5 The Investigation Process

I conducted my investigation largely on an informal basis, which is consistent with NRCB inspectors’ generally informal procedures for carrying out our compliance and enforcement functions under AOPA. That said, I have created a complete and official record of my investigation, and prepared this written ‘decision.’

As part of my investigation I interviewed Stanley Taylor, and was assisted by another NRCB inspector. This interview was digitally recorded. I provided Stanley Taylor with a recording of his interview for his review so he could correct any errors or otherwise ensure an accurate record of what was stated in the interview, and to provide further clarification to points already made.

During the interview, I asked a common set of core questions regarding the overall nature of the operation during the grandfathering period, and more specifically, how the operation’s different types of livestock ‘cycled’ through the facilities in question and the physical nature of these facilities. Most if not all types of livestock operations are run on a cyclical basis, so the cycle is a logical and useful concept for analyzing and understanding the operation. For ease of reference in the interview, I used an aerial photograph image (taken on October 15, 2001) in Appendix B with the facilities numbered from A1 to A12. Besides asking our own questions, we also provided an opportunity for Stanley Taylor to provide other information that he felt might be relevant to this investigation.

Under section 11(2) of the AOPA Administrative Procedures Regulation, *“Prior to making a deemed permit determination under subsection (1)(a), the inspector shall provide notice to those parties who would be entitled to notice under section 19(1) or 21(1) of the Act for a new manure storage facility or confined feeding operation with the same capacity.”*

The claim is for 5,000 beef finishers, so I applied the notification radius of 1.5 miles.

To ensure that I had received all of the neighbours’ perspectives on factual issues relating to the state of the operation on January 1, 2002, I contacted other residents I identified (based on information from Clearwater County) who owned or resided on land within a 1.5 mile radius of the site. I invited the neighbours to provide written submissions addressing the CFO grandfathering issues. In response to these invitations, I received **10** written statements from

these neighbours. I included all of these statements in my investigation record and fully considered them for this decision.

For simplicity, the neighbours who submitted written statements will be referred to in this decision as “witnesses,” unless otherwise noted.

As part of the investigation, I also visited the operation and surrounding area on several occasions. I took photographs of the site, reviewed historical air photos and satellite imagery of the area to collect information on how the operation changed over the years. All of this information is included in my investigation record.

3.0 Evidence

3.1 Initial Evidence and File Review

I contacted Clearwater County on June 24, 2019, to see if they had additional information that would be helpful with this file. The County could only provide an email chain from 2015 (which the NRCB already had), which discusses subdivision and minimum distance separation (MDS) between the County, Alberta Agriculture, as well as the landowner of the proposed subdivided land. In the email chain, animal numbers from the operation were provided from January 1, 2002, which included 903 cows, 48 bulls and 1,305 feeders/finishers (Appendix C). Based on these emails, I also contacted the Alberta Agriculture employee who was involved in this email chain on June 24, 2019. He did not have any additional information to help with the grandfathering determination.

As part of this investigation, I looked through the NRCB database to find any additional information with regards to the grandfathering determination and I also looked at historical aerial photographs. Our hard files were also reviewed on November 4, 2019, and our historical complaint files for Clearwater County were reviewed on January 21, 2020.

The only other information I could find included a letter to Stant Enterprises from the former NRCB Director of Compliance and Enforcement. The letter was signed and dated on January 16, 2010, and went over a possible decommissioning protocol for the operation. No additional documentation was in our records with regards to the decommissioning process.

During the initial talks with Stanley Taylor and the potential buyers of the operation, they provided a letter to me on June 26, 2019, that appeared to have been written by the former NRCB Director of Compliance and Enforcement (Appendix D). The letter discussed MDS for the operation for potential subdivision purposes, as well as deeming the operation as a 5,000 head beef finisher operation. The letter was dated on December 21, 2009. The NRCB had no record of this letter in our files or database. It's also important to note that the letter was not on NRCB letterhead, nor was it signed.

Due to these circumstances, on October 22, 2019, I spoke to the former NRCB Director of Compliance and Enforcement to ask about his knowledge of the operation. He recalled discussing MDS with Stanley Taylor and touring the feedlot with the operator. He also stated that he remembers that the NRCB grandfathered the operation for the 5,000 beef finishers that were mentioned in the letter.

3.2 Site Inspections

On July 3, 2019, I conducted an initial site inspection accompanied by Approval Officer Jeff Froese and Inspector Jason Moodie. We met Stanley Taylor at the site and toured the operation with him (pens were empty at the time of the inspection). When touring the site, it looked as though the operation was used as a feedlot at one point in time due to the fencing, feed bunks and layout of the operation. All of the pens/facilities seemed to be the same size as in January 1, 2002, when compared to historical aerial photographs, and were generally in good shape. Therefore, I was able to verify that there have been no changes to the operation since January 1, 2002.

A second site inspection was conducted on September 16, 2019. During the site inspection, the potential buyer of the property showed up. I asked the potential buyer if he had any additional information related to facts in the grandfathering determination. The potential buyer provided a framed photo of the operation (Appendix E). He wasn't sure of when the photo was taken, but was certain that it was taken prior to 2002. In my view, each pen looked to be in full use at the time the photo was taken (no vegetation growing in pens).

