



NRCB | Natural Resources
Conservation Board

**Decision Report PB24003 for
Grandfathered (Deemed) Permit Determination
under the
Agricultural Operation Practices Act
Valerian Urichuk (Urichuk Farms Ltd.)
NW 3-55-15-W4M**

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1.0 Introduction and background

This document sets out the written reasons for my determination of the livestock capacity and type in a deemed permit under the *Agricultural Operation Practices Act* (AOPA). The subject of the determination is a beef operation located on NW 3-55-15-W4M (this quarter section will be referred to as “the site”). The site is located in the County of Two Hills No. 21, approximately 11.0 kilometres southeast of the Hamlet of Willingdon. The process of ascertaining livestock capacity and livestock type under a deemed permit is known commonly as a “grandfathering” determination.

On January 20, 2023, Evonne Urichuk on behalf of Urichuk Farms Ltd. contacted the Natural Resources Conservation Board (NRCB) and inquired about an NRCB grandfathering determination for their beef confined feeding operation (CFO). The CFO operates under the corporate name of Urichuk Farms Ltd. and the land is owned by Valerian Urichuk and Walter Urichuk.

The livestock operation does not currently hold a CFO development permit issued by the municipality before January 1, 2002, or a permit issued by the NRCB since 2002.

Under section 18.1(1)(a) of AOPA, CFOs that existed (even without a municipal development permit) on January 1, 2002, are grandfathered.

It is therefore necessary for me to determine:

1. Was there a “CFO” on this site on January 1, 2002?
2. Was the CFO above the permitting thresholds under AOPA on January 1, 2002?
3. If so, what was the footprint on January 1, 2002?
4. What were the structures on January 1, 2002? How were the structures being used?
5. What, if any, permits or licences did the operation hold?
6. What category(ies) of livestock was the CFO confining and feeding, or permitted to confine and feed? What type(s) of livestock in that category (e.g., calves, feeders, finishers)? What livestock numbers were permitted or being held for each type of livestock?
7. What was the capacity of the structures to confine livestock on January 1, 2002?
8. Is the claimed capacity within a reasonable range of the physical capacity on January 1, 2002?

On May 7, 2024, Valerian & Evonne Urichuk submitted a formal grandfathering determination request to the NRCB on behalf of Urichuk Farms Ltd. The grandfathering determination was requested for the NW 3-55-15-W4M with a claimed livestock capacity of 1,850 beef feeders (450 – 900 lbs) (**Appendix A**).

For the reasons that follow, and based on the evidence gathered during my investigation and the standard of proof, on a “balance of probabilities” I have determined that the beef feedlot at NW 3-55-15-W4M, currently owned by Valerian Urichuk and Walter Urichuk existed as a CFO on January 1, 2002; had a capacity for 1,850 beef feeders (450 – 900 lbs), which is above the AOPA animal threshold numbers and within a reasonable range of the physical capacity of the facilities as it existed on January 1, 2002; and has the same footprint (for confining cattle) today, as it did in 2002 which included fourteen feedlot pens, a pumphouse, scale, grain mill, processing barn, a silage pit, and therefore has a deemed AOPA approval. The operation has not been abandoned and the deemed AOPA approval is still valid today.

To ensure transparency with AOPA and consistent decision-making, a complete and thorough investigation was conducted to address the questions listed above, ensuring that all relevant aspects of the operation were considered in making a formal grandfathering determination.

2.0 Context and process

2.1 Legal context

Under section 18.1(1)(a) of the *Agricultural Operation Practices Act* (AOPA), the owner or operator of a confined feeding operation that existed on January 1, 2002, for which a development permit was not issued by the municipality is deemed to be issued a permit under AOPA. The capacity allowed by a deemed permit is the capacity of the enclosures to confine livestock at the CFO on January 1, 2002 – section 18.1(2)(a) of AOPA.

The term “capacity” refers to a CFO’s livestock numbers, not to the scope of the CFO’s facilities. The term “deemed capacity” refers to the maximum number of livestock, or maximum volume or tonnage of manure storage, allowed by a CFO’s deemed permit as determined under section 18.1(2) of AOPA.

The question of whether there was a “confined feeding operation” on this site on January 1, 2002, may turn on the definition of “CFO” in AOPA. 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 livestock 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...

As excluded from the “CFO” definition, “seasonal feeding and bedding site” is also a defined term in section 1(i) of AOPA:

1(i) “seasonal feeding and bedding site” means an over-wintering site where livestock are fed and sheltered;

To be grandfathered, a CFO must have been at or above AOPA threshold numbers on January 1, 2002. The Part 2 Matters Regulation under AOPA identifies the threshold to require a permit for beef feeders (450 – 900 lbs) is 200 - 499 for a registration and 500+ for an approval.

The Administrative Procedures Regulation under AOPA includes section 11 governing deemed permit investigations. 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.*

The NRCB has formalized grandfathering decisions by adopting processes set out in section 11 of the Administrative Procedures Regulations under AOPA and through the Operational Policy 2023-01: *Grandfathering (Deemed Permit)*. These documents provide the framework to establish the facts and the scope of the grandfathering determination process.

2.2 Standard of proof

Section 11 of the Administrative Procedures Regulation under AOPA states that an inspector shall conduct an investigation to determine capacity of a CFO in place on January 1, 2002. Grandfathering determinations require findings of fact. Whether a CFO existed on January 1, 2002, above threshold, is a question of fact. Similarly, what category and type of livestock, and what capacity the CFO had on January 1, 2002, are also questions of fact.

If not otherwise specified in legislation, the standard of proof in a civil administrative proceeding like this is a “balance of probabilities”—that is, whether a relevant fact is more likely than not to be true.

2.3 Flexible approach to grandfathering

Section 18.1 of AOPA focuses on facts as they existed on the precise grandfathering date of January 1, 2002. However, I generally sought evidence as to the type of livestock and the livestock capacity at the operation between 2000 and 2004 (See Grandfathering Policy, part 6.0). Considering the operation for at least two years before and two years past the January 1, 2002, grandfathering date seemed useful because witnesses might not remember what occurred on the exact date of January 1, 2002, and documents may not have the exact date. 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 a short-term market crisis. Thus, the 2000 to 2004 range was meant to generate sufficient evidence to apply this pragmatic and flexible approach.

2.4 Notice

Under Part 2 Matters Regulation of AOPA, the municipality where the CFO is located is an affected party (see section 5 of the regulation). As such, the NRCB provided notice of the grandfathering investigation to the County of Two Hills No. 21 and invited comments.

The NRCB also sent information to Alberta Environment & Protected Areas.

I sought neighbours’ perspectives on the factual questions of capacity and type of livestock being confined and fed on January 1, 2002. I wanted to collect relevant historical information from those who may have lived in the area around that date. Notice is required in section 11(2) of AOPA’s Administrative Procedures Regulation. Before determining a deemed approval for an operation that was in place on January 1, 2002, the NRCB inspector is required to provide notice to those parties who would be entitled to notice under section 19(1) of AOPA for a new CFO with the same capacity.

In this case, the claimed capacity is 1,850 beef feeders (450 - 900 lbs), which puts the distance for affected persons entitled to notice under section 19(1) of AOPA at one mile. The distance is set out in section 5 of the Part 2 Matters Regulation.

On July 17, 2024, notice of the grandfathered (deemed) permit determination request was published in the *Vegreville News Advertiser*. In the notice, I advised of the claim by Valerian & Evonne Urichuk on behalf of Urichuk Farms Ltd. for a deemed permit for 1,850 beef feeders, and I invited the public to provide written submissions related to the facilities, capacity, and type of livestock produced by the CFO on January 1, 2002. I also invited the public to apply for status as directly affected parties. The deadline for written submissions was August 15, 2024.

In addition, on July 10, 2024, 10 notification letters were sent to people who (according to the County of Two Hills No. 21) reside on or own land within a one mile radius of the site who might have relevant information as to the capacity and type of livestock that the CFO produced around January 1, 2002. The notification letters included information similar to that in the newspaper notice.

The NRCB published notice of the grandfathering determination on its public website at www.nrcb.ca, as well as information filed in support of the deemed permit request.

3.0 Evidence

3.1 Information at the NRCB (if applicable)

It should be noted that this file was originally assigned to Inspector Thompson, however in an effort to distribute workloads and decrease wait times, the file was reassigned to myself, Inspector Krenn.

Upon receipt of the grandfathering determination request, I conducted a search of NRCB's electronic CFO database. Inspector Thompson had already conducted a search of the internal hard copy files at the Morinville office. No information was found regarding this operation in either the electronic CFO database or hard copy files.

3.2 Information from Valerian and Evonne Urichuk

On June 20, 2024, Inspector Thompson and I attended Urichuk Farms Ltd. located at NW 3-55-15-W4M. Inspector Thompson and I first met with Evonne Urichuk. She advised her husband Valerian would be joining us shortly. I provided Evonne with my business card, the Formal Grandfathering Determinations FAQ's, a copy of Valtus Aerial Imagery dated 1999-2003 and Google Earth Pro Aerial Imagery from 2020. I had drafted a list of questions that Inspector Thompson and I went over with Evonne. Evonne advised she would do her best to answer our questions, but stated some questions may be better answered by Valerian.

- 1. Is the footprint the same as it was on January 1, 2002? (Short term handling-sorting, processing, treating, shipping, quarantining, or receiving areas are not part of the area used for calculating livestock capacity).**

On the aerial imagery I had provided Evonne I had labelled the pens alphabetically. Evonne provided me with the actual pen numbers (1 - 14). I asked about Pens 12 - 14. Pen 12 appeared to be visible on the Valtus Aerial Imagery 1999-2003, however pens 13 and 14 were not identifiable. Evonne, later confirmed by Valerian, advised that pens 13 and 14 had been constructed by 2004. However, they could not remember the exact

year the pens were built. Inspector Thompson and I advised we needed to determine the pen area, and the length of the pens used for fenceline feeding prior to January 1, 2002, as these numbers are what we would use in our calculation for determining the deemed livestock capacity. Inspector Thompson showed Evonne the Calculator for Determining Livestock Capacity of Operations As They Existed on January 1, 2002 (Agdex 096-81) and explained how we calculated livestock capacity based on animal type for a particular area (e.g., northern AB). Evonne provided us with some paperwork she had found which included construction details for all fourteen pens (**Appendix B**). The construction detail included pen dimensions, bunk length, number of head for each pen, the length of piping and uprights, and guard rails. There was no date written on the paperwork. The paperwork also included the total livestock capacity which was recorded as 2,254 head.

2. Have there been changes to the footprint, and if so, what were they?

No changes.

3. What structures existed on January 1, 2002?

Processing barn, scale, grain mill, pumphouse, wooden pens with concrete waterers, and a silage pit.

4. What type of livestock was being confined on January 1, 2002?

Feeders – they were all brought in by customers. When they received the calves, they weighed between 300 - 600 lbs. They would custom feed the calves until they weighed around 900 lbs before shipping to a finishing feedlot. Their operation was primarily backgrounding, but on occasion they would do some finishing, depending upon what the customer wanted.

5. Were the cattle confined and fed all months of the year or were any of the pens used for SFBS (e.g., cow-calf operation/calving)? How was the operation managed (cattle purchased or brought to site, how were they fed and when)?

Yes, cattle were confined and fed all year, only moved to sort. Pens were always full as cattle were brought in year-round. As already stated, all cattle were custom fed for customers. They did have their own small cow-calf herd that were kept separate from the other cattle. These cattle were kept confined for over-wintering and calving and then put out to pasture in the spring. Evonne advised they had a cow-calf herd of approximately 40 head and expanded it by another 20. Valerian later advised they had around 75-100 cow-calf herd around 2002, they got rid of most of the cow-calf herd around 2009, but they built it back up and now have 120 head.

Question 6 & 7 have been included in section 6.1 below, as they pertain to abandonment.

Valerian & Evonne provided several documents to support the claimed grandfathered capacity of 1,850 beef feeders (450 – 900 lbs.). The first set of documents (**Appendix C**) included three custom feed billing records from the years 2001, 2007, and 2009 which indicated the number of head being fed (Table 1).

Table 1. Feed Records 2001, 2007, & 2009

• September 4, 2001	614 head
• February 20, 2007	1,342 head
• June 20, 2009	913 head

The second set of documents (**Appendix D**) included custom feed billing records from March 2002, October 2002, June 2003, November 2003, January 2004, and December 2004. The feed records show the number of head that were fed for each customer during the month indicated. The feed records also indicate the number of heifers or steers being fed but do not provide specific weights. The total number of head for the feed records specified in Appendix D are tallied below. The totals tallied by the operator are included in the email from Evonne Urichuk dated May 16, 2024 (**Appendix E**).

Table 2. Feed Records 2002, 2003, & 2004

• March 2002	1,546 (*1,551) head	• October 2002	1,549 head
• June 2003	2,209 head	• November 2003	2,239 head
• January 2004	1,640 (*1,740) head	• December 2004	2,335 head

* The numbers in brackets are the numbers provided by the operator which were different from my calculated totals. Note: totals do not include dead livestock.

Table 3. All records received from Valerian & Evonne Urichuk

Description of record	Relevant and considered	If not relevant or considered explain why	Appendix (only if relevant and considered)
Feed Records 2007	No	I didn't include these records as there were several other records provided closer to the January 1, 2002, date that show the number of head being confined.	N/A
Construction Detail Pens (1 – 14)	Yes – provides pen dimensions, bunk length and total head capacity per pen for all fourteen pens.		Appendix B
Feed Records 2001, 2007 & 2009	Yes, but mainly the 2001 Feed Record as it is prior to January 1, 2002, and the deemed permit date.		Appendix C
Feed Records March & October 2002, June & November 2003, and January & December 2004	Yes, within two years of January 1, 2002, and the deemed permit date.		Appendix D

Email from Evonne Urichuk May 16, 2024	Yes – provides a tally of the total number of head custom fed during each specific month listed in Appendix C.		Appendix E
Scale Records 2007	Yes, for type only. Although from 2007, these records are the only records submitted that show the weights of calves when received, thus indicating the type of cattle (feeders 450 – 900 lbs) likely to have been custom fed in 2002 (see two paragraphs below).		Appendix F

Valerian then took Inspector Thompson and I on a tour of the site. There was a pumphouse, scale, grain mill (still operating), pens, processing barn, and silage pit. The pens were constructed of wood post and rail, some had wooden fence panels which were leaning, most pens had metal gates, and most pens still had their original pen numbering.

Pens 1 & 3 were being used to house their cow-calf herd. Pens 1 & 3 had been combined into one pen. Pen 1 was the only pen with fence line feeding on one side. Around 2005, pens 3, 4, & 8 had been upgraded with metal fence panels along some portions of the exterior of the pens. Pens 9 and 10 had only remnants of the original pen structures remaining which included a few wooden fence posts and small portions of wooden fence panels; grass had re-established within the pens, and the pens were not being used for another purpose. The concrete waterers were still in place in all the pens and appeared to be in good condition. As per Valerian the water lines had been blown out and the electrical for the waterers was still in place.