3.3 Information from Stanley Taylor

As part of this investigation, I interviewed Stanley Taylor on January 10, 2020 in the company of NRCB Inspector Jason Moodie. In his interview, Stanley Taylor stated that he is the current owner of Stant Enterprises (formerly Hillbrook Feeders) and has been since around 1985. The operation generally ran as a custom feedlot, grain farm, as well as a cow/calf operation located at a different location from the feedlot.

During the interview, Stanley Taylor verified that the photo with overlay in Appendix B looked to be from the 2001 time frame of his operation.

During the interview, I also provided Appendix C to the operator which lists the operation's cattle numbers as of January 1, 2002. Stanley Taylor could not verify this document and did not recognize it. He speculated the animal numbers reflected just his own cattle, not the custom fed cattle.

The information Stanley Taylor provided to help with his grandfathering claim included the aerial photo of his operation that the potential buyer showed to the NRCB (Appendix E). Stanley Taylor felt that the photo was taken from between the years 1990-2000. Stanley Taylor also provided a book called Beef Spotter, The Feedlot Atlas from 1995-1996 (Appendix F). This feedlot atlas states that the operation had a capacity of 5,000 head.

Stanley Taylor provided detailed information about each of the facilities in question, as set out below. He also mentioned that there was a cow/calf herd around the feedlot, but they were never placed in the facilities in question.

According to Stanley Taylor, he purchased the NW 18-40-4 W5M section in 1970 and started building the feedlot in 1985. The operation did its last expansion in 1989, adding pens A8, A9, A10 and A12. The land and facilities used for the operation consist of the pens and facilities shown in Appendix B.

Prior to 2003, the operation generally functioned as a custom feedlot for backgrounding and finishing beef cattle. After 2003, cattle numbers went down in the operation due to Bovine Spongiform Encephalopathy (BSE) and losing clientele for his custom feeding operation.

As mentioned earlier, the overall purpose of my investigation was to determine whether there was a CFO at the site on January 1, 2002 and, if so, whether the CFO was above the AOPA permit thresholds. If it's determined that the operation was a CFO as of January 1, 2002, and was above AOPA permit thresholds, I will then need to determine the CFO's beef finisher capacity. I also considered the facts right up to the present, in order to assess whether any changes occurred since January 1, 2002, or could otherwise be considered unauthorized construction.

In order to understand how the facilities in question were used, it is useful to start with an assessment of the different areas of the operation, as well as the management of each area from around January 1, 2002 (Areas A1 to A12).

The description of each area (listed below) is from Stanley Taylor's January 10, 2020, interview. The descriptions correspond with the areas identified in Appendix B.

Area A1

Area A1 was generally used for backgrounding calves (approximately 500-700 pounds) around the years 2001 to 2002 for custom feeding purposes. This area was divided into four pens, had plank fencing, concrete bunks for feeding and generally had around 250 head. These pens were used between November and May and were empty for the rest of the year. Manure management involved cleaning the manure out of the pens once a year.

Area A2

Area A2 was used for background custom feeding around the years 2001 to 2002. This area had plank fencing, concrete bunks for feeding and generally had around 400 head. These pens were used year round including in the summer months to show larger cattle to potential cattle buyers. This area had around 200 finishers in them over the summer months, before they were sold. Manure management involved cleaning the manure out of the pens once a year.

Area A3

Area A3 was used for background custom feeding around the years 2001 to 2002. Some of the cattle stayed in the feedlot and were sorted in February to different areas of the feedlot, or shipped back to Stanley Taylor's clients. This area had plank fencing, portable concrete bunks for feeding and generally had around 300 head. These pens were used year round with there being fewer cattle in during the summer months. Manure management involved cleaning the manure out of the pens twice a year.

Area A4

Area A4 was used as a sorting facility for in-bound cattle around the years 2001 to 2002. Cattle would stay here until they were processed and ready to go to their destination pen. A lot of the time, the people who owned the cattle came to the feedlot to decide what they wanted to do with their livestock at this sorting area. This area would usually have backgrounded heifers, some

used for replacements, and sometimes it was used for finishers. Manure management involved cleaning the manure out of the pens twice a year.

Area A5

Area A5 was used in the years 2001 to 2002 for backgrounding, then as finishing pens later in the summer. These pens were used year round with approximately 600 head in them until the end of the summer. Sometimes there were a lot fewer cattle in this pen, but it was still used all year long. This pen had plank fencing, pre-cast concrete bunks for feeding. Manure management involved cleaning the manure out of the pens twice a year.

Area A6

Area A6 was used for finishing cattle around the years 2001 to 2002. These pens generally had around 800 to 900 head between August and February, weighing over 800 pounds. Between February and May, these pens were mainly used as backgrounding pens to prepare cattle for pasture, or clientele would take their cattle back. Between June and August, these pens were not being used and vegetation would grow in the pens if there was no cattle in them. This area had plank fencing, half concrete feed bunks and concrete floors by the feed bunks. Manure management involved cleaning the manure out of the pens twice a year.

Area A7

Area A7 was generally managed the same way as area A6 during the years 2001 to 2002. These pens were generally better and bigger than A6, so they had around 1,000 head in them. This area had plank fencing, half concrete feed bunks and concrete floors by the feed bunks. Manure management involved cleaning the manure out of the pens twice a year.

Areas A8 and A9

Areas A8 and A9 management was complex in the years 2001 to 2002. In the fall time, calves would go into these pens, and the operation would also start purchasing 800 to 1,000 pound cattle. These areas could have as many as 1,200 to 2,250 head in each area (A8 and A9). The operation would start marketing in December so the numbers would go down to around 1200 to 1,250 head in each area, but these numbers fluctuated from year to year. Cattle would stay in here until they were close to finishing, but as they emptied, the operation would start backgrounding in these two areas until the springtime. Some cattle stayed in these areas between June and August, while others went to pasture (depending on what cattle owners wanted). These areas had plank fencing with a concrete apron, and both were used all year round. Manure management involved cleaning the manure out of the pens twice a year.

Although Areas A8 and A9 were complex with their management, in general, Areas A6-A9 were managed the same way, but it all depended on the market, as well as what the operation's clientele wanted.

Area A10

Stanley Taylor believes that Area A10 was used by the County for research in 2001 and 2002. There were around 150 head in this area between November and May. The rest of the year this area was mainly used as spare pens or sick pens with around 100 head.

Area A11

Area A11 has a hospital building, and just south of the hospital building was used as a sorting area during the years 2001 to 2002. This area was used to sort cattle that were off treatment or recovering and then being sent back to the individual cattle owner's pen.

Area A12

Area A12 was generally used the same way as Area A10. No research was done in this area by the County, but it was used in 2001 and 2002 as spare pens or sick pens with around 100 head.

The Cow/Calf Operation

During Stanley Taylor's testimony, he stated that he was usually in and around the 1,000 head number for his cow/calf portion of the operation. Around 100 to 150 of the 1,000 head was owned by Stanley Taylor in 2001 and 2002.

In 2001, calving would be done in May (sometimes April) on the hill just east of the feedlot (east of Area A9 on Appendix B). This timeline would rarely change from year to year. Calving was not done in any of the facilities in question since the operator preferred to calve on pasture land. The cow/calf pairs were kept on pasture land until the calves were weaned in October or November. Once weaned, most calves would be kept, put into the feedlot (Areas A1 and A2), and grown to finisher weight (Area A9).

Once calves were weaned, the cows would stay on pasture land. In 2001 and 2002, bred cows were winter fed in the pasture south of the feedlot and on pasture land located at SE 24-40-5 W5M. Then in May, they would be moved to different areas for pasturing and calving. Bulls were kept in a few small pens located 3.5 miles south of the operation.

Based on Stanley Taylor's information, it is more likely than not that the cow/calf operation was not a significant activity within the facilities in question around 2001 to 2002.

3.4 Information from Municipality and Regulatory Bodies

As required by AOPA, we provided public notice of the grandfathering determination request. The official public notice was published in the August 20, 2019, issue of The Mountaineer. Courtesy letters were also sent to Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Clearwater County and Alberta Transportation, encouraging written comments, including any information they may have with the grandfathering request. For this determination, neighbours who submitted a statement and Clearwater County will be considered a directly affected party in this decision.

AHS and Clearwater County replied to the NRCB courtesy letters with no information related to the grandfathering request. Alberta Transportation also didn't have any information for the grandfathering request, but they replied with the following statement:

"While we have no objections to the continued operation of the existing beef feedlot, we respectfully request that the NRCB continue to refer Alberta Transportation on any future proposed additions, expansions or intensification of use. The sight lines at both highway intersections are not ideal, and any proposed increase in traffic may require mitigation (i.e. tree clearing, intersection improvements, etc.)."

3.5 Evidence from Neighbours

As part of the investigation, the NRCB sent out letters on August 16, 2019 to neighbours within a 1.5 mile radius of the operation. These letters were requesting any information that could be used in determining the grandfathering status of the facilities in question. Witnesses were requested to submit written information on facilities that existed on the site on January 1, 2002 and how these facilities were being used.

Ten witnesses provided written submissions. However, only two of those witnesses lived in the area of the operation around January 1, 2002. For the purposes of the grandfathering determination, given the importance of the January 1, 2002 time frame, I contacted only these two witnesses for further information.

- I contacted one of the witnesses by phone on October 30, 2019. They stated they lived in the area of the operation around the January 1, 2002 date, and they believed that the operation had anywhere between 1,000-2,000 head of cattle from around the time frame of January 1, 2002.
- I contacted the second witness by phone on January 23, 2020. They informed me they moved into the area in 1986, and stated that the operation never had anywhere near the 5,000 beef finisher numbers that the operator is requesting in his grandfathering determination.

Neither of the two witnesses could provide documentation or photos to support their statements.

Written statements provided by the ten witnesses and conversations with the two witnesses suggested that they had a very general knowledge of how and when the facilities on the operation were used. They also had a vague knowledge of how many cattle were in the facilities from around January 1, 2002. I believe that the level of knowledge the neighbours had did not allow them to provide detailed information about historical aspects of the operation.