When discussing with Valerian as to evidence to support the type of cattle, beef feeders (450 - 900 lbs) that were confined and fed around 2002, Valerian went into the pumphouse next to the scale. He came out with a handful of paperwork. The records showed the number of head and weights of cattle received in 2007. One record dated Dec 5, 07 showed the receipt of 50 head with an average weight of 582 lbs. Another record dated Nov 28, 07 showed 7 heifers totaling 3300 lbs which on average is 471 lbs and 26 steers at 13,130 lbs which on average is 505 lbs. A record from Nov 30 showed 27 steers 14, 280 lbs with an average weight of 528 lbs and at the bottom of the tally 74 head totaling 39,550 lbs with an average weight of 534 lbs (**Appendix F**).

Digital photos taken (Appendix N).

3.3 Information from municipality

Under the Part 2 Matters Regulation under AOPA, the municipality where the CFO is located is an affected party (see section 5 of the regulation). As such, the County of Two Hills No. 21 is an affected party and is also a directly affected party in this deemed permit determination, as they would be if this were an application for an approval today.

On July 17, 2024, notification of the grandfathering investigation and determination was sent to the County of Two Hills No. 21. I did not receive a written response from the County.

On August 20, 2024, I sent an email to the County of Two Hills No. 21 requesting any aerial imagery they may have of Urichuk Farms Ltd., around January 1, 2002, or from the period of 2000 – 2004.

On August 27, 2024, I received an email from the County of Two Hills which included a black and white aerial image of Urichuk Farms Ltd. from 2002 (**Appendix G**).

3.4 Evidence from neighbours

The notice placed in the *News Advertiser*, as well as the notification letters mailed to residents and landowners within one mile of the CFO, invited people to provide written statements with relevant information related to the CFO as it existed on or about January 1, 2002. The notice and letters also contained information on applying for status as a directly affected party.

I received written statements from two neighbours located within the one mile notification radius:

- Raymond & Lydia Lastiwka (SW02-055-15-W4M), received August 15, 2024 (**Appendix H**), asking questions regarding the purpose of the grandfathering determination, impacts on water quality, water availability, and possible future expansion of the CFO. In their response Raymond and Lydia advised they had lived in the area for 38 years, had owned their home quarter since 1986, confirmed that they were aware that their neighbours have a feedlot and cattle on their property, but did not know how many pens, how many cattle, or which years they were present.
- Bill & Sharon Dembicki, (NE25-054-16-W4M) received August 15, 2024 (**Appendix I**), advised that on or about January 1, 2002, the CFO did house beef feeders, however they stated the number of pens at the site did not have a one-time capacity for 1,850 feeders. Of the pens at the site, a number were not in usable condition (due to wet conditions, animal damage, maintenance issues and material decline. There were no drainage ponds. Manure was left in windrows in the fields. Some windrows were and still are located close to creeks/water drainage. Worker and animal safety should be concerning. They also advised they are long time area residents and had formerly, upon request, provided assistance at the CFO (unpaid).

Responses received from both “directly affected” individuals on August 15, 2024, were reviewed and responded to on August 20, 2024 (**Appendices J & K**) advising that information pertaining to the grandfathering determination would be addressed in the grandfathering final Decision Report and concerns regarding possible risk to the environment could be submitted by way of a formal complaint, in accordance with the NRCB’s Compliance and Enforcement Operational Policy 2016-8. Attached to my responses were the Formal Grandfathering Determinations Frequently Asked Questions and the Grandfathering (Deemed Permit) Operational Policy 2023-

In addition to the two written responses received from the above “affected parties”, I also had phone conversations with two individuals who did not live within the one mile notification radius but who had seen the notice for the grandfathering (deemed permit) determination in the *Vegreville News Advertiser*. Both individuals had questions regarding the grandfathering process and its purpose and wanted to offer input. I answered their questions regarding the grandfathering process and welcomed written responses before the submission deadline, but I did not receive any.

3.5 Other evidence

Evidence from other Agencies

On July 17, 2024, notification of the grandfathering (deemed permit) determination was sent to Alberta Environment and Protected Areas (AEPA) and invited comments. No response was received.

Historical Aerial Imagery

Historical aerial imagery from Valtus 1999 – 2003, Google Earth Pro March 2010, Valtus 2013 - 2015, Google Earth Pro April 2017, Google Earth Pro August 2020, and Alberta Land Titles image (no date) which shows parcel dimensions, has been included (**Appendix L**).

Google Earth Pro March 2010 shows pens 13 and 14 highlighted in “red” that are not identifiable on the 1999 – 2003 Valtus aerial imagery but visible on the 2010 Google Earth Pro aerial imagery and all aerial imagery after 2010.

During my discussion with the operator(s), they advised the site was used as a feedlot until 2011 but due to market conditions and loss of one of their main suppliers, they shut down the feedlot operation. However, they have continued to use a portion of the site for their own cow-calf herd.

4.0 Analysis and Findings

4.1 Was there a CFO on site on January 1, 2002

Under AOPA, a seasonal feeding and bedding site is not a “confined feeding operation.”

“confined feeding operation” means fenced or enclosed land or buildings where livestock 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...

where

1(i) “seasonal feeding and bedding site” means an over-wintering site where livestock are fed and sheltered;

I considered the evidence above and concluded that the enclosures, (excluding sick pens, processing area, and cow-calf over-wintering pens), were part of a “CFO” on January 1, 2002. NRCB Operational Policy 2015-2: Distinguishing Between confined Feeding Operations and Seasonal Feeding Bedding Sites (for Cattle Operations) provides guidance on how to make this distinction for cattle operations.

The operator advised that cattle were confined and fed all year, only moved during sorting, and the pens were always full. They did have their own small cow-calf herd that were kept separate from the other cattle.

The operator provided paperwork which included construction details for all fourteen pens as referred to in Table 3 and included as Appendix B. The construction detail included pen dimensions, bunk length, number of head, length of piping and uprights, number of guard rails,

and total livestock capacity for 2,254 head. This number, 2,254 head, is above threshold levels as outlined in Schedule 2 of AOPA Part 2 Matters Regulation. There was no date on the paperwork and the operator could not recall when it was from.

See Livestock Capacity Calculations (**Appendix M, p. 3**) for a detailed map identifying which enclosures were used on January 1, 2002, for cow-calf over-wintering, processing, sick pens, and confined feeding (pens 1 – 14).

4.2 CFO footprint and structures

The evidence set out above and attached as appendices shows the footprint and structures as they existed on or about January 1, 2002.

Google Earth Pro March 2010 (Appendix L) shows pens 13 and 14 highlighted in “red” that are not identifiable on the 1999 – 2003 Valtus aerial imagery but visible on the 2010 Google Pro aerial imagery and all aerial imagery after 2010. The aerial imagery from 2002 provided by the County of Two Hills No. 21 confirms that all 14 pens existed on or about January 1, 2002.

During my site inspection on June 20, 2024, I observed that the footprint of all pens appeared the same as they appeared on the Aerial Imagery from 2002 (Appendix G), except pens 9 and 10 which only had small portions of the original pen layout remaining. Pen 8 had been partially reconstructed with metal panels and included two ancillary shelters. There were small portions of pen 13 which were missing. All other pens had what appeared to be the original wooden fence post and rails. Most were in good condition. Some fencing was leaning and may require minor maintenance with the addition of new fence posts or bracing. Metal panels were also used to maintain pens 1 and 3, which are currently being used. The operator did advise he had extra metal panels that he could use for maintenance purposes. The concrete waterers were still in the pens and in good condition. The operator advised the lines had been blown out and all the electrical was still in place. The pump house, scale, processing barn, grain mill (in operation at time of inspection), and a silage pit which were part of the original feedlot were still in place and appeared to be in good condition.

Based on my site inspection on June 20, 2024, the aerial imagery (Appendix L), and my discussion with the operator, I conclude that the footprint of the CFO today is the same footprint that existed on January 1, 2002.

This CFO consisted of the following ancillary structures:

- Processing Barn
- Two Sick Pens
- Grain Mill
- Pump House
- Scale

See **Appendix “N”** for the current site layout including ancillary structures and seasonal enclosures.

4.3 Livestock type

As to livestock type, supporting materials include Scale Records from 2007 (Appendix F) showing that steers and heifers were received at weights averaging between 521 lbs per head up to 590 lbs per head; the operator stated they had always housed feeders; and one of the

directly affected parties in their response stated “that on or about January 1, 2002, the CFO did house beef feeders (Appendix I).

The custom feed records (customer bills) do not show finished weights. As per the operator, calves were received weighing between 300 – 600 lbs and would be custom fed to weights around 900 lbs before being shipped to a finishing feedlot. The operator did advise the operation was primarily backgrounding but on occasion, if customers requested, they would custom feed to finishing weight.

4.4 CFO livestock capacity

The *Grandfathering (Deemed Permit)* Policy at 6.3.3 provides:

If there is no MD permit, then field services staff determine the capacity of the enclosures to confine livestock (“physical capacity”) under section 18.1(2)(a) of AOPA.

Importantly, it is the capacity, rather than the actual number of confined livestock, that determines capacity for this deemed approval.

The operator advised cattle were brought in all times of the year. This is common for the feedlot industry where numbers fluctuate throughout the year as do animal cycles. The information provided by the operator, pen construction detail (Appendix B), and the aerial imagery (Appendix L) provide detail as to the square footage and bunk space allocation for all fourteen pens.

A useful tool to verify the evidence is Technical Guideline Agdex 096-81 *Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002* (see NRCB Operational Policy 2023-1: *Grandfathering (Deemed Permit)* at 6.3.2). The formula for beef feeders (450 – 900 lbs) number calculations is:

Pen Area Calculated Animal # =	$\frac{\text{Pen Area (ft}^2\text{)}}{\text{Space Allocation (ft}^2\text{/animal)}}$ <p>* Factors used for calculations are based on the 2000 Alberta Feedlot Management Guide *</p>
<ul style="list-style-type: none">• Calculation 1 (Pens 1 – 14):• Calculation 2 (As per operator):	<ul style="list-style-type: none">346,621.24 ft²/200 ft² per animal = 1,733 animals337,408 ft²/200 ft² per animal = 1,687 animals

Bunk Space:

Full Feed Calculated Animal # =	$\frac{\text{Bunk Length (ft)}}{\text{Bunk Space Full Feed (ft/animal)}}$
<ul style="list-style-type: none">• Calculation 1 (Pens 1 – 14):• Calculation 2 (As per Operator):	<ul style="list-style-type: none">4,298 ft/0.8 ft per animal = 5,372 animals2,235 ft/0.8 ft per animal = 2,793 animals

Limited Feed Calculated Animal # =	$\frac{\text{Bunk Length (ft)}}{\text{Bunk Space Limited Feed (ft/animal)}}$
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- Calculation 1 (Pens 1 – 14): 4,298 ft/2.0 ft per animal = 2,149 animals
- Calculation 2 (As per Operator): 2,235 ft/2.0 ft per animal = 1,117 animals

For comparison, I provided the two sets of calculations above using the following information:

Calculation 1: The pen area (ft²) used for livestock capacity calculations, bunk space (full feed) and bunk space (limited feed) I obtained using aerial imagery (approximations only).

Calculation 2: The pen area (ft²) used for livestock calculations was obtained from the Construction Detail (Appendix B) provided by the operator. The bunk space allocation was calculated based on the information provided by the operator during the site inspection on June 20, 2024.

The Guideline sets out different calculations for northern vs southern Alberta – in this case, the CFO is in northern Alberta. The Guideline also states:

Space allocations for beef cattle are based on pen size, bunk length for full feed, and bunk length for limited feed. All three factors should be considered. The bunk length is often the deciding factor for large pen spaces.

Taking an average of Calculation 1 (Pens 1 – 14) and Calculation 2 (As per Operator), the capacity of this CFO, based on this analysis is 1,710 beef feeders (using pen area), 4,082 beef feeders (using bunk space full feed), and 1,633 beef feeders (using bunk space limited feed).

Based on the numbers obtained using the guideline, the CFO livestock capacity of 1,850 beef feeders, as claimed by the operator, is within a reasonable range for this site.

4.5 Was the CFO above AOPA threshold on January 1, 2002?

The AOPA threshold for an approval for beef feeders (450 – 900 lbs) is 500+ animals. Given the evidence provided by the operator and the analysis above, I find that this CFO had capacity for 1,850 beef feeders (450 – 900 lbs), which is above the threshold. Accordingly, the CFO's livestock capacity was above threshold on January 1, 2002, and it has a deemed permit.

4.6 Reasonable range of physical capacity

The *Grandfathering (Deemed Permit)* Policy notes at 6.3.2 that, while Technical Guideline Agdex 096-81 *Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002*, is a tool for determining physical capacity, field services staff have discretion in how they use the tool. For example:

- a. If the operator had a different management practice that doesn't follow the guideline, discretion can be exercised as long as the rationale is explained.
- b. Field services staff may discount feed alleys, handling facilities, etc. when entering the numbers into the Agdex 096-81 calculator to account for the non-MSF and non-MCA portions of the total area.

I assessed whether the claimed capacity (1,850 beef feeders) is within a reasonable range of the physical capacity on January 1, 2002 – in other words, would the claimed 1,850 beef feeders have fit into these pens in 2002?

The claimed capacity of 1,850 beef feeders is within a reasonable range of the physical capacity of the CFO on January 1, 2002, as calculated above and shown by the Livestock Capacity Calculations (Appendix M).

5.0 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 grandfathered (deemed) permit determination include reasons on whether affected persons who made a submission are directly affected parties.

Directly affected parties may have their response considered in a grandfathering determination and may submit a request to the NRCB's Board for a review of a grandfathering determination. If not directly affected, they may not have these options.

Affected persons in this determination were the municipality in which the operation is located, the County of Two Hills No. 21, and all neighbours who own or occupy land within the one mile notification distance. By proxy through section 19 of AOPA, these are determined by section 5 of the Part 2 Matters Regulation.

"Directly affected parties" are typically a subset of "affected persons." Under section 19(6) of AOPA, the applicant for an approval and municipalities that are "affected persons" are automatically directly affected parties. As such, the County of Two Hills No. 21 is a directly affected party.

In deciding who else would be considered a directly affected party, I referred to the NRCB's Approvals Policy section 7.2.1 paragraph 2 which states "*The NRCB presumes that persons who reside on or own land within the notification distance also qualify for directly affected party status, if they provide written response to the notice within the posted response deadline.*"

Based on the above, I conclude the following to be considered directly affected parties:

- The County of Two Hills No. 21
- Raymond & Lydia Lastiwka
- Bill & Sharon Dembicki

I did not receive any written responses from anyone else.

6.0 Status of deemed permit today

6.1 Abandonment

While a grandfathering determination is limited to a point in time – January 1, 2002 – the NRCB also takes this opportunity to assess the validity or status of a deemed permit, today. In other words, for a permit that is deemed under AOPA as of January 1, 2002, does that same permit exist with the same terms in 2024? This assessment may be useful to provide certainty to prospective buyers, sellers, or lenders; regulators (such as the NRCB); and the owner and operator of the CFO.

In a decision concerning a grandfathered (deemed) permit determination (RFR 2020-04 *Stant Enterprises Ltd.* at pg. 4), the NRCB Board implied that where 18+ years have passed since the time window used in a grandfathering, it may be appropriate to evaluate a question of abandonment. If a facility or operation were abandoned, that might invalidate its deemed permit today.