I acknowledge that there were other concerns in the written statements that were not relevant to this grandfathering determination, which mainly included runoff concerns. I'm dealing with and tracking those concerns in accordance with the NRCB's Compliance and Enforcement Policy.

3.6 Evidence from Former Employee at Stant Enterprises

On January 28, 2020, Stanley Taylor informed me that he contacted one of his former employees, who might be able to answer some of my questions. I called Earl Pauley on January 29, 2020, and he also provided a written, signed statement on February 12, 2020. Earl Pauley was a former employee at the operation and worked as a custom cow care worker at the feedlot between 1996 and 2001. Mr. Pauley claimed that he was quite familiar with the operation and how it operated between those years. To be specific, he stated that the operation operated as a custom feedlot and had anywhere between 5,000 to 6,000 head of cattle while he worked there. In the summer months, Mr. Pauley said that the numbers may have been closer to 4,800 head of cattle. During this time frame, Mr. Pauley also claimed that all of the pens were full and used at all times due to the high cattle turnover.

When asked about the cow/calf portion of the operation, Mr. Pauley mentioned that the pens in the feedlot were never used for the cow/calf portion of the operation. He mentioned that the

fields to the east and south of the feedlot were used for cow/calf purposes, as well as a field northwest of the feedlot (SE 24-40-5 W5M).

The former employee was very knowledgeable about the operation between the years 1996 and 2001, but could not provide documentation or photos to support his information from around the January 1, 2002, timeframe.

4.0 Findings

4.1 Affected Persons and Directly Affected Parties

Section 11(5) of the Administrative Procedures Regulation under AOPA requires that an inspector's decision report on a grandfathering investigation shall include reasons on whether affected parties that made a submission are directly affected parties.

Affected persons in this investigation were the applicant (Stant Enterprises); the municipality in which the operation is located (Clearwater County); and all the neighbours (sixty-eight) who own or occupy land within the 1.5 mile notice radius (see section 5 of the Part 2 Matters Regulation under AOPA).

"Directly affected parties" are typically a subset of "affected persons." Under section 19(6) of AOPA, the applicant for an approval and a municipality that is an "affected person" are automatically directly affected parties. For others, I found it made sense to adopt the approach to determining directly affected party status from NRCB Operational Policy 2016-7: *Approvals* (updated May 8, 2018). Under that Policy at part 6.2, people who reside on or own land within the affected party radius and who provide timely statements are presumed to be directly affected parties.

In this case, the presumption is not rebutted. In my view, the 10 neighbours who reside on or own land within the 1.5 mile radius and who submitted a timely statement are directly affected by this grandfathering determination.

Directly affected parties are accordingly:

- a) Stant Enterprises
- b) Clearwater County
- c) The 10 neighbours who submitted a statement.

4.2 Credibility and Weight of the Evidence

This part addresses my findings regarding the witnesses' credibility and the appropriate weight to be given to written statements of concern from directly affected parties, as well as phone conversations with some of the neighbours and the former operation employee. By "credibility," I mean essentially knowledge, experience and objectivity (i.e. bias). (Nothing in this decision is meant to suggest that I have questioned the witnesses' personal integrity.)

On most factual issues, the evidence was relatively consistent from all sources, so it was unnecessary to consider the sources' credibility and to weigh the evidence with respect to these uncontested issues.

However, on other issues—particularly those relating to the use of the facilities in question to confine and feed cattle, as well as the number of cattle in the facilities—there was a range of

relevant evidence. Thus, in order to make findings of fact on these issues, it was necessary to make judgements regarding the witnesses' credibility and the appropriate weight to be given to the conflicting evidence.

In assessing the witnesses' credibility, I was mindful of the fact that representations made by the CFO owner and by neighbours may come from self-interested motivation. For example, some of the witnesses may have had a personal stake in the outcome of this decision (based on what was mentioned in their statements), which may have coloured their statements somewhat. That said, the two neighbours that I spoke to, as well as the former Stant Enterprises employee appeared to be answering my questions truthfully and to the best of their ability.

Stanley Taylor likely has a personal stake in the outcome of this decision (potential sale price of the operation). In my observation interacting with him, however, Stanley Taylor also appeared to be answering my questions honestly and to the best of his recollection. Stanley Taylor did not refuse to answer any questions and he seemed to consider all questions before answering.

In assessing all of the witnesses' statements, I also recognized that the grandfathering period (2000 – 2003) was around 20 years ago, so it would be unreasonable to expect the witnesses to have a perfect recollection of key facts, particularly, how each of the facilities in question were used and how many cattle were in the facilities. Other challenges in recalling relevant facts may have resulted from changes in how the overall operation was managed. One or all of these factors likely accounted for at least some of the differences among the witnesses' statements and for at least some of each of the witnesses' challenges in recalling specific details about the operation during each of these years.

Given the passage of time, I also did not consider a lack of documentation from the grandfathering period as undermining credibility. It would be a challenge for the witnesses and Stanley Taylor to still have relevant documents from around the grandfathering date.

Although there is a discrepancy between the 5,000 beef finishers that Stanley Taylor is claiming, the numbers shown on Appendix C, and the numbers the neighbours are claiming, I found that Stanley Taylor had the most detailed knowledge of events during the grandfathering period. The statements from the former employee corroborated Stanley Taylor's claims. Stanley Taylor did not recognize the Appendix C document, but he had an explanation for the animal numbers in Appendix C, and his evidence was otherwise internally consistent. Therefore, I put more weight on his evidence and statements, versus evidence from statements of concern, the neighbours I spoke to, or Appendix C.

4.3 Findings Related to the Facilities in Question

As quoted above, the CFO definition in AOPA is tied to an operation's physical facilities (i.e. the operation's "land or buildings"). Thus, determining whether a livestock operation was a CFO requires assessing each of the operation's facilities. That said, the CFO definition refers not only to the physical characteristics of the "land or buildings," but also to how they are used (i.e. confining livestock for the purpose of growing, sustaining, finishing or breeding by means other than grazing). Thus, the uses of an operation's facilities can be determinative as to whether the facilities qualify as a CFO. Likewise, if a facility has several different uses, if one of the uses is for the purposes listed in the CFO definition, the facility can qualify as a CFO even if the other uses are not listed.

For these reasons, the analysis below considers whether the facilities in question existed as a CFO on January 1, 2002, by assessing how all or each of the facilities were used at that time. If facilities in question are considered to have been used for CFO purposes on January 1, 2002 and above AOPA threshold levels, the next step of the grandfathering process is to calculate the beef finisher capacity of the operation.

Based on the evidence provided, it is reasonable to conclude that Areas **A1, A2, A3, A5, A6, A7, A8 and A9** (Appendix B) were likely used for confining livestock for the purpose of growing, sustaining and finishing. It is also safe to conclude that all of these areas together exceeded the threshold number of cattle in AOPA that would require a permit, which would also make it a CFO by definition. The evidence I used to come to this conclusion included;

- a) Stanley Taylor's interview – Stanley Taylor had the most knowledge about the operation during the grandfathering time period and was able to recollect specific uses of specific areas;
- a) Aerial Photograph of the operation provided by the potential buyer (Appendix E) – The aerial photograph showed that prior to 2002 all pens were in use, there was no vegetation growing in the pens, and there was permanent infrastructure (plank fencing, feed bunks etc.) which is commonly associated with feedlots;
- b) Information from the former NRCB Director of Compliance and Enforcement – The former NRCB Director of Compliance and Enforcement remembered the NRCB deemed Stanley Taylor's Operations capacity at 5,000 head back in 2009;
- c) The Feedlot Atlas provided by Stanley Taylor (Appendix F) – The Feedlot Atlas mentions animal numbers similar to what Stanley Taylor is claiming; and
- d) Appendix A – This table helps define the operation as a feedlot. More specifically when considering animal numbers, livestock type, feeding areas, manure concentration, density of confinement, infrastructure, runoff control and timing. All these factors fall more on the side of CFO than on the side of a seasonal feeding and bedding site.

Knowing that these areas were used for CFO purposes as of January 1, 2002, I included areas **A1, A2, A3, A5, A6, A7, A8 and A9** in my capacity calculation for the grandfathering determination.

Although it was stated during Stanley Taylor's interview that Areas A1, A6 and A7 were not being used during the summer months, I concluded that in general, the operation was used as a finishing feedlot, therefore these areas were defined as CFO areas when using Appendix A.

Areas A4, A10, A11 and A12 (Appendix B) were used for short-term livestock handling for sorting, processing, treating, shipping, and/or receiving livestock. These uses are common at CFOs, however, due to their short term nature, should not be included in a grandfathering capacity calculation.

The capacity of the feedlot was calculated by using Google Earth to measure the areas of **A1, A2, A3, A5, A6, A7, A8 and A9** (Appendix B). Then the total area from **A1, A2, A3, A5, A6, A7, A8 and A9** was divided by 200 ft² (Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002, Technical Guideline (Agdex 096-81; updated on February, 2016) to give me the beef finisher capacity for the feedlot.

5.0 Determination

Considering the photo evidence (Appendix E), Feedlot Atlas provided by Stanley Taylor (Appendix F), information from the former NRCB Director of Compliance and Enforcement and Stanley Taylor's evidence, it is more likely than not that Areas **A1, A2, A3, A5, A6, A7, A8 and A9** (Appendix B), were established and used to hold livestock well before, or on the January 1, 2002 grandfathering timeline, and were used for confining livestock for the purpose of growing, sustaining and finishing. Furthermore, using the same evidence stated above, the footprint has not changed since January 1, 2002. Therefore no unauthorized construction has taken place according to AOPA.

I accept that the operation was a CFO, was above threshold numbers as of January 1, 2002, holds a deemed permit under AOPA, and therefore is grandfathered. There will be no terms or conditions included in this grandfathering decision, however, as mentioned earlier, any concerns (for example runoff concerns) not relevant to this grandfathering will be followed using our Compliance and Enforcement Policy. The legislation's grandfathering determination is based on the existence of the facilities as of January 1, 2002. Having said that, I did not restrict my questioning or analysis strictly to January 1, 2002 but rather looked to a period of time between 2000 and 2003.