The NRCB's Operational Policy, 2016-3 Permit Cancellations under AOPA section 29 (updated April 23, 2018) guides how to assess whether an operation or facility is abandoned. The policy also directs the approval officer (or inspector) to consider:

- the CFO's current use, if any
- the CFO's current condition
- what, if any, steps are being taken to keep the CFO's facilities in condition such that they could resume being used for livestock management without major upgrades or renovations
- when the CFO stopped being used, and the owner's reason for stoppage
- whether the operation changed ownership during the period of disuse
- the owner's reason for ceasing or postponing use and owner's intent with respect to future use of the CFO
- the value of CFO facilities (independent of their permitted status) and the cost of reconstructing them if reconstruction is needed.

From my observations, information obtained during my site inspection, oral testimony provided by the operator, aerial imagery, and Alberta Land Titles, I was able to assess the status of the site.

During my discussion with the operator on June 20, 2024, I asked several questions about the operation including the possibility of abandonment. Questions 1 – 5 are addressed above in section 3.2. Questions 6 and 7 and the operator's responses to those questions, as they pertain to abandonment, are included below:

1. The CFO's current use if any?

Personal cow-calf herd (120 head).

2. What is the CFO's current condition, and

7a. What, if any, steps are being taken to keep the CFO's facilities in condition such that they could resume being used for livestock management without major upgrades or renovations?

There has been some maintenance, and some pens are still in use. Pen 8 has been updated with metal fence panels. All pens still have the concrete waterers with concrete pads that were constructed with in-floor heat to prevent freezing in the winter. All water lines were blown out and can still be used. All electrical is still present.

7b. When did the CFO stop being used, and the owner's reason for stoppage?

In 2011, the CFO stopped being used due to market conditions. There was no longer any value in custom feeding and one of our largest suppliers of backgrounders had passed away.

7c. Whether the operation changed ownership during the period of disuse?

We (operators) have always owned the land, since the early 1980's and the feedlot had been in operation for 30 + years. Note: Land Titles shows Valerian Urichuk and Walter Urichuk (Valerian's father) as the registered owners. I advised we may need some form of authorization for the application as Walter is also registered owner on title. Evonne stated she could obtain this if required.
Note: Written Authorization from Walter Urichuck provided September 6, 2024.

7d. The owner's reason for ceasing or postponing use and owner's intent with respect to future use of the CFO?

Market conditions were the main reasons for discontinuation in 2011 as well as the loss of one of our major suppliers. As for intent with respect to future use, Evonne advised they have two adult children who are both interested in cattle and possible taking over the farm in the near future. Evonne stated they want the option to pass the operation onto their children.

7e. The value of CFO facilities (independent of their permitted status) and the cost of reconstructing them if reconstruction is need?

The operator advised they would just need to replace a couple of the broken pens and some broken boards. The automatic waterers, which are concrete, are already in each pen and are still in good condition.

7f. Ballpark, what do you think it would cost to have the operation ready tomorrow?

Valerian stated if he had to have the operation ready tomorrow it would only require some fence boards, posts, as he already has metal fence panels. The concrete waterers and electrical are still in place and in good condition. He stated, if he had to provide an estimate, it would cost around \$10,000.

During the site inspection I observed that the footprint of all pens remained intact, except pens 9 and 10 which only had small portions of the original pen exterior remaining. Pen 8, most of the wood fence had been replaced with metal fence panels, and two ancillary shelters had been added. There were small portions of pen 13 which were missing. All other pens had wooden fence post and rails. Most were in good condition. A couple of the pens had fence panels that were leaning and would require minor maintenance with the addition of new fence posts or bracing. The operator did advise he had metal panels, as used on pen 8, that he could use for maintenance. The concrete waterers were still in the pens and in good condition. The operator advised the lines had been blown out and all the electrical was in place. The pump house, scale, processing barn, grain mill (in operation), and a silage pit which were part of the original feedlot were still in place and appeared to be in good condition.

After reviewing historical aerial imagery, verbal discussions with the operator, responses provided by "directly affected parties", and a visual site inspection of the current state of the operation on June 20, 2024 (site layout & site photos – Appendix N), I conclude that the feedlot although empty at the time of inspection, other than a 120 head cow-calf herd, has been maintained for the most part, although some upgrades will be required. Market conditions and the loss of a major supplier of backgrounders resulted in the cessation of use. However, the operator's intent is to maintain the CFO and its status so that it can be passed on to the

operator's children in the near future. The CFO requires minimal maintenance and cost to address the few leaning fence panels, replace some broken boards, and to restore pens 9 and 10. Based on the above-mentioned criteria, I conclude that the CFO is not abandoned.

7.0 Conclusion

Having reviewed all the evidence listed above and relevant information provided in the written responses submitted by the directly affected parties, I have determined that based on the evidence and a balance of probabilities that:

On January 1, 2002, the beef feeder feedlot at NW 3-55-15-W4, currently owned by Valerian Urichuk and Walter Urichuk existed as a CFO on January 1, 2002; had a capacity for 1,850 beef feeders (450 – 900 lbs), which is above the AOPA animal threshold numbers, is within a reasonable range of the physical capacity as it existed on January 1, 2002; and has the same footprint (for confining cattle) today, as it did in 2002 which included fourteen feedlot pens, a pumphouse, scale, grain mill, processing barn, and a silage pit.

Therefore, under section 18.1 of AOPA, the owner or operator of the CFO has a deemed approval with the capacity for 1,850 beef feeders (450 – 900 lbs).

I have determined that the CFO has not been abandoned and the deemed NRCB permit under AOPA is still valid today.

Furthermore, I conclude that the only directly affected parties of this decision are the operators, Raymond & Lydia Lastiwka, Bill & Sharon Dembicki, and the County of Two Hills No. 21.

September 9, 2024

(Original Signed)

Tracey Krenn
Inspector – Natural Resources Conservation Board

8.0 Appendices

- A. Grandfathering Determination Request (May 7, 2024)
- B. Construction Detail (Pens 1 – 14) (no date)
- C. Feed Records 2001, 2007 & 2009
- D. Feed Records March & October 2002, June & November 2003, and January & December 2004
- E. Email from Evonne Urichuk May 16, 2024
- F. Scale Records 2007
- G. 2002 Aerial Imagery of Urichuk Farms Ltd. received from the County of Two Hills No. 21 on August 27, 2024
- H. Response received from Lastiwka August 15, 2024
- I. Response received from Dembicki August 15, 2024
- J. Email from Inspector to Lastiwka August 20, 2024
- K. Email from Inspector to Dembicki August 20, 2024
- L. Alberta Land Titles Map (no date) and Aerial Imagery (Valtus 1999 – 2003, Google Earth Pro March 2010, Valtus 2013 - 2015, Google Earth Pro April 2017, Google Earth Pro August 2020)
- M. Livestock Capacity Calculations (Based on Google Earth Pro Aerial Imagery & Appendix B)
- N. Site Layout & Photos (Site Inspection June 20, 2024)

Grandfathering Determination Request



Application under the *Agricultural Operation Practices Act* (AOPA) for a grandfathering determination for a confined feeding operation (CFO), manure collection area (MCA), or manure storage facility (MSF)

NRCB USE ONLY	NRCB Application Number PB24003	Date Stamp NRCB APPLICATION MAY 07 2024 RECEIVED
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CONTACT/OWNER INFORMATION

Name of owner: VALERIAN URICHUK		Corporate Name (if applicable): URICHUK FARMS LTD	
Name of person making request: VALERIAN & EVONNE URICHUK			
Address: (Street/P.O. Box) RRI			
City/Town: WILLINGDON	Province: AB	Postal Code: T0B 4R0	

LOCATION FOR WHICH GRANDFATHERING DETERMINATION IS REQUESTED

Legal Land Description(s)	NW 3 - 55 - 15 W4 (Qtr-Sec-Twp-Rg-W Mer)		
County/Municipal District	COUNTY OF TWO HILLS		
Registered Landowner(s)	Is the person making the request the registered landowner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>(If no, please attach letter of consent signed by all landowners)</i>		
Existing Permit(s)	Does this legal land location have an existing permit(s) for CFO facilities? (e.g. municipal development permit.) If so please include a copy. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
	Permit #:		Permit #:

Claimed Grandfathered Livestock Capacity (Capacity of the enclosures On January 1, 2002)

Livestock category and type	Claimed grandfathered livestock capacity
BEEF FEEDERS 450-900lbs	1850 HEAD

Claimed Grandfathered Facilities (On January 1, 2002)

Facility Name	Dimensions Length x width (x depth as applicable) (m)	Description of management of the facility (Seasonal use, movement of livestock, type of livestock etc.)

Grandfathering Determination Request

Information to support grandfathering determination request: (Provide all relevant information to support the grandfathering claim. This can include, permits issued prior to January 1, 2002, records supporting the claimed capacity, photographs, details of facilities used to confine livestock, site layout plan, etc. Attach pages as required.)

Types of Records for Years 2000-2004	Yes	No	Comments
Aerial imagery (<i>old farm photos</i>)	✓		YOU HAVE
Photographs (<i>personal photos taken of animals/facilities</i>)			
Livestock Purchase Records (<i>auction market receipts</i>)			
Livestock Sales Records (<i>auction market receipts</i>)			
Financial Records (<i>Taxes</i>)			
Feed, Straw, Mineral Purchase Records			
Government Support Program Records (<i>GRIP, NISA</i>)			
Premises Identification Registration Records			
Quota Records			
Veterinary Records			
Manifests			
Calving/Farrowing/Lambing etc. Records			
Livestock Health Records (<i>records of livestock treatments/vaccinations</i>)			
Purchases of Livestock Holding/Handling Equipment (<i>poultry cages, dairy cow beds/stalls, farrowing crates</i>)			
Testimonies from Employees or Family Members (<i>that worked on the operation in 2002-2004 and could be contacted now</i>)			
Building and Construction Records (<i>concrete bunks, buildings, sheds, slab fences, barns, waterers, etc.</i>)			
Any Diaries, Journals or Daily Logs			
OTHER	✓		FEED BILL TO CUSTOMERS

Grandfathering Determination Request

REQUEST DISCLOSURE

I acknowledge that this information is collected under the authority of the *Agricultural Operation Practices Act*, is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*, and shall be deemed public unless the NRCB grants a written request that certain sections remain private.

I, the owner, or agent of the owner, have read and understand the statements herein and acknowledge that the information provided in this application is true to the best of my knowledge.

May 5, 24
Date of signing

[Redacted]
Signature

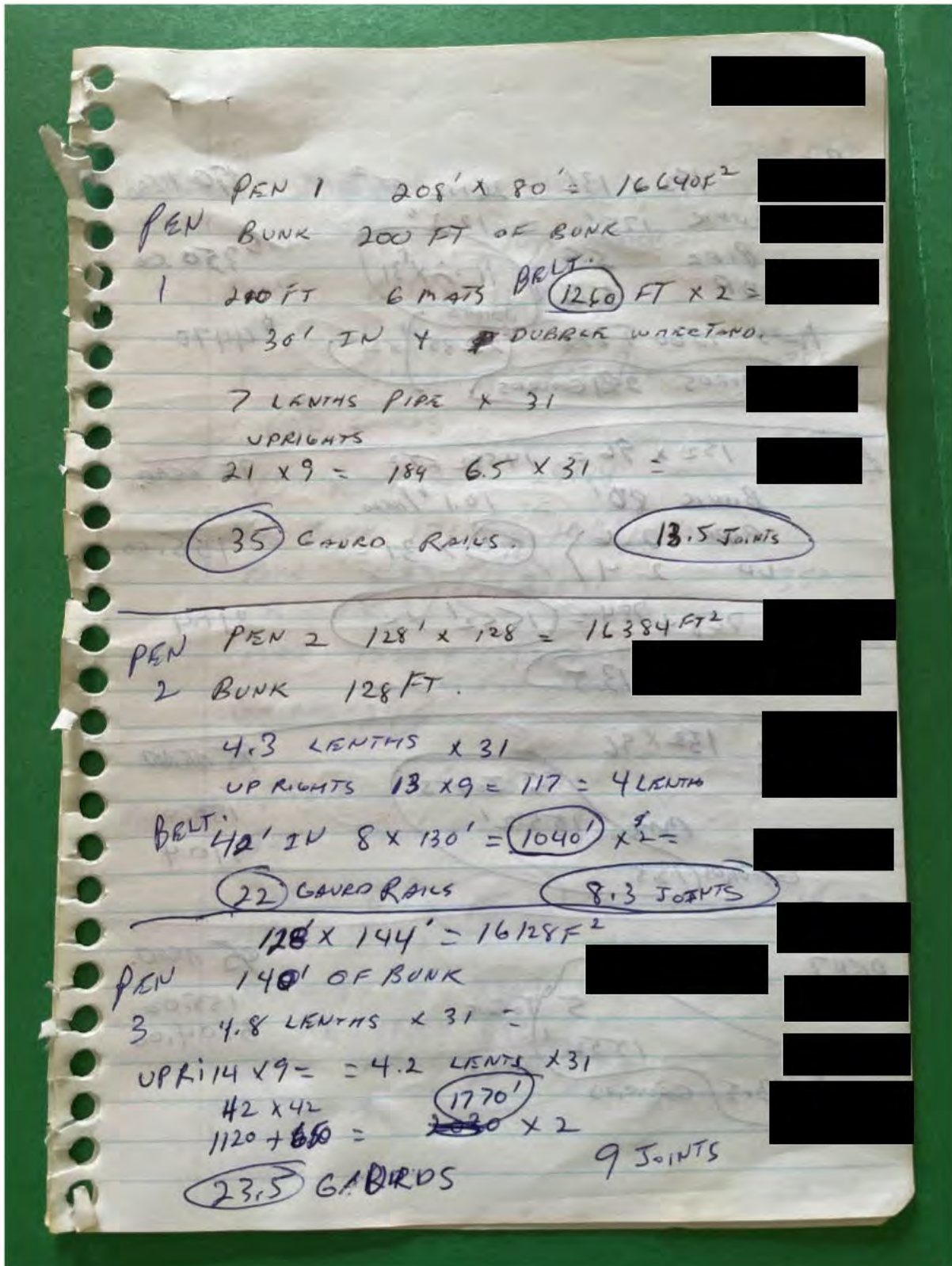
URICHUK FARMS LTD
Corporate name (if applicable)

VALERIAN URICHUK
Print name

This contact information is only for NRCB, municipal, and referral agency use, and is not for public disclosure.			
Owner Contact Information			
Name: <u>VALERIAN URICHUK</u>		Corporate Name (if applicable): <u>URICHUK FARMS LTD</u>	
Contact Numbers	Business:	Cell: [Redacted]	Home: [Redacted]
Email: [Redacted]			

Person (Other than Owner) Requesting the Determination Contact Information (if applicable)			
Name: <u>BONNE URICHUK</u>		Relationship to Owner: <u>WIFE</u>	
Contact Numbers	Home: [Redacted]	Cell: [Redacted]	
Email: [Redacted]			

Photos of records provided by Evonne Urlichuck taken by Inspector T. Krenn during site visit 2024.06.20



PEN 4 - $192 \times 136 = 26112 \text{ FT}^2$

BUNK $175' = 12.3''$

PIPE 5.9
UP 5.3 } 11.2×31
JOINTS

MATS $1560 + 675 = 2235' \times 2$

GAURDS 29.1 GAURDS

PEN 5 $152 \times 96 = 14592 \text{ FT}^2$

BUNK $80' =$

PIPE 2.6
UP 2.4 } $5.0 \times 31 =$

MAT $768 + 784 = 1552' \times 2$

GAURDS 13.5

PEN 6 152×96

MAT 1552'
5 JOINTS

GAURDS 13.5

PEN 7 152×96

MAT 1552'
5 JOINTS

GAURDS 13.5

PEN 8 $200 \times 152 = 30400$

BUNK 184'

PIPE 6.2 } 11.8×31
UR 5.6 }

MAT. $1600 + 784 = 2384 \times 2 =$

46 GAUROS

PEN 9 $192 \times 152 = 29184$

~~PIPE~~ BUNK 176' =

PIPE 5.9 } 11.2×31
UR 5.3 }

MAT $1560 + 784 = 2344 \times 2 =$

GAUROS 29.5

PEN 14 $256 \times 152 = 38912$

BUNK 240' =

PIPE 8 } 15.2×31
UR 7.2 }

MAT $9 \times 256 = 2304$

$8 \times 112 = 896$

$3200 \times 2 =$

40 GAUROS.

PEN 12 $160 \times 216 = 34560$

BUNK ~~216~~ $216' =$

PIPE 7.2 } 13.7×31
UR. 6.5

MAT. $1944 + 920 = 2864 \times 2$

GAURPS (36)

PEN 13 $168 \times 240 = 40320$

BUNK $240' =$

PIPE 8 } 15.2×31
UR 7.2

MAT 9 = $2304 + 1000 = 3304 \times 2$

(40) GAURPS

PEN 11 $152 \times 184 = 27968$

BUNK $184' =$

PIPE 6.2 } 11.8×31
UR 5.6

MAT 9 $\times 1656 + 896 = 2552 \times 2$

(31) GAURPS

PEN 10 $152 \times 112 = 17024$

BUNK $112' =$

PIPE 3.8 } 7.2×31
UR 3.4

MAT. $8 \times 896 + 1064 = 1960 \times 2$

GAURPS

(19)

TOTAL ROOM = [REDACTED]

PIPE 144 LENGTHS X 31 = [REDACTED]

MAT 29569' X 2 = [REDACTED]

GAUGES, 393 GAUGES.