Having found that the operation existed as a CFO as of January 1, 2002, was above threshold numbers, and had the physical characteristics of a CFO, I could then calculate the feedlot capacity for the Stant Enterprises operation for Areas **A1, A2, A3, A5, A6, A7, A8 and A9**. I used the Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002, Technical Guideline (Agdex 096-81; updated on February, 2016) to make my capacity calculation. This guideline uses the 2000 Alberta Feedlot Management Guide to help with calculating beef animal numbers. Using this guide, my capacity calculation for these areas gives the Stant Enterprises operation a grandfathering determination of **4,800 beef finishers**, under AOPA.

May 1, 2020



(Original Signed)
David Smejkal
Inspector

6.0 Appendices

- A. Factors Used by the NRCB to Differentiate Between Confined Feeding Operations (CFO) and Seasonal Feeding and Bedding Sites (SFBS) (in use close to 2002)
- B. Aerial Photo of Site with Overlay
- C. Fax from Hillbrook Feeders to Clearwater County July 2, 2015 with Cattle Numbers on January 1, 2002
- D. Historical Letter dated December 21, 2009
- E. Historical Photo of the Operation
- F. Beef Spotter, The Feedlot Atlas 1995-96

APPENDIX A

Factors Used by the NRCB to Differentiate Between Confined Feeding Operations (CFO) and Seasonal Feeding and Bedding Sites (SFBS)

Factors	Confined Feeding 	Gray Zone	Seasonal Feeding and Bedding 
Timing	Contains animals during grazing season	↔	Winter use only (between grazing seasons)
Animal Numbers	Above threshold for registration/approval	↔	Below threshold for registration/approval
Livestock Type	Steers/backgrounding/finishing	↔	Mature breeding herd/unweaned Young
Bedding Area	No bedding or one bedding pile/site	↔	Frequent moving of bedding site
Feeding Area	One feeding spot/permanent feed bunks	↔	Dairy/regular moving of feeding source
Manure Concentration	Concentrated in small area – must be removed and spread or stored	↔	Dispersed over large area – requires little or no management
Proximity to CFO	Immediately adjacent to CFO	↔	Not located within MDS of CFO
Density of Confinement	High density of animals/acre (>6)	↔	Low density of animals/acre (<4)
Infrastructure	Significant permanent infrastructure	↔	Little or no permanent infrastructure
Risk of Runoff	Runoff control required	↔	Little risk of runoff
Feeding Area	Packed feed floor, no vegetation	↔	Vegetated feeding area

APPENDIX B



APPENDIX C

HILLBROOK FEEDERS

A DIVISION OF STANT ENTERPRISES LTD.
CUSTOM FEEDLOT
BOX 113, LESLIEVILLE, ALBERTA. T0M 1H0
FAX NUMBER: (403)729-2516

DATE July 2, 2015 FAX NUMBER 403-845-4048
TO Clearwater County
* ATTENTION Marilyn Sanders
FROM Ryan Taylor
NUMBER OF PAGES TO FOLLOW 4

MEMO:

Animals Re: NW 18-40-4 WS
on January 1, 2002.

Cows - 903 Hd.

Bulls - 48 Bulls

Feeders + Finishers - 1305 Hd.

2256 Total. Cattle.

July 6, 2015
per Wilma - info can be forwarded to NRCB.
ML

APPENDIX D

December 21, 2009

Mr. Stan Taylor
Stant Enterprises Ltd
Leslieville, AB T0H 1M0

Dear Mr. Taylor:

Re: Hill Brook Feeders NW18-40-4-W5

Under Section 18 of the Agricultural Operations Practices Act Hill Brook Feeders is deemed to have an approval for a beef feedlot with a capacity for 5,000 animals. The information that you provided has been verified and Hill Brook Feeders has been entered into the NRCB's CFO database.

The estimated minimum distance separation (MDS) for your operation based on category 1 (acreage residences) and the number of beef finishers is as follows:

5,000 - 550 metres
4,000 - 507 metres
3,000 - 456 metres
2,000 - 394 metres
1,000 - 306 metres

I've attached an aerial showing the setbacks for 1000 head, the distances are estimates only but will give you an idea of the relative distances. They still need to be verified by an NRCB Approval Officer. The distances are measured from the outside wall of the neighbouring residences to your manure storage facility, catchbasin or compost area but do not include feed storage, feed handling areas or offices. Since we don't know where the residences might be located I've used the possible property lines.

I was mistaken and your catchbasin does count and the construction of a new one would need to be properly engineered and require an authorization from the NRCB.

Please contact myself to discuss and further refine these estimates.