OUR NUMBER	518190
DATE	FEB 20/07
CUSTOMER'S ORDER	

BOLD TO	M.V. O'CONNOR ENT.
ADDRESS	EDMONTON, AB

SHIP TO	JAN FEED BILL
ADDRESS	FAT CATTLE.

REG. NO.	SALESPERSON	FOB	TERMS	VIA
----------	-------------	-----	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.	63	518.60
	SIL	8	950.10
	MIN	3	990.00
	CT	3	006.00
	Roll	2	800.00
	YARD.	7	072.34
		89	339.04
			592.34
			931.38
			TOTAL

1342 HEAD

GST

GST

PST

TOTAL

OUR NUMBER **484280**
 DATE **JUNE 20/09**
 CUSTOMER'S ORDER

TO **ROYAL SANDS FARMS**
 BY **ROBERT**

SHIP TO **TRAY FEED**
 ADDRESS

SALES PERSON NO. _____ SALES PERSON _____
 FOB _____ TERMS _____ VIA _____

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	913 HEAD X 1.20 X 31 PMS	33	963.60
	65T		169.82
		34	133.42
	LESS FATS	1	000.00
		33	133.42
	LESS YARD REBATE		406.16
		32	727.26
		GST	
		PST	
	TOTAL		

INVOICE

OUR NUMBER	752258
DATE	MARCH 3/02
CUSTOMER'S ORDER	

SOLD TO <u>JAMIESON CATTLE Co.</u>
ADDRESS <u>EDMONTON, AR.</u>

SHIP TO <u>FEB. FEED BILL</u>
ADDRESS <u>FEB. FEED BILL</u>

TAX REG. NO.	SALESMAN	F.O.B	TERMS	VIA
--------------	----------	-------	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		2704.44
	SIL		2372.60
	MIN		922.00
	STRAW		649.00
	Roll		12500
	YARD		1029.16
			3710.20
216 HEAD.		65T	80.72
175 HEADS.	1.44/head/day		8790.92

BLUELINE DC31

INVOICE

OUR NUMBER	752260
DATE	MARCH 3/02
CUSTOMER'S ORDER	

SOLD TO <u>MIDDLEBANE RANCH</u>
ADDRESS <u>EDMONTON, AR.</u>

SHIP TO <u>FEB. FEED BILL</u>
ADDRESS <u>GRASS TRIFERS</u>

TAX REG. NO.	SALESMAN	F.O.B	TERMS	VIA
--------------	----------	-------	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		927.93
	SIL		1498.14
	MIN		207.90
	STRAW		2164.00
	Roll		39.00
	YARD.		423.04
			10222.61
900 HEAD		65T	32.38
1000 HEADS	1.29/head/day		10255.00

BLUELINE DC31

INVOICE

OUR NUMBER	752261
DATE	MARCH 3/02
CUSTOMER'S ORDER	

SOLD TO MADOLE LANE RANCH
 ADDRESS EDMONTON, AB

SHIP TO FEB. FEED BILL
 ADDRESS BIG HEIFERS.

TAX REG. NO.	SALESMAN	F.O.B.	TERMS	VIA
--------------	----------	--------	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		4294.74
	SIL		2782.60
	MIN		961.00
	STRAW		884.00
	ROLL		199.00
	WOOD		1309.00
275 HEIFERS			11430.34
			105.56
	1.48 / unit / day		911.535.90

BLUELINE DC31

FEB 24, 691.81

INVOICE

OUR NUMBER	752262
DATE	MARCH 3/02
CUSTOMER'S ORDER	

SOLD TO MADOLE LANE RANCH
 ADDRESS EDMONTON, AB

SHIP TO FEB. FEED BILL
 ADDRESS STEEPS

TAX REG. NO.	SALESMAN	F.O.B.	TERMS	VIA
--------------	----------	--------	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		3735.19
	SIL		2099.60
	MIN		924.00
	STRAW		895.00
	ROLL		173.00
	WOOD		1175.72
249 HEIFERS			19906.51
- 2 DEER		1.57	94.41
			20000.92

BLUELINE DC31

INVOICE

OUR NUMBER	752263
DATE	MARCH 3/02
CUSTOMER'S ORDER	

SOLD TO	MIKE O'CONNOR F.M.T.
ADDRESS	EDMONTON, AB

SHIP TO	FEB. FEED.
ADDRESS	COWS.

TAX REG. NO.	SALESMAN	F.O.B.	TERMS	VIA
--------------	----------	--------	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.	21	678.14
	SIL	66	000.00
	MIN	24	49.00
	STRAW IN FEED		205.00
	STRAW	19	35.00
	ROLL		980.00
440 cows	YARD.		2684.88
- 2000		35	328.02
438 cows			214.54
		35	542.56

BLUENINE DC31

INVOICE

OUR NUMBER	752264
DATE	MARCH 3/02
CUSTOMER'S ORDER	

SOLD TO	MIKE O'CONNOR F.M.T.
ADDRESS	EDMONTON, AB

SHIP TO	FEB. FEED.
ADDRESS	STARRS

TAX REG. NO.	SALESMAN	F.O.B.	TERMS	VIA
--------------	----------	--------	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.	21	5368.58
	SIL	66	669.50
	MIN	24	178.00
	STRAW		1405.00
	ROLL		249.00
249	YARD.		1337.00
+ 32		13	202.08
281			111.02
		13	219.10

BLUENINE DC31

OUR NUMBER	550889
DATE	Oct. 4/02
CUSTOMER'S ORDER	

SOLD TO	JAMIESON CATTLE CO. INC.	SHIP TO	SEPT. FEED BILL
ADDRESS	EDMONTON	ADDRESS	215 HEIFERS

TAX REG. NO.	SALESPERSON	FOB	TERMS	VIA
--------------	-------------	-----	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR	13	305.00
	SILV.	1	372.00
	MIN.	1	290.00
	ROLL.		486.50
	YARD.	1	096.50
		17	550.00
			110.81
215 heif.		17	660.81
			GST
			PST
			TOTAL

BlueLine DC31

OUR NUMBER	550894
DATE	Oct. 4/02
CUSTOMER'S ORDER	

SOLD TO	MIKE O'CONNOR FMT	SHIP TO	
ADDRESS	EDMONTON	ADDRESS	

TAX REG. NO.	SALESPERSON	FOB	TERMS	VIA
--------------	-------------	-----	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
2614	HEAD	44	759.55
196	HEAD	12	234.62
252	HEAD	18	318.82
472	hd	32	186.41
1334	(NET)	\$107	499.40
	OVER CHARGE		595.00
	TOTAL GST Pd	102	904.40
			GST
			PST
			TOTAL

BlueLine DC31

INVOICE

OUR NUMBER	796952
DATE	JUNE 4/03
CUSTOMER'S ORDER	

SOLD TO ALLAN JAMIESON
 ADDRESS EDMONTON, AB.

SHIP TO MAY FEED BILL
 ADDRESS _____

TAX REG. NO. _____ SALESPERSON _____ FOB _____ TERMS _____ VIA _____

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		890.24
	SIL.	4	612.00
	MIN		380.00
	ROLL		50.00
	YARD.		996.02
			<u>6928.27</u>
			73.22
189 HEAD.			<u>7001.49</u>
		GST	
		PST	
		TOTAL	

GST ✓

189 head

Blueline DC31

OUR NUMBER	796953
DATE	JUNE 4/03
CUSTOMER'S ORDER	

SOLD TO ALLAN JAMIESON
 ADDRESS EDMONTON, AB.

SHIP TO APRIL FEED
 ADDRESS 46 FAT HRIFF.

TAX REG. NO. _____ SALESPERSON _____ FOB _____ TERMS _____ VIA _____

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.	2	249.40
	SIL.	3	64.50
	MIN		295.00
	ROLL		125.00
	YARD.		242.42
			<u>3276.32</u>
			25.72
46 FAT HRIFFS			<u>3302.04</u>
		GST	
		PST	
		TOTAL	

GST ✓

46 head

Blueline DC31

OUR NUMBER 796955
 DATE JUNE 4/03
 CUSTOMER'S ORDER

SOLD TO MIKE O'CONNOR ENT.
 ADDRESS EDMONTON, AB.

SHIP TO MAY FERRO
 ADDRESS 89 224 ST.

TAX REG. NO. SALESPERSON FOB TERMS VIA

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR		1017.75
	SIL		5960.00
	MIN		410.00
	ROLL		56.00
	YARD		1175.21
			8618.96
224 HEAD	LST		86.18
1 DEAD			58705.14
223			GST
			PST
			TOTAL

224 head

Blueline DC31

OUR NUMBER 796954
 DATE JUNE 4/02
 CUSTOMER'S ORDER

SOLD TO MIKE O'CONNOR ENT.
 ADDRESS EDMONTON AB.

SHIP TO MAY FERRO
 ADDRESS 89 FAT STEERS.

TAX REG. NO. SALESPERSON FOB TERMS VIA

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR		4658.19
	SIL		865.00
	MIN		480.00
	ROLL		259.00
	YARD		469.03
			6731.22
	3 COWS AT 210/004 =		259.30
			7219.52
		LST	GST 50.96
			PST
			TOTAL 7070.48

89 head

Blueline DC31

OUR NUMBER	796959
DATE	JUNE 4/03
CUSTOMER'S ORDER	

SOLD TO	MIKE O'CONNOR FENT.
ADDRESS	EDMONTON, AB.

SHIP TO	MAY FRED
ADDRESS	RD 7 157 Lds

TAX REG. NO.	SALESPERSON	FOB	TERMS	VIA
--------------	-------------	-----	-------	-----

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR	1	775.56
	SIL	3	776.00
	MIN		295.00
	ROLL		42.00
	YARD	8	43.20
			<u>5732.76</u>
			62.03
			<u>5794.79</u>
		GST	
		PST	
		TOTAL	

157 head

Blueline DC31

OUR NUMBER	796958
DATE	JUNE 3/03
CUSTOMER'S ORDER	

SOLD TO	MIKE O'CONNOR FENT.
ADDRESS	EDMONTON.

SHIP TO	MAY FRED
ADDRESS	RD 7 253 HEIFERS

TAX REG. NO.	SALESPERSON	FOB	TERMS	VIA
--------------	-------------	-----	-------	-----

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.	1	279.95
	SIL	6	424.00
	MIN		320.00
	ROLL		60.00
	YARD.	1	328.04
			<u>941.99</u>
			- 900.00
			<u>851.99</u>
		GST	97.16
		PST	
		TOTAL	<u>949.15</u>

253 head

Blueline DC31

OUR NUMBER	796961
DATE	JUNE 4/03
CUSTOMER'S ORDER	

SOLD TO MIKE O'CONNOR RMT
 ADDRESS EDMONTON, AB.

SHIP TO MAY FRED
 ADDRESS PEN 7 96 HEAD

TAX REG. NO. SALES PERSON FOB TERMS VIA

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		1456.60
	SIL		2396.00
	MIN		218.00
	ROLL		25.00
	YARD		505.92
			<u>3601.52</u>
			37.16
			<u>3638.68</u>
		GST	
		PST	
		TOTAL	

96 head

BlueLine DC31

OUR NUMBER	796960
DATE	JUNE 4/03
CUSTOMER'S ORDER	

SOLD TO MIKE O'CONNOR RMT
 ADDRESS EDMONTON.

SHIP TO MAY FRED
 ADDRESS PEN 14 - 280 HEAD

TAX REG. NO. SALES PERSON FOB TERMS VIA

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		1259.25
	SIL		7852.00
	MIN		490.00
	ROLL		70.00
	YARD.		1420.33
			<u>11091.58</u>
			107.82
			<u>11199.40</u>
		GST	
		PST	
		TOTAL	

280 head

BlueLine DC31

QUANTITY NUMBER	796962
DATE	JUNE 4/03
CUSTOMER'S ORDER	

SOLD TO MIKE, O'CONNOR ENT.
 ADDRESS ED MONTON, AB.

SHIP TO MAY FEED
 ADDRESS 120 HEAD PEN 3

TAX REG. NO. SALES PERSON

FOB TERMS VIA

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		568.31
	SIL.		2956.00
	MIN		198.00
	ROLL		31.00
	YARD.		632.40
			<u>4385.71</u>
			46.44
			<u>\$ 4432.15</u>
		GST	
		PST	
		TOTAL	

120 head

120 HEAD
HEADS

GST

Blueline DC31

OUR NUMBER	796963
DATE	JUNE 4/03
CUSTOMER'S ORDER	

SOLD TO MIKE O'CONNOR ENT.
 ADDRESS ED MONTON, AB.

SHIP TO MAY FEED
 ADDRESS 210 GRASS CATTLE

TAX REG. NO. SALES PERSON

FOB TERMS VIA

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR		972.55
	SIL		4964.00
	MIN		300.00
	ROLL		54.00
	YARD.		1106.70
			<u>7397.25</u>
			81.25
			<u>7478.50</u>
		GST	
		PST	
		TOTAL	

210 head

GST

Blueline DC31

OUR NUMBER	796964
DATE	JUNE 4/03
CUSTOMER'S ORDER	

SOLD TO MIKE O'CONNOR ENT.
 ADDRESS EDMONTON, AB

SHIP TO MAY FERRIS
 ADDRESS 150 STEERS CAMP
MAY 17/03

TAX REG. NO. _____ SALESPERSON _____

FOB _____ TERMS _____ VIA _____

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		256.95
	SIL		1259.60
	MIV		102.00
	ROLL		15.00
	YARD		352.50
			<u>2015.45</u>
150 HEAD.	GST		27.83
			<u>2043.28</u>
	GST		
	PST		
	TOTAL		

150 head

OUR NUMBER	796928
DATE	Nov 10/03
CUSTOMER'S ORDER	

SOLD TO ALLAN JAMIESON
 ADDRESS EDMONTON, AB.

SHIP TO Oct. FEED BILL
 ADDRESS FAT HEIFERS

TAX REG. NO.	SALESPERSON	FOB	TERMS	VIA
--------------	-------------	-----	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR,		4231.20
	SIL		150.00
	MIN		756.40
	ROLL		340.00
	YARD.		653.48
			<u>7131.08</u>
			69.54
			<u>7200.62</u>
		GST	
		PST	
		TOTAL	

124 HEAD

124 head

BlueLine DC31

OUR NUMBER	796940
DATE	Nov. 10/03
CUSTOMER'S ORDER	

SOLD TO MIKE D'CONNOR ENT.
 ADDRESS EDMONTON, AB.

SHIP TO TOTAL OCT. FEED.
 ADDRESS _____

TAX REG. NO.	SALESPERSON	FOB	TERMS	VIA
--------------	-------------	-----	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
PEN 4 - 165 at	10/10.26		
11 - 156 at 141	8343.77		
5 - 150 at 150	7784.34		
12 - 230 at	11872.89		
2 - 81 mix YARD.	4248.40		
14 - 277 at	14709.60		
13 - 252 HEIF	12293.39		
8 - 221 at	11210.22		
6 - 120 HEIF.	5750.72		
7 - 134 at	6478.85		
7131.08 - 329	4457.81		
	<u>2115</u>		<u>99276.25</u>
		GST	
		PST	
		TOTAL	

2115 head

BlueLine DC31

OUR NUMBER	796813
DATE	JAN 7/04
CUSTOMER'S ORDER	

SOLD TO MIKE O'CONNOR ENT.
 ADDRESS EDMONTON, AB

SHIP TO DEC. FEED
 ADDRESS PEN 13 251 Rd.

TAX REG. NO.	SALESPERSON	FOB	TERMS	VIA
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INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		8577.55
	SIL		1999.20
	MW		1116.00
	ST		880.00
	ROLL		690.00
	YARD.		1322.77
			<u>1584.52</u>
			140.89
			<u>1725.41</u>
		GST	
		PST	
		TOTAL	

251 head

Blueline DC31

OUR NUMBER	796814
DATE	JAN 7/04
CUSTOMER'S ORDER	

SOLD TO MIKE O'CONNOR ENT.
 ADDRESS EDMONTON, AB.

SHIP TO DEC. FEED
 ADDRESS PEN 14 275 rd

TAX REG. NO.	SALESPERSON	FOB	TERMS	VIA
--------------	-------------	-----	-------	-----

INVOICE

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR		10006.10
	SIL		2295.20
	MW		1302.00
	ST		1280.00
	ROLL		810.00
	YARD		449.25
			<u>17142.55</u>
			158.15
			<u>17300.70</u>
		GST	
		PST	
		TOTAL	

275 head

Blueline DC31

OUR NUMBER	796815
DATE	JAN 7/04
CUSTOMER'S ORDER	

SOLD TO MIKE O'CONNOR ENT.
 ADDRESS EDMONTON, AB.

SHIP TO DEC. FREEP
 ADDRESS PEN 3 7 7 134^{at}
120^{kt.}

TAX REG. NO.	SALESPERSON	FOB	TERMS	VIA
--------------	-------------	-----	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		8784.58
	SIL		1991.20
	MW		1116.00
	ST		1060.00
	ROLL		677.00
	YARD.		338.58
			14967.36
			141.09
		GST	108.45
		PST	
		TOTAL	

134
125

154
head

BlueLine DC31

OUR NUMBER	796816
DATE	JAN 7/04
CUSTOMER'S ORDER	

SOLD TO MIKE O'CONNOR ENT.
 ADDRESS EDMONTON, AB.

SHIP TO DEC. FREEP.
 ADDRESS PEN 12 230^{at}

TAX REG. NO.	SALESPERSON	FOB	TERMS	VIA
--------------	-------------	-----	-------	-----

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	BAR.		7888.00
	SIL		911.40
	MW		992.00
	ST.		880.00
	ROLL		645.00
	YARD.		212.10
			13528.50
			129.99
		GST	13658.49
		PST	
		TOTAL	

230
head

BlueLine DC31

INVOICE

INVOICE

OUR NUMBER	521300
DATE	Dec. 9/04
CUSTOMER'S ORDER	

SOLD TO MIKE CLONNOR ENT.
 ADDRESS _____

SHIP TO TOTAL ALL BILLS
 ADDRESS _____
FOR NOV.

TAX REG. NO. _____ SALESPERSON _____

FOB _____ TERMS _____ VIA _____

INVOICE

QUANTITY	FEED	DESCRIPTION	VET	PRICE	AMOUNT
440	HEAD	15,046.35	TREATED	27 HEAD	W. 117
258	HEAD	14,763.97	NO FEED		945.00
216	HEAD	12,274.11	MINTENTL	12 HEAD	320.00
313	HEAD	14,229.30			1265.00
227	HEAD	12,362.04		GST	88.55
275	HEAD	15,052.79			353.55
310	HEAD	16,068.10			
296	HEAD	15,983.64			
7335	HEAD	\$ 115,790.30	TOTAL GST PA FOR		
	VET	1,353.55	FEED	1161.25	GST
			VET	88.55	PST
		\$ 117,133.85 total		1750.80	TOTAL

Blueline DC31

2335 head

From: [REDACTED]
To: [Cathryn Thompson](#)
Subject: more feed records
Date: May 16, 2024 4:45:19 PM
Attachments: [March 02.pdf](#)
[Oct 2002 feed record.pdf](#)
[Nov 2003 feed record .pdf](#)

This sender is trusted.

Hi Cathryn

See attached for 2 sets of records for each of the 3 years you suggested

March 2002 (1551 head) and October 2002 (1549 head)
Jun 2003 (2209 head) and Nov 2003 (2239 head)
January 2004 (1740 head) and December 2004 (2335 head)



[June 2003 feed record.pdf](#)



[Jan 2004 feed record.pdf](#)



[December 2004 feed record.pdf](#)

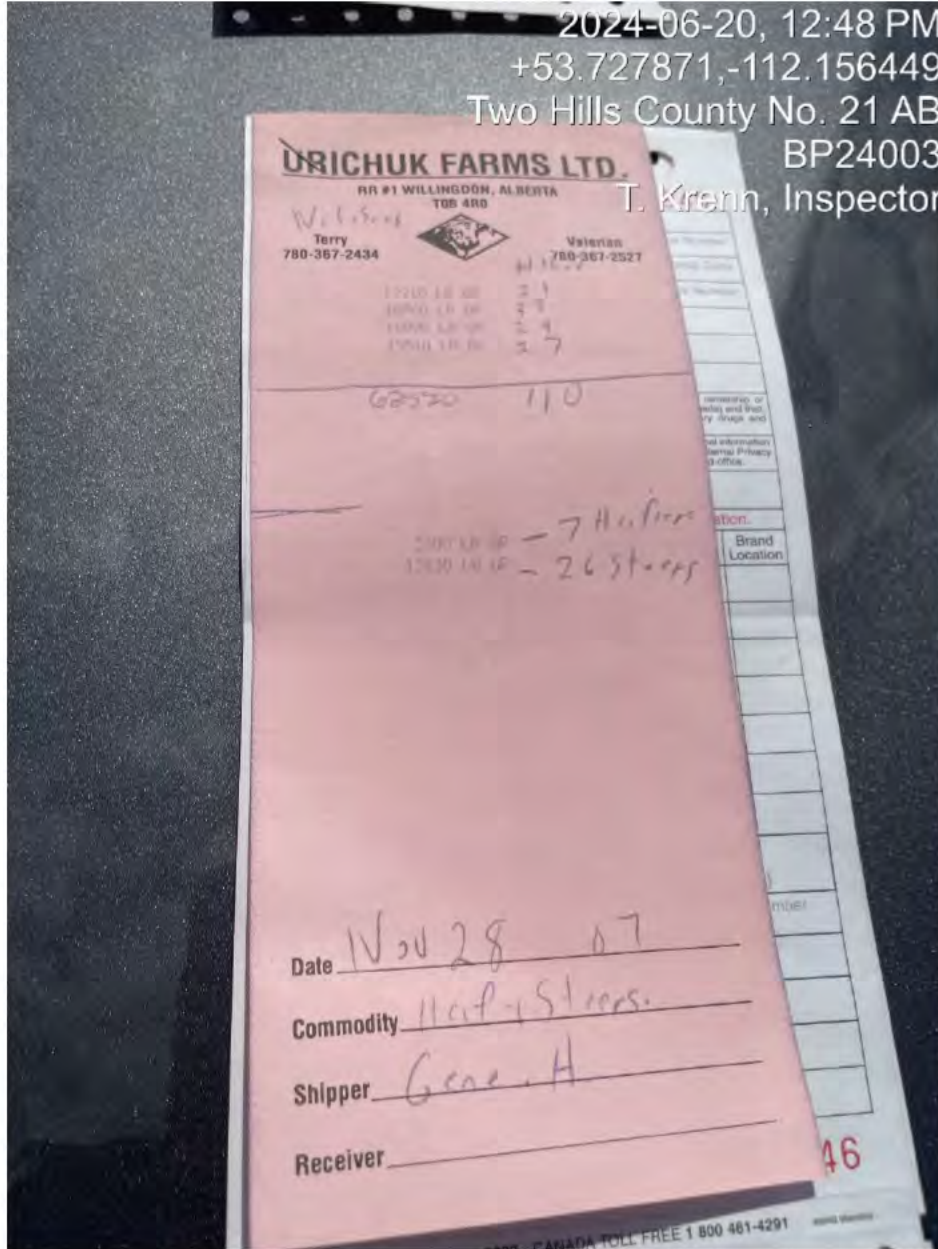
Sorry some of them went google drive
I hope this will be enough if not please let me know

Thank you
Evonne

PB24003 - Scale Records: Weights of calves (steers & heifers) upon arrival at Urichuk Farms Ltd.

Note: The file number is incorrect on the photos it should be PB24003 not BP24003

November 28, 2007



Total Weight Received (lbs)	Total head received	Average Weight (lbs) Received/Head
12,210	21	581
18,760	33	568
16,090	29	554
15,510	27	574
62,570	110	568

November 30

2024-06-20, 12:48 PM
+53.727871,-112.156449
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

URICHUK FERTILISERS
RR #1 WILLINGDON, ALBERTA
T0B 4R0

Terry
780-367-2434

Valeria
780-367-2527

Nov 30
14280 - 2751-cas
528 Ave.

19400 LB @ -36

23450 LB @ 45

42850 81
- 3300 7 Nov 28

39550 on 74 Head

534 Ave

Date Nov 30

Commodity Headings

Shipper Gene H

Receiver _____

DF PRINT CALGARY 252-3232 CANADA TOLL FREE 1 800 461-4291 48540 Market

Total Weight Received (lbs)	Total head received	Average Weight (lbs) Received/Head
14,280	27	528
19,400	36	538
23,450	45	521
- 3300	- 7	471
53,830	101	532

December 5, 2007

2024-06-20, 12:48 PM
+53.727871,-112.156449
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

URICHUK FARMS LTD.
RR #1 WILLINGDON, ALBERTA
T0B 4R0

Terry
780-367-2434

Valerian
780-367-2527

Head

17430 LB @ 30

11670 LB @ 20

29100 50

Ave 582

Date Dec 5 07

Commodity Stems

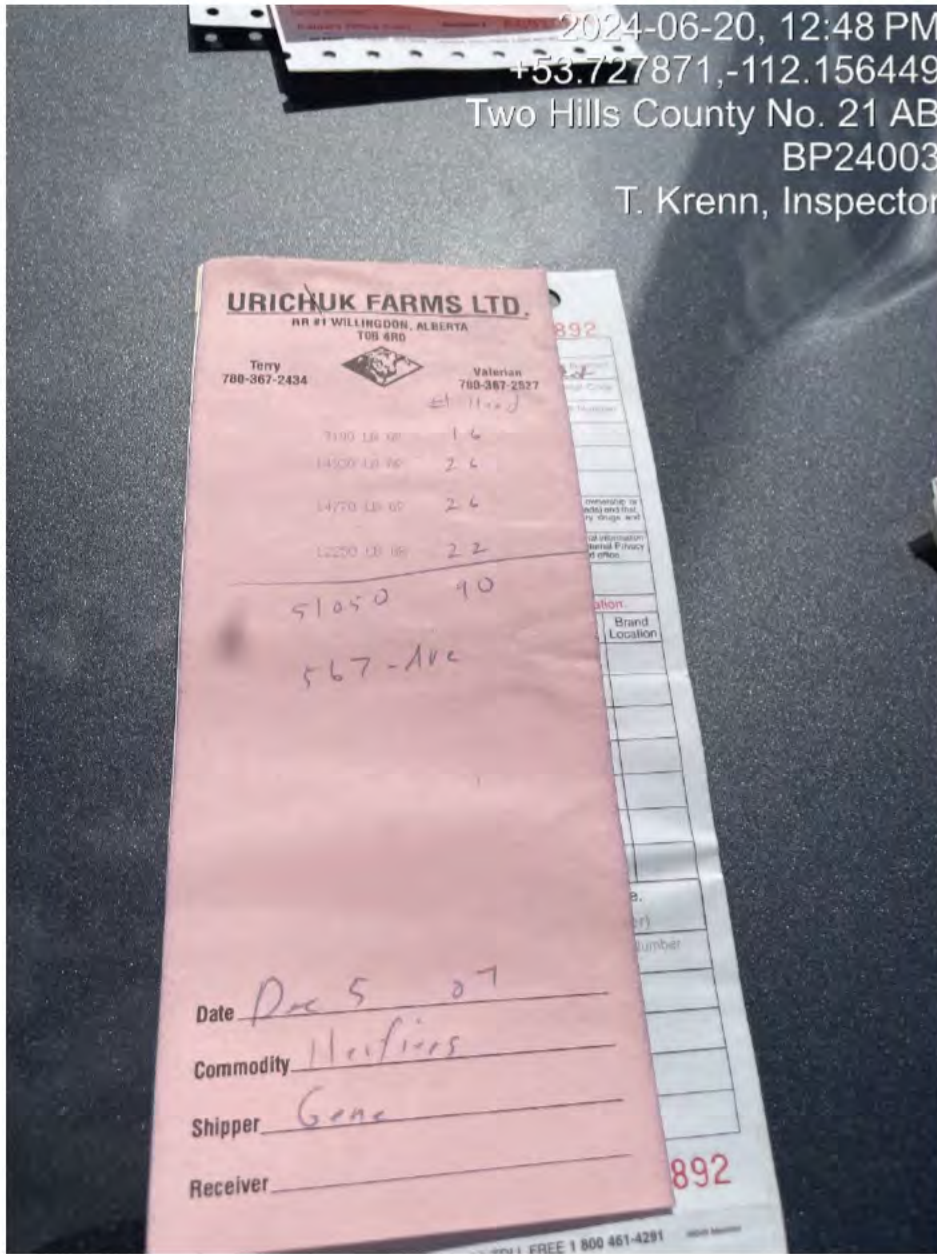
Shipper Gene

Receiver _____

93

Total Weight Received (lbs)	Total head received	Average Weight (lbs) Received/Head
17,430	30	581
11,670	20	583
29,100	50	582

December 5, 2007



Total Weight Received (lbs)	Total head received	Average Weight (lbs) Received/Head
9,100	16	568
14,930	26	574
14,770	26	568
12,250	22	556
51,050	90	567

December 6, 2007

2024-06-20, 12:47 PM
+53.727871,-112.156449
Two Hills, County No. 21 AB
BP24003
T. Krenn, Inspector

URICHUK FARMS LTD.
RR #1 WILLINGDON, ALBERTA
T0B 4R0

Terry
780-367-2434

Valerian
780-367-2527

51 cows

1000 LB Wt 16

17070 LB GP 29

26590 45

Avg 590

16100 LB GP 30

13970 LB GP 25

30070 55

546 Avg.

Date Dec 6 07

Commodity Heifer + Steers

Shipper Gene

Receiver _____

DF PRINT CALGARY 252-3232 CANADA TOLL FREE 1 800 461-4291

Total Weight Received (lbs)	Total head received	Average Weight (lbs) Received/Head
9,520	16	595
17,070	29	588
16,100	30	536
13,970	25	558
56,660	100	566



Hill, G

Urichuk, V & E

Bereska, T & E

Urichuk, V & E

Urichuk, V & T

Urichuk, W & V & E

Hill, G & T

SE-4-55-15-W4

August 15, 2024

Tracy Krenn

Inspector, Compliance and Enforcement Division

Natural Resources Conservation Board

Re: PB 24003 – Notice of a Grandfathered (Deemed) Permit Determination Request

Urichuk Farms Ltd.