Yours truly,

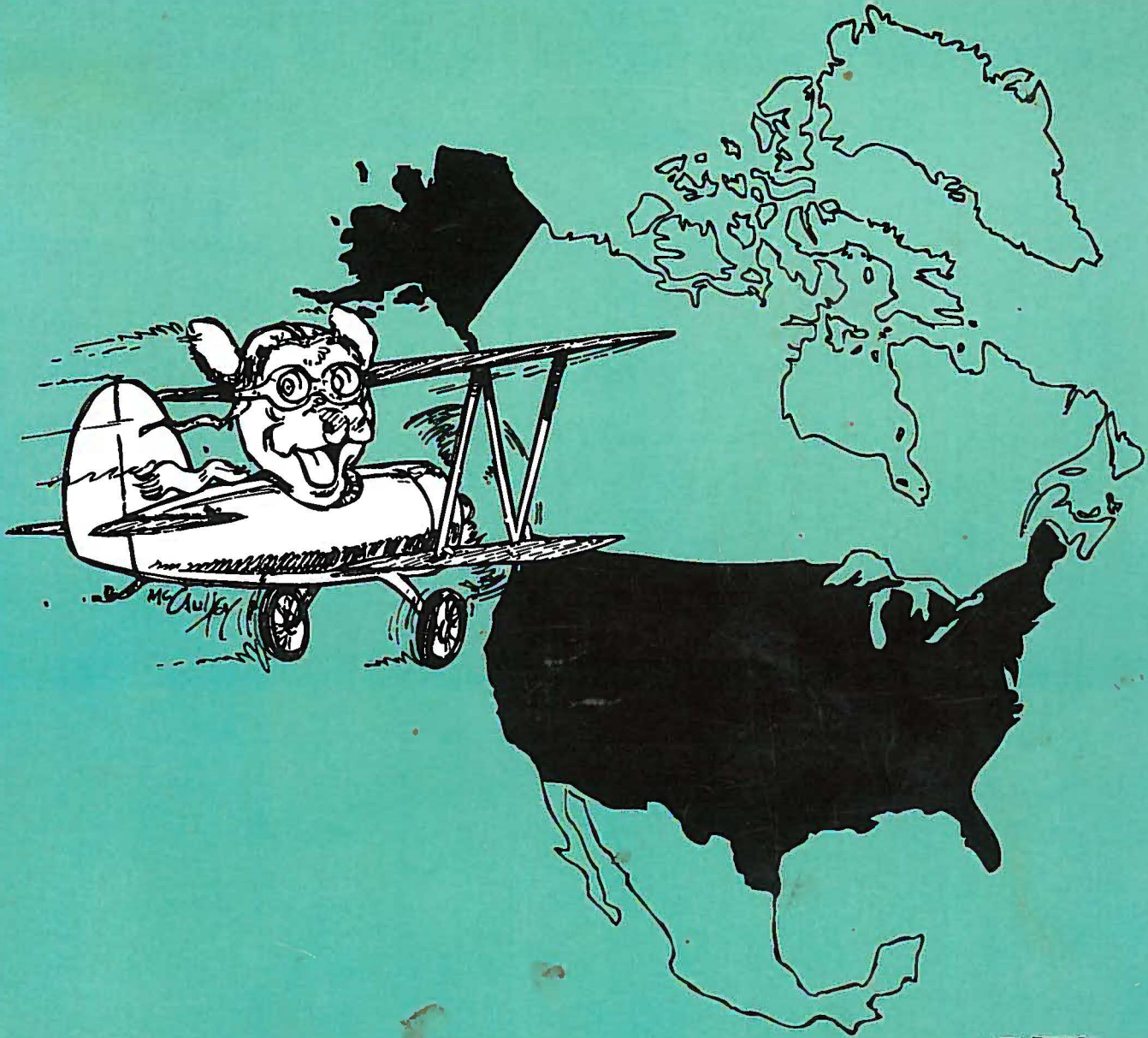
Jim McKinley
Director, Compliance and Enforcement
Natural Resources Conservation Board

APPENDIX E

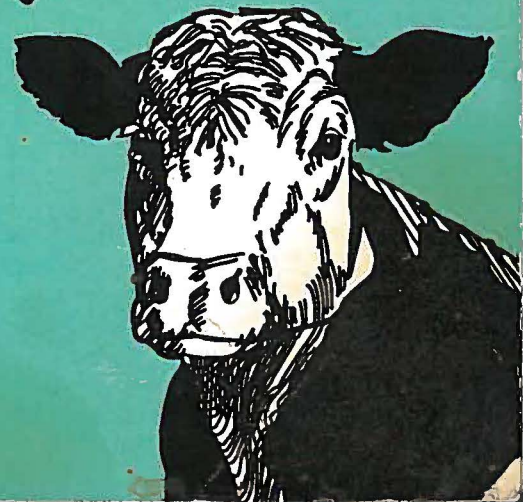


BEEF SPOTTER™

... The Feedlot Atlas



- 1995-96 Edition -
Feedlot Listings & Locations
in The United States • Canada
& the U.S. / Mexico Border



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WYOMING FEEDING
 LOCATIONS

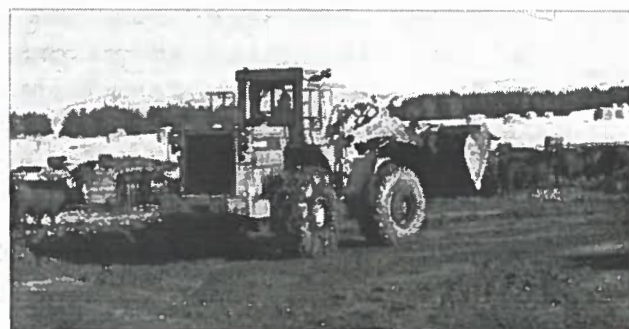
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Adam's Land Cattle, Broken Bow, Nebraska

The **RUD "Bison"**
 doesn't take any *bull* when it
 comes to high performance
 traction chains in your cattle
 operation.