What is the purpose of a grandfathered permit determination? We looked back at the "Grandfathered Determination Request" and see that there is no existing permit for a CFO facility at the location. So how can NRCB issue a grandfathered request if nothing has been checked and permitted previously?

We own land and live near the Urichuk farms. Our home quarter is SW 2-55-15-W4, which we have owned since 1986. We also own other land in the area, with SE 3-55-15-W4 being the nearest to the feeding operation.

You have asked us to basically evaluate our neighbours' business. We are not responsible for monitoring and reporting on their private/personal business. Yes, we know that they have a feedlot and cattle on their property, but we do not know how many pens, how many cattle, which years, etc. Why would you ask us to submit photos? It should be the job/duty/responsibility of NRCB to check everything before approving. We suppose this may be one way of checking, but this is limited by privacy concerns and neighbourliness. Shouldn't the facility have to apply for a CFO permit before being considered for grandfathering?

Your letter states that you are part of NRCB's inspection, compliance, and enforcement division. Has NRCB inspected the facilities in question anytime over the past 22 years? Since the facility has never had a permit, we do not believe any of the environmental checks have ever been done. Is NRCB aware that Spring Creek is flowing through the feedlot property, continuing on through our property and within ¼ mile of our home?

Our concern now is whether the NRCB has done or will do any checking into whether this permit determination will affect our water quality further. When we had our well drilled almost 40 years ago, we were told that all water in the area came from the same zone. The water was of very high quality, but we know that has changed greatly since we moved here 38 years ago. Just because something was done 22 years ago doesn't mean it meets requirements.

Some calculations to be considered: 3.5 gallons of urine produced per animal per day X 1850 animals = 6475 gallons daily in a confined area = 2,363,375 gallons per year, 52,000,000 gallons in 22 years. This does not even account for solid waste, which also affects soil. Our water zone is at approximately 55 feet below ground. (The same throughout the area.) Our water has definitely been affected.

Since the feedlot is claimed to have been in operation for over 20 years, as was implied, naturally it can be assumed that water quality may have been affected. Perhaps this should be considered and reviewed/re-evaluated before NRCB automatically assumes everything can be grandfathered.

As we said previously, our concern would be whether water amount and quality would be further affected. Also, whether this applies only to Urichuk Farms; would new owners potentially be grandfathered as well? And can this permit allow for expansion?

We want NRCB to have everything checked first. We want NRCB to do water quality tests from 2 separate independent companies. Also an environmental or pollution report, especially because of the nearby creek.

We have had a good life living in the country. We want our children and grandchildren and future generations to have a safe and healthy environment, for our neighbours and entire community as well.

We would appreciate a response. Thank you.

[Redacted]

Raymond Lastiwka

[Redacted]

Lydia Lastiwka

[Redacted]

SW 2-55-15-W4 home quarter
SE 3-55-15-W4
NW2-55-15-W4

[Redacted]

August 15, 2024.

Tracey Krenn, Inspector,
National Resources Conservation Board,
Red Deer, AB.

Re:

Unichuk Farms Ltd
Grandfathering Determination
Confined Feeding Operation
located on 3-55-15 W4M
Two Hills County AB

Dear Tracey,

In response to the call for input for the CFO noted above:

On or about January 1, 2002:

- the above CFO did house beef feeders

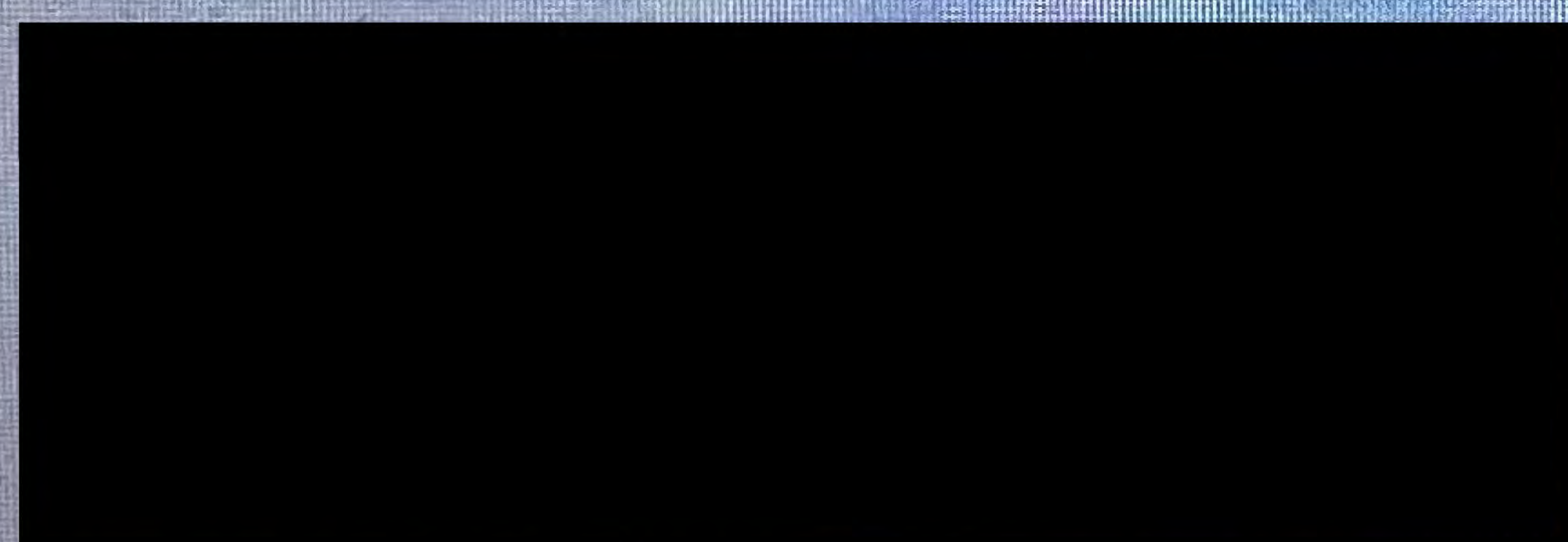
However:

- the number of pens including only that location, did not have a one-time capacity for 1850 feeders
- of the pens at that site, a number were not in usable condition (due to wet conditions, animal damage, maintenance issues & material decline etc.)
- there were no drainage ponds
- manure was left in windrows in the fields
- some windrows were & still are, located close to creeks/water drainage
- worker & animal safety could be concerning

Respectfully submitted,
Bill & Sharon Dembicki:

-Long time area residents.

-Formerly, upon request, provided assistance at CFO. (unpaid)



From: [Tracey Krenn](#)
To: [REDACTED]
Cc: [Carolyn Taylor](#)
Subject: PB24003 - Notice of a Grandfathered (Deemed) Permit Determination Request Urichuk Farms Ltd. - NW03-55-15-W4M
Date: August 20, 2024 11:28:00 AM
Attachments: [Grandfathering Program Information Package FAQs.pdf](#)
[Grandfathering \(Deemed Permit\) Operational Policy 2023-1.pdf](#)

Good morning Raymond & Lydia,

Thank you for response regarding Urichuk Farms Ltd. Grandfathering Determination. If a confined feeding operation existed before January 1, 2002, when the Agricultural Operation Practices Act (AOPA) came into effect, the owner or operator of the operation is deemed to have been issued a permit – in other words the operation is considered to be grandfathered under section 18.1 of AOPA. This means the operation existed before the legislation.

A formal grandfathering determination is a process through which NRCB staff investigate whether a confined feeding operation existed before January 1, 2002, and what the operation's deemed capacity and footprint were on or about January 1, 2002, when the Agricultural Operation Practices Act (AOPA) came into effect.

For your reference I have attached the Formal Grandfathering Determinations Frequently Asked Questions and the NRCB Grandfathering (Deemed Permit) Operational Policy 2023-1 which outlines the grandfathering determination process.

Whether new or existing, any livestock operation (CFO) is required to ensure it does not pose a risk to the environment. In accordance with the NRCB's Grandfathering (Deemed Permit) Operational Policy 2023-1, if an existing facility poses a risk to the environment, it will be addressed by NRCB Compliance in accordance with the Compliance and Enforcement Operational Policy 2016-8, independent of the grandfathering determination.

The NRCB may investigate any risk to the environment or inappropriate disturbance or require action to be taken to mitigate the risk, as determined by the NRCB.

In your response you identified possible risks to the quality of your drinking water and state that you know that the water quality has changed greatly since you moved there 38 years ago. To validate your concerns, please provide the NRCB with any current and historical drinking water quality test results from an accredited laboratory (private or provincial) so that the NRCB may review them and determine if any action is required. Please forward your concerns regarding water quality, including dates when water quality has been affected, your water well id, and water well tests from an accredited laboratory to tracey.krenn@nrcb.ca. A complaint file will be opened, and your concerns reviewed.

As to your concerns regarding the amount of water available, this does not fall under the legislative authority of the NRCB and should be directed to the appropriate legislative authority, Alberta Environment & Protected Areas (AEPA).

If the existing CFO were to expand, the new or expanded portions of the CFO that collect, or store manure would be required to meet the standards in the regulations. The applicant is not proposing to expand at this time.

Kind regards,

Tracey Krenn

Inspector

Natural Resources Conservation Board

#303, 4920 – 51st Street

Red Deer, AB T4N 6K8

Tel: 403-318-8199

Email: tracey.krenn@nrcb.ca

Website: www.nrcb.ca

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Please do not print this email unless absolutely necessary. The trees will thank you!

Formal Grandfathering Determinations

Frequently Asked Questions

1. What does it mean to be grandfathered?

If a confined feeding operation existed before January 1, 2002, when the *Agricultural Operation Practices Act* (AOPA) came into effect, the owner or operator of the operation is deemed to have been issued a permit—in other words the operation is considered to be grandfathered—under section 18.1 of AOPA.

2. What is a formal grandfathering determination?

A formal grandfathering determination is the process through which NRCB staff investigate what your operation's deemed capacity and footprint were on January 1, 2002 when AOPA came into effect. The process can take up to eight months when the NRCB does not have dedicated resources in place to assist with grandfathering determinations.

3. When I read the legislation, it looks like my operation is already considered grandfathered. So why do I need a formal grandfathering determination from the NRCB?

Even if your operation is considered grandfathered under section 18.1 of AOPA, your status and permitted livestock numbers and facilities might not be on your municipal permit, your operation might not have a previously issued permit, or there may have been changes to your operation since 2002. If this is the case, you have nothing official to provide a bank or a prospective buyer if you are seeking to refinance, expand, or sell your operation. Having the NRCB make a formal grandfathering determination to confirm your permitted livestock numbers ensures that your grandfathered status is verified and documented. This includes confirming the permitted livestock type, number of livestock, and CFO facilities at your operation.

4. What are the benefits of being formally grandfathered?

Official confirmation of your grandfathered status helps to protect your confined feeding operation should zoning or planning changes occur in your municipality. It also confirms the status of your confined feeding operation in case a financial institution requests confirmation of your permit status, or you want to sell your operation.

5. How do I go about seeking a formal grandfathering determination?

Fill out and submit a Grandfathering Determination Request form, obtained from an NRCB staff member or on the NRCB website, including your name, land location, existing permits, and the livestock type and capacity of your CFO facilities on January 1, 2002 that you are claiming. You should also include any records you have to support your claim. These can include aerial imagery, personal photos, livestock purchase records, livestock sales records, tax records, feed purchase records, etc. Once the NRCB receives this form and supporting information, a staff member will be assigned to work with you throughout the process to confirm your claims. Public notice may also be required as part of the process.

6. If I request a formal grandfathering, won't that open me up to excessive regulation from the NRCB?

No. This program is NOT intended as a means to identify and punish older operations. The program is intended to help operators obtain important documentation in case they need to sell, refinance, or expand their operations, and to confirm their status before more time passes and records from pre-2002 become even more difficult to find.

7. I'm already grandfathered. Could anything invalidate my operation's status?

If your operation was abandoned, if you constructed or modified it without a permit, or if you are creating a risk to the environment it could invalidate all or part of your grandfathered status.

8. What are my rights and obligations under AOPA as a grandfathered operation?

All livestock operations, including grandfathered confined feeding operations must manage their manure, any manure runoff, and keep records in compliance with the legislation. Grandfathered operations must also ensure that the operation's footprint, livestock capacity, manure storage capacity, and livestock category are the same as they were on January 1, 2002, and don't create a risk to the environment.

9. My operation is grandfathered. What limitations are there for expanding?

Your operation can continue to operate as it did in 2002, as long as you don't make any changes that would require a permit (extra pens, barn additions, increased manure storage, or increases in animal numbers) or create a risk to the environment (contamination of groundwater or surface water). If you do any of these things, you will need to speak to the NRCB about a new permit. If you want to expand your operation you will need to meet the requirements set out in AOPA for any new or expanding facilities.

10. How do I know whether I'm already grandfathered?

The best way to check whether your operation is already grandfathered is to contact the NRCB regional office closest to you and talk to an NRCB inspector or approval officer.

11. What happens if I expanded my operation since 2002?

The NRCB's goal is to bring operations into compliance with the AOPA requirements. NRCB staff will work with you to get through the permit application process if it is determined that you need a permit for any changes made to your operation since 2002.



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GRANDFATHERING (DEEMED PERMIT)

Operational Policy 2023-1

Agricultural Operation Practices Act
April 3, 2023

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1.0 Definitions

The terms “**deemed**” and “**grandfathered**” are interchangeable in this policy.

References to “**capacity**” in this policy, in relation to deemed approvals and registrations, refer to a confined feeding operation’s (CFO’s) livestock numbers, not to the scope of the CFO’s facilities. “Capacity” in relation to deemed authorizations means volume for liquid manure storage and tonnage for solid manure storage.

“**Confined feeding operation**” means fenced or enclosed land or buildings where livestock 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 residences, livestock seasonal feeding and bedding sites, equestrian stables, auction markets, race tracks, or exhibition grounds (section 1(b.6) of the *Agricultural Operation Practices Act* (AOPA)).

The term “**deemed capacity**” refers to the maximum number of livestock, or maximum volume or tonnage of manure storage, allowed by a CFO’s deemed permit as determined under section 18.1(2) of AOPA.

“**Deemed approval, registration, or authorization**” refers to a permit held by the owner or operator of a CFO or manure storage facility (MSF) that is grandfathered under section 18.1(1) of AOPA.

“**Field services staff**” for the purposes of this policy means an NRCB-appointed approval officer or inspector (see [section 2.4](#) of this policy).

“**Grandfathered CFO footprint**” means the dimensions of the entire CFO including all MSFs or manure collection areas (MCAs) that held a municipal development (MD) permit, or existed on January 1, 2002.

“**Grandfathered facility**” means an MSF or MCA that is covered by an MD permit, or existed on January 1, 2002 at above AOPA thresholds, with identified dimensions.

“**Manure collection area**” (MCA) means the floor of a barn, the under-floor pits of a barn, the floor of a feedlot pen, and a catch basin where manure collects, but does not include the floor of a livestock corral.

“**Manure storage facility**” (MSF) means a facility for the storage of manure, composting materials, and compost, and a facility for composting, but does not include such a facility at an equestrian stable, an auction market, a race track, or exhibition grounds.

“**MD permit**” means a municipal development permit, or a licence, permit, or other approval issued under the *Public Health Act*.

“**Physical capacity**” refers to the number of livestock that a CFO can confine and feed based on the capacity of the enclosures to confine livestock.

2.0 Introduction

2.1 Purpose

The purpose of this policy is to guide participants in grandfathering determinations under AOPA. The frequency and complexity of grandfathering determinations have increased in recent years, as we move further away from January 1, 2002. While the process of determining a grandfathered (deemed) permit under AOPA is unchanged, the documentation involved in the process has evolved.

This policy combines the substance of two previous grandfathering policies, and fills in policy and procedural gaps that have become evident. A goal of operational policies is to contribute to transparency in how the NRCB administers AOPA. A single, comprehensive policy on grandfathering determinations enhances consistent decision-making among NRCB approval officers and inspectors. This policy also aims to streamline the grandfathering process.

In enacting this policy, the NRCB is repealing Operational Policy 2016-6 Public Notice for Grandfathering Decisions, and Operational Policy 2016-5 Determining Deemed Capacity for Grandfathered Confined Feeding Operations.

2.2 Historical background

When Part 2 of the AOPA came into force on January 1, 2002, the grandfathering of CFOs was a transitional matter in the legislation that enacted Part 2 (*AOP Amendment Act, 2001*). At that time, in brief, if a confined feeding operation did not hold a MD permit as of January 1, 2002, the new standards under Part 2 of AOPA applied to that operation (in terms of permits), but only when the operation expanded.

In 2004, section 18.1 was added to AOPA to provide for deemed permits where a confined feeding operation held an MD permit on January 1, 2002, or where it did not have a permit but “existed.” There is no end point to the operation of section 18.1. As a result, CFOs or manure storage facilities (MSFs) that existed or had a permit on January 1, 2002 are still eligible to be “grandfathered” today.

For many years, the NRCB Board had no jurisdiction to hear a dispute over grandfathering determinations, and a party could only seek a remedy at the Court of Queen’s (King’s) Bench. In a 2012 judicial review of a grandfathering determination, *Unland v Natural Resources Conservation Board*, 2012 ABQB 501, the Court of Queen’s Bench stated that an NRCB grandfathering investigation must be thorough, objective, and supported with written reasons.

In 2017, the Natural Resources Conservation Board (NRCB) Board added section 11 to its AOPA Administrative Procedures Regulation, to provide some guidance on authority and procedure for grandfathering determinations. The Regulation also provided a way to dispute a grandfathering determination at the NRCB Board, instead of in court. Since section 11 was added, the Board has treated grandfathering determinations somewhat like permit applications – e.g. the notice procedure for grandfathering determinations uses AOPA’s application notice procedures. However, because grandfathering determinations determine the state of affairs at January 1, 2002, they require findings of fact that are not part of AOPA permit applications.

2.3 Current context

Grandfathering is generally how legislation exempts existing operations from new regulatory requirements. Lawmakers typically create “grandfathering” exceptions in order to respect prior policies and regulations that generated legitimate expectations and to avoid unfairness for investors who expected a specific regulatory regime.

AOPA recognizes CFOs and MSFs that held an MD permit, or that existed, on January 1, 2002. The owners or operators of those facilities are “deemed” to hold a permit under AOPA. Before that date, CFOs and MSFs were regulated by municipalities or under the *Public Health Act*.

Section 18.1 of AOPA addresses the grandfathering of CFOs in essentially two steps:

1. Section 18.1(1) lists three categories of CFOs (or MSFs) that are considered to have a “deemed” (i.e., grandfathered) approval, registration, or authorization under AOPA.

2. Sections 18.1(2) and (3) state how grandfathered “capacity” is to be determined for each of the three categories described in section 18.1(1).

In a grandfathering determination, an NRCB field services staff will need to address the following questions regarding the state of the site on January 1, 2002:

1. Was the operation a “confined feeding operation” or something else (e.g. a seasonal feeding and bedding site, a cow/calf site)?
2. Was the operation operating at, or permitted for, livestock numbers that exceeded the thresholds in AOPA for requiring a permit?
3. What, if any, permits or licences did the operation hold (or had pending applications for)?
4. What facilities (manure storage facilities or manure collection areas) existed, or were permitted?
5. What was the footprint of the CFO or MSF?
6. What category(ies) of livestock was the CFO confining and feeding, or permitted to confine and feed? What type(s) of livestock in that category? What livestock numbers were permitted or being held for each type of livestock?
7. How were the facilities being used?

In the case of a grandfathering determination requested by an operator or landowner, the onus is on the operator or landowner to provide sufficient evidence to support their claim. The operator has the responsibility to locate and provide records and other evidence to meet the standard of proof for each relevant fact. The standard of proof is on a balance of probabilities (more likely than not). Field services staff may ask clarifying questions and seek particular documents (see [section 6, Investigation](#), below). The quantity, quality, and type of records and other supportive evidence required to meet the onus will vary from case to case. If the grandfathering determination is not being requested by the landowner or operator, the inspector will notify both the landowner and operator to give them an opportunity to provide input and evidence.

The NRCB recognizes the inherent difficulties in grandfathering investigations and determinations. With the passage of time since January 1, 2002, the likelihood of locating records and the reliability of witness evidence fades. Some municipalities have not retained their records. Some operations have changed ownership and relevant records may not have accompanied the shift in owners. Some neighbours who lived near the operation in 2002 may no longer live there. These issues naturally present increasing challenges not just to operators, but also to neighbours, municipalities, and NRCB field services staff.

As with all operational policies, field services staff have discretion to deviate from this policy when its strict application would be clearly unfair, or in other necessary and appropriate circumstances. However, field services staff may wish to seek guidance from management before deviating from this policy. If they do choose to deviate from this policy, field services staff should provide written reasons to support their approach.

2.4 Who can make grandfathering decisions

Historically, both NRCB approval officers and inspectors have made grandfathering determinations under AOPA.

However, section 11(1) of the AOPA Administrative Procedures Regulation calls specifically on NRCB “inspectors” to make those determinations. Sections 11(2), (4), (5), and (8) repeat this reference to NRCB inspectors. By contrast, section 11(3) refers to NRCB approval officers, rather than inspectors. That provision deals with deciding whether to waive the notice process in section 11. However, it may be impractical for approval officers to make those waiver decisions, but no other decisions relating to grandfathering.

In practice, NRCB approval officers are all cross-appointed as inspectors (and vice versa). Accordingly, the regulation's primary focus on inspectors also includes approval officers. The NRCB interprets section 11 as intending to empower both inspectors and approval officers to make grandfathering determinations required by that section, and all references below to NRCB inspectors include approval officers.

As for division of tasks on a given grandfathering determination, if a grandfathering determination is:

1. associated with an application = approval officer
2. not associated with an application and there are no NRCB-issued permits = inspector
3. not associated with an application, has received NRCB permits in the past (including authorizations) and the approval officer is still in an active role = the approval officer, though they may consult with the inspector if the inspector has more recent interactions with the operation. If the approval officer is not still in an active role = inspector.

3.0 Types of grandfathering determinations

Field services staff may issue a grandfathering determination in the following three ways:

3.1 In conjunction with an approval or registration application

Type of trigger – approval or registration application for CFO expansion where:

1. the application is likely to be denied, and the operator seeks assurance of what capacity and facilities the operation is currently permitted for
2. there is a dispute about whether construction is unauthorized (i.e. built after January 1, 2002 without a permit)
3. it is necessary to determine which existing facilities or footprint are grandfathered and exempt from having to meet AOPA regulations (section 20(1.2) and 22(2.2) of AOPA).

In those contexts, the NRCB has historically addressed grandfathering through the NRCB's permitting process.

A key feature of this process is that applications for approvals and registrations are subject to public notice and provide an opportunity for municipalities and other directly affected parties to submit written comments. Public notice for the grandfathering determination runs simultaneously with public notice for the application. Directly affected parties may submit a request to the NRCB's Board to review permit decisions issued by approval officers. Under section 11(7) of the Administrative Procedures Regulation, this right also exists for seeking review of grandfathering determinations on which those permit decisions are based.

3.2 In conjunction with an authorization application

Type of trigger – authorization application for a facility at an existing CFO with a deemed permit where:

1. an approval officer needs to verify what the operator is claiming, to determine minimum distance separation (MDS) at a CFO or MSF, where the proposed MSF or MCA is moving closer to a neighbouring residence, or
2. an approval officer is uncertain whether the CFO was over threshold on January 1, 2002 and therefore would have required a permit under AOPA.

Sometimes CFO owners apply for authorizations to modify their CFOs, when the NRCB has not previously permitted those CFOs or determined that the CFOs are grandfathered. In these instances, the NRCB may need to determine whether the CFO is grandfathered before deciding whether to issue the authorization. This grandfathering determination may be needed

because the NRCB only issues authorizations to NRCB-permitted operations and to operations that have a deemed permit under section 18.1 of AOPA.

Until the NRCB adopted the original version of the Public Notice for Grandfathering Decisions policy in 2016 (Operational Policy 2016-6), approval officers made the grandfathering determination as part of their process for deciding whether to issue the authorization. However, AOPA does not require public notice or an opportunity for affected individuals to comment on authorization applications. In this way, the consolidated approach effectively precluded public notice and participation in the related grandfathering decisions.

The 2016 policy outlined how approval officers should use the public notice process for grandfathering determinations. Since June 2017, section 11 of the AOPA Administrative Procedures Regulation for grandfathering decisions has codified this approach.

3.3 As a stand-alone grandfathering decision

“Stand-alone” grandfathering determinations are those investigated and made in a context other than part of a permit application.

Types of trigger:

1. a request by the owner or operator of a CFO or MSF for a grandfathering determination
2. a complaint where determination of the existence of a deemed permit – or the terms and conditions of a deemed permit – is required for the NRCB to respond to the complaint
3. a question whether the operation requires an AOPA permit or not – in other words, whether the operation was above threshold on January 1, 2002
4. a dispute about construction being unauthorized (i.e. built after January 1, 2002 without a permit); an inspector may need to resolve what is grandfathered and what is unauthorized (not grandfathered) in the context of whether to assess an existing facility’s risk to the environment or to require a permit, or
5. a question about sufficiency of manure storage capacity or a manure handling plan.

An inspector will use their judgment to determine whether all parts of a grandfathering determination are required to respond to the complaint.

Lenders, prospective CFO buyers, or municipalities may ask the NRCB to make a grandfathering determination for purposes of financial contingencies or land use planning. Under these circumstances, field services staff will only make a grandfathering determination in response to a request made directly by a CFO owner or operator, or when a CFO owner (or landowner) consents to a request made by a lender, buyer, or municipality.

4.0 Initiating the grandfathering process

Prior to initiating a grandfathering determination, field services staff may wish to obtain the following information:

1. legal land description(s) of the facility or operation to be grandfathered
2. corporate name of the operator (if applicable)
3. landowner name(s)
4. operator name(s), if different from landowner names. Note, if an operator is requesting a grandfathering determination and the operator is not listed on the land title then consent from the landowner must be given
5. categories and types of livestock being confined in 2002
6. number of livestock being confined in 2002
7. a list of all MSFs or MCAs associated with the operation
8. supporting documentation (see records section at [section 7.1](#) of this policy below)

4.1 Preliminary deemed capacity estimate (no claim from owner/operator)

The NRCB Board has recognized that grandfathering determinations may be resource- and time-intensive (RFR 2021-08 / EO 21-01 Schooten and Sons at page 8). In the absence of a claim from the owner or operator, it is sometimes difficult for field services staff to identify the claimed capacity for the public notice of a grandfathering determination. It is also difficult for NRCB inspectors to address an overpopulation complaint in a timely way without knowing the (deemed) permitted capacity of the CFO.

As such, it may be helpful for field services staff to conduct a preliminary assessment to estimate the deemed capacity of a CFO or MSF. This preliminary assessment may be based on:

1. conversations or correspondence with the operator
2. existing MD permits, and other permits or documents that might mention capacity (e.g. water licensing), from the NRCB CFO database and hard copy file
3. aerial photos or satellite imagery of the site around January 1, 2002. For example, field services staff may be able to estimate rough square footage of the footprint and facilities using GeoCortex or Google Earth
4. applying the rough square footage of the footprint in the Agdex 096-81: Calculator for Determining Livestock Capacity for Operations as they Existed on January 1, 2002, and
5. site inspection to determine what facilities appear to have been built pre-2002 and what facilities appear to have been constructed or altered post-2002.

In general, field services staff use this information to develop a preliminary estimate of deemed capacity. Field services staff communicate the preliminary estimate to the operator, and the operator may agree or disagree with it. If the operator agrees, field services staff will use the estimated capacity for the public notice (and may use that capacity as foundation for compliance action in relation to an overpopulation complaint). If the operator disagrees, field services staff will use the larger capacity in the public notice. Either way, field services staff will proceed with a grandfathering determination under the following procedures.

5.0 Public notice

5.1 When public notice is required

Public notice of a grandfathering determination is required if the situation does not fall into either of the two exceptions discussed below ([section 5.2](#)).

The following procedures are in addition to, and consistent with, those set out in section 11 of the AOPA Administrative Procedures Regulation. They apply when public notice is required.

If the grandfathering determination is part of an expansion application (i.e. an approval or registration), notice of the grandfathering determination should be combined with notice of the application to expand. If the grandfathering determination is part of an authorization application or conducted as a stand-alone process, and does not meet the exceptions outlined in [section 5.2](#)., then public notice is required.

5.1.1 What must be included in the public notice

All public notices must identify the location and the CFO or MSF being claimed as grandfathered, as required in subsection 11(4) of the AOPA Administrative Procedures Regulation. Subsection 11(4) prescribes the content of notices, including when responses are due, and any other matters field services staff deem appropriate

to include in a notice. In addition to covering the subjects listed in subsection 11(4), the notice will state that all responses will be treated as non-confidential.