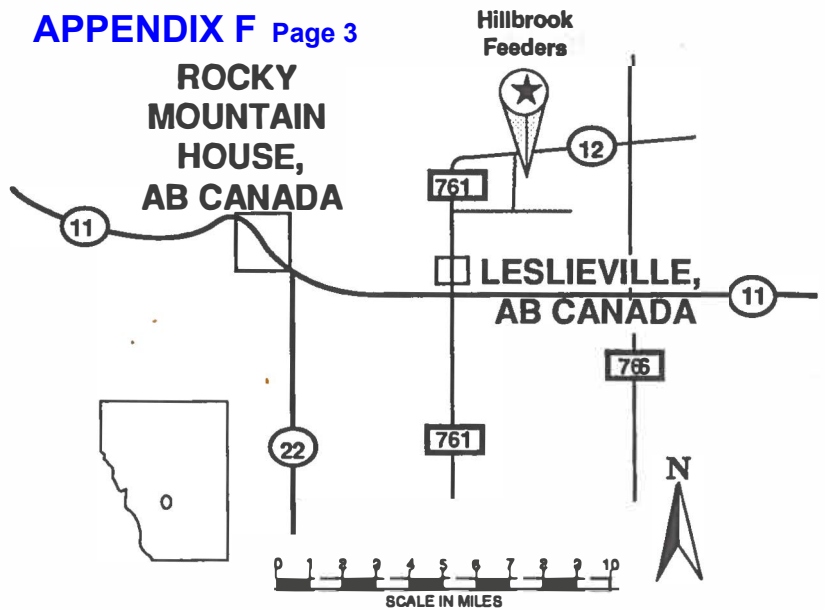


Rud-Chain, Inc.
 1300 Stoney Point Road S.W.
 P.O. Box 8145
 Cedar Rapids, Iowa 52408
 Phone: 319-390-4040
 800-553-7993
 Fax: 319-390-3342

Hillbrook Feeders

P.O. Box 113
 Leslieville, AB Canada T0M 1H0
 Owner: Stan Taylor
 403-729-2800
 Capacity: 5,000

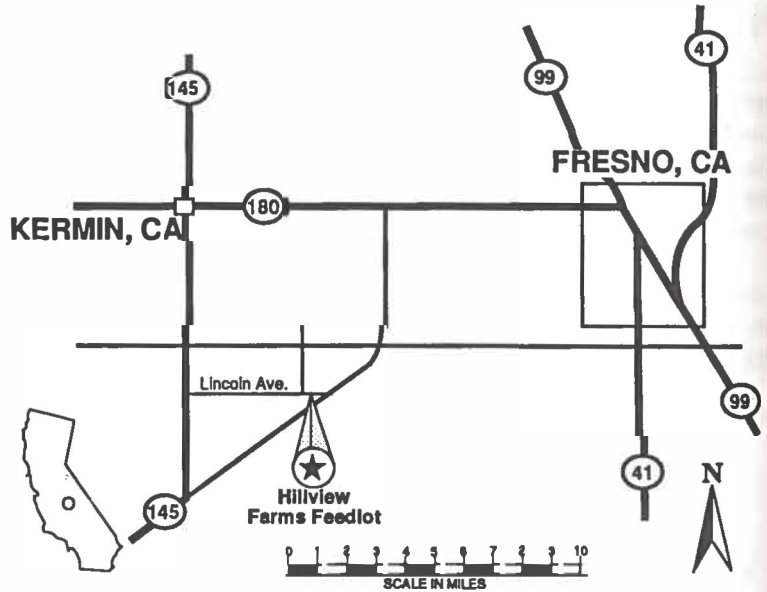
Location: From Leslieville, AB Canada:
 3 miles North on paved secondary road
 #761, then 1 mile East and 1 mile North
 on gravel county road.
 Hillbrook Feeders is on the East side
 of the road.



Hillview Farms Feedlot

11900 W. Lincoln
 Fresno, California 93706
 Manager: Frank Toste
 209-233-4329
 Capacity: 3,000

Location: From the Intersection
 of CA 99 and CA 180 In Fresno, CA:
 15 1/2 miles West on CA 180 to
 CA 145, then 5 miles South to
 Lincoln Avenue, then 3 miles
 East. Hillview Farms Feedlot is
 on the South side of the road.



Hitch, Henry C. Feedlot, Inc.

P.O. Box 1559
 Guymon, Oklahoma 73942
 Manager: Rod Schemm
 405-338-2533
 Capacity: 43,000

Location: From Guymon, OK:
 4 miles East on OK 3 to Borger
 Road, then 3 miles South and
 1 mile East on paved county road.
 Henry C. Hitch Feedlot is on the
 South side of the road.