For a stand-alone grandfathering determination of a CFO, the public notice, when required, must also include a number and type of livestock that is being claimed. If the operator does not specify a claimed number and type of livestock, the field services staff may do a preliminary deemed capacity assessment ([section 4.1](#)).

If the deemed capacity at the end of the investigation is determined to be lower than the capacity in the public notice, there is no need to re-publish a notice. If the deemed capacity is determined to be higher, notice may need to be re-published.

For grandfathering determinations associated with an approval, registration, or authorization application, public notice should include the fact of a grandfathering claim as part of the application and the type of livestock claimed. The claimed livestock capacity is optional for the notice.

For grandfathering of a manure storage facility only, notice to affected parties under AOPA must include the dimensions of the facility being claimed as grandfathered, and type of manure stored in the facility.

5.1.2 Method of notice

Field services staff will adopt the process for notification used in applications under sections 19 and 21 of AOPA, and as further explained in NRCB Operational Policy 2016-7: Approvals.

Section 31 of the AOPA Administrative Procedures Regulation gives field services staff several options for deciding how to provide notice, when notice is required.

5.1.3 Who must be notified

Field services staff inform the municipality in which the operation is located that the operation has requested the NRCB to conduct a grandfathering determination. This notification may act as notice to the municipality as a directly affected party. At this time, field services staff should determine if public notice is required as mentioned above.

Section 11(2) of the AOPA Administrative Procedures Regulation directs notice be given to

those parties who would be entitled to notice under section 19(1) or 21(1) of ... [AOPA] for a new manure storage facility or confined feeding operation with the same capacity.

Sections 19(1) and 21(1) of AOPA (and the Part 2 Matters Regulation that they refer to, in turn) define the scope of “affected parties” that are entitled to notice of AOPA permit applications. For approval and registration applications, affected parties include owners of and residents on land within a prescribed distance from the proposed development. The prescribed notification distance is derived from a formula that is based on the requested category, number, and type of livestock. For authorization applications, affected parties will include the local municipality as well as any other municipalities that are “affected” under the Part 2 Matters Regulation.

Solely for the purpose of determining the notification distance, approval officers and inspectors will base the CFO's "capacity" on the largest of the following three numbers:

1. the deemed capacity claimed by the CFO owner
2. the estimated capacity determined by field services staff, or
3. the CFO's current physical capacity.

To determine who owns land or resides within this distance, the NRCB will follow the same process as that used for permit applications according to NRCB Operational Policy 2016-7: Approvals.

5.2 When public notice is not required

5.2.1 Existing MD permits

Public notice is not required if an MD permit pre-dates January 1, 2002 and specifies the capacity and livestock type. The AOPA Administrative Procedures Regulation considers it unnecessary to solicit public input for a CFO constructed "pursuant to a [pre-2002] development permit" when the permit resolved all relevant issues as to the CFO's deemed capacity. Under section 11(2) of the Regulation, notice is not required for that situation.

An MD permit for a CFO is considered a "deemed" permit under section 18.1(1) of AOPA, if the permit was issued before January 1, 2002, and if the livestock capacity allowed by the MD permit is greater than the AOPA permit threshold. In this case, the MD permit will be recognized as an AOPA permit effectively issued by the NRCB.

If the operator does not dispute the capacity authorized in the MD permit, then a grandfathering determination is not required.

In the following circumstances, however, notice for a CFO with an MD permit may be required:

1. if the MD permit does not state the CFO's capacity, or livestock category and type, and the NRCB must make a deemed capacity determination, or
2. if the CFO owner claims a grandfathered capacity that is greater than the capacity stated in their MD permit.

5.2.2 Notice waived for indoor CFOs (with or without MD permit)

The purpose of the waiver of notice in section 11(3) of the AOPA Administrative Procedures Regulation is to create a shortcut for those operations where it is plain what was permitted or what existed in 2002, and public notice will not elicit any useful information. The reason for this approach is that, in the NRCB's view, it is generally much easier for staff to make the necessary factual determinations for indoor facilities than for outdoor pens, based on site visits, aerial photos, and other available records. These facts relate essentially to whether CFO facilities existed on January 1, 2002, their dimensions, their physical capacity, and how they were being used. The exception for indoor CFOs is discretionary under section 11(3) of the Regulation.

Many CFOs with indoor barns (e.g. dairy) for their primary livestock also have some outdoor pens for replacement or other ancillary livestock, or for temporary confinement of their primary livestock.

Given this reality, the NRCB interprets the reference to "indoor" CFOs in section 11(3) as referring to the primary CFO facilities for confining and feeding livestock. If those

primary facilities are indoor, the NRCB will treat the entire CFO as indoor for purposes of this subsection.

Section 11(3) states that field services staff may exercise discretion to waive public notice if, at a minimum, the livestock type and capacity of the structures can be reliably determined by viewing historical aerial photographs and owner/operator records.

For example, waiving public notice for a dairy may be appropriate under the following circumstances:

1. There is reason to believe that the facilities and the number of stalls counted today are the same as what existed on January 1, 2002.
2. Information is available about the practices on January 1, 2002. E.g. if it is obvious where a dairy kept their dries and replacements in 2002.
3. The dairy is predominantly indoor.
4. Historical aerial photographs support the claim of both capacity and type.
5. Records from the owner/operator support the claim of both capacity and type. These records may include milking records, testimonials from neighbours or employees, photographs inside the facilities, etc.

A waiver of public notice means neighbours will not have an opportunity to provide evidence or submissions relating to the grandfathering investigation.

Accordingly, if field services staff decide to waive public notice under section 11(3) of the Regulation, the reasons for the waiver should be clearly set out in the grandfathering decision report or the Decision Summary, as applicable.

6.0 Grandfathering investigation

The following subsections apply to both application-related and stand-alone grandfathering investigations.

The investigation focuses on facts as they existed on January 1, 2002. However, the NRCB generally uses a pragmatic and flexible approach toward applying the January 1, 2002 grandfathering date. Field services staff may seek evidence about the operation between 2000 and 2004, acknowledging that the range is not meant to re-define the January 1, 2002 date in section 18.1 of AOPA.

Considering the operational details for two years before and two years past the January 1, 2002 grandfathering date may be useful if witnesses do not remember what occurred on the exact date of January 1, 2002. Also, considering how an operation functioned over a range of dates might provide additional context for typical daily operational functions.

This approach is reasonable because a more rigid or stricter application of the January 1, 2002 grandfathering date could lead to unfair results. For example, if on January 1, 2002 an operation happened to have emptied its enclosures, had temporarily shut down, or were partway through rebuilding or constructing the enclosures on that date, the capacity of the CFO may not be representative of the typical daily operations during that period. The 2000 to 2004 range is meant to generate sufficient evidence to apply this pragmatic and flexible approach.

If the grandfathering determination is being completed in response to a complaint and is not being requested by the landowner or operator, notification regarding the grandfathering determination must be sent to both the landowner and operator. In this way, the landowner or operator will still have an opportunity to provide field services staff with input and evidence.

6.1 Record collection

6.1.1 Operator records

Since the onus is on the operator or owner to establish the likelihood of their claimed capacity, the operator or owner requesting a grandfathering determination should provide records that support their claim in the grandfathering request. These may include, but are not limited to:

1. milking records
2. shipping and handling records (purchase or sale receipts)
3. feeding records or receipts
4. water licences and/or registrations
5. municipal permits
6. certificate of compliance (e.g. Alberta Agriculture)
7. aerial photographs
8. ownership records
9. site plans or drawings
10. livestock nutrition or veterinarian records
11. testimonials from operators and third parties
12. calving and breeding records
13. income tax records (year ending inventories)
14. government program records
15. premise ID records
16. daily journals

Sometimes a record from the past (e.g. inspection report, letter, part of a decision summary) indicates a grandfathering determination was previously done by the NRCB. Even if not in a formal report form, the previous NRCB determination is valid. However, sometimes a partial supplemental determination may be required – for example, to determine the deemed footprint or facilities.

6.1.2 Field services review

The following records, if available, may assist NRCB field services staff in making a grandfathering determination:

1. land title search
2. corporate search
3. historical municipal records (development permit application forms)
4. aerial photographs (Google Earth Imagery, GeoCortex, County/MD, etc.)
5. historical NRCB records (hard copy and database entries), including correspondence relating to CFO status
6. Alberta Environment and Protected Areas records (water well licensing)
7. records from a site inspection (see [Section 6.2 Site inspection](#) for more details)
8. records from an operator interview (if applicable); the interview may be recorded and should have two field services staff present
9. Agriculture and Irrigation records (dairy inspection records, cattle feeders' records)
10. *Public Health Act* licences, permits, or approvals
11. records from livestock industry associations

6.2 Site inspection

NRCB field services will conduct a site inspection with the operator to gather information about the operation as it existed in 2002 such as:

1. grandfathered CFO footprint (based off aerial photos, drawings)
2. facilities in operation (based off aerial photos, drawings, or other evidence)
3. permanent vs. temporary infrastructure, such as feed bunks and watering stations
4. infrastructure inside facilities, and condition of existing infrastructure (does it look as if it was constructed pre-2002?)
5. pit wells, pumphouses
6. location of fences over time
7. alteration (interior or exterior) or abandonment of facilities
8. water wells (e.g. stock vs. domestic use)
9. number of stalls for dairy barns
10. management practices (e.g. free range birds with access to the outside)
11. feeding practices (e.g. CFO vs seasonal feeding and bedding site (SFBS))
12. air photographs to assess whether any unauthorized construction occurred since January 2002
13. handling and processing facilities
14. feeding regime (permanent feed bunks vs portable round bale feeders)

Field services staff will interview the operator in conjunction with the site inspection. The interview can be informal or formal, though it will be more formal when there is little or no documentation, or where there is conflicting evidence.

6.2.1 Outdoor facilities at CFOs

When investigating outdoor facilities at CFOs, field services staff will also consider whether the operation was an SFBS, solely a cow/calf operation, or a CFO on January 1, 2002. See:

- a. Operational Policy 2015-2: Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (for Cattle Operations);
- b. Operational Guideline 2019-1: Sheep Confined Feeding Operation Determinations; and
- c. Operational Guideline 2016-9: Meat Goat CFO Determinations

In the absence of certainty over whether an operation was an SFBS, cow/calf operation, or CFO in 2002, the NRCB will use current standards to make this determination.

6.2.2 Environmental risk assessment

While at the site, field services staff will take the opportunity to gather information about potential risks posed by existing MSFs and MCAs to groundwater and surface water. Generally, field services staff use the NRCB's Environmental Risk Screening Tool (ERST) to assess site-specific risks. Field services staff will also use their professional judgment, and may wish to access the expertise of the NRCB's Science and Technology division when assessing risks to the environment.

If an existing facility poses a risk to the environment, then:

1. the permit may include conditions to address the risk following NRCB policy if the grandfathering determination is part of an application for an approval, registration, or authorization, or
2. the risk will be identified to NRCB compliance for follow up under NRCB policy if it is a stand-alone or complaint-triggered grandfathering determination.

6.3 Determining capacity

6.3.1 Permitted capacity

An MD permit for a CFO is considered a “deemed” permit under section 18.1(1) of AOPA, if the permit was issued before January 1, 2002, and if the livestock capacity allowed by the municipal permit is greater than the AOPA permit threshold.

To identify the permitted livestock capacity, field services staff will consider MD permits. The NRCB’s CFO database houses many municipal permitting documents, but may not be exhaustive. For this reason, it may be helpful for field services staff to check hard copy files, and to seek information from the municipality.

Certificates of compliance from government departments are not “development permits” under AOPA and are not themselves a deemed permit. However, the information contained in a certificate of compliance may be helpful in a determination of physical capacity.

6.3.2 Physical capacity

For determining facilities’ capacity under a deemed **approval or registration**, field services staff will determine on a balance of probabilities what the capacity of the enclosures to confine livestock was on January 1, 2002.

Field services staff may also refer to Technical Guideline Agdex 096-81 *Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002*. While this guideline is a tool for determining physical capacity, field services staff have discretion in how they use the tool. For example:

- a. If the operator had a different management practice that doesn’t follow the guideline, discretion can be exercised as long as the rationale is explained.
- b. Field services staff may discount feed alleys, handling facilities, etc. when entering the numbers into the Agdex 096-81 calculator to account for the non-MSF and non-MCA portions of the total area.

The calculator may function as an aid to assessing the reasonableness of a claimed capacity. Operators are encouraged to provide evidence or describe their management practices in 2002 in addition to the results obtained using the Agdex 096-81 calculator and air photos.

For determining the capacity of facilities constructed under a deemed **authorization**, field services staff will consider evidence of the dimensions of MSFs (e.g. historical air photos, liquid levels, operator records), and evidence of manure management practices including the number and type of livestock that produced the manure that was stored at the facility. Field services staff can use Alberta Agriculture and Irrigation’s manure volume storage calculators for verification or supplementary guidance.

For any type of grandfathering determination of physical capacity, another tool is the *Manure Characteristics and Land Base Code* to provide some evidence of manure storage capacity (liquid) by back-calculating land base against claimed capacity. Field services staff may also consider the *2000 Code of Practice for Responsible Livestock Development and Manure Management*.

6.3.3 Determining which capacity method to use

If there is an MD permit that sets out capacity, and if the operator does not claim they are grandfathered at a greater capacity, then the deemed livestock capacity is what is in the permit (“permitted capacity”) under section 18.1(2)(b) of AOPA.

If an MD permit specifies capacity, but the operator claims a grandfathered capacity greater than that specified on the MD permit, then field services staff determine the capacity of the enclosures to confine livestock on January 1, 2002 (“physical capacity”) under section 18.1(2)(a) of AOPA.

If there is no MD permit, then field services staff determine the capacity of the enclosures to confine livestock (“physical capacity”) under section 18.1(2)(a) of AOPA.

See scenarios in [Appendix A](#).

7.0 Grandfathering decision

7.1 When a formal grandfathering report is not needed

It is unnecessary to complete a formal grandfathering report or provide notice for a CFO constructed pursuant to an MD permit issued prior to January 1, 2002, where the MD permit establishes the CFO’s deemed capacity and livestock category and type, and the deemed capacity and animal type match what an operator is claiming. In that situation, field services staff may issue a letter to the operator (with a courtesy letter to the municipality) recognizing the pre-2002 MD permit and the category, type, and capacity set out in that permit as a deemed permit under section 18.1 of AOPA.

7.2 Grandfathering reporting process

Where a written report is required to explain a grandfathering determination, section 11(5) of the AOPA Administrative Procedures Regulation requires that a report state:

1. whether affected parties that made submissions are directly affected
2. whether a deemed permit exists
3. any other terms or conditions included in the deemed permit; this will include terms and conditions deemed to exist under section 18.1(4) and any clarified under section 18.1(5).

Stand-alone grandfathering determinations also may include, but are not limited to, reasoning related to:

1. introduction and background
2. context of the deemed permit determination (legal authority, standard of proof, the process)
3. evidence submitted and considered (operator, municipalities, neighbours, affected persons, and directly affected parties, etc.)
4. findings based on records or inspections – whether the CFO existed; whether above threshold; footprint; capacity; directly affected parties
5. status of the deemed permit today
6. a list of all manure and livestock facilities.

For grandfathering determinations triggered by **approval or registration** applications, the reasoning to support the determination typically appears in an appendix in the decision summary supporting the permit decision. That appendix, in combination with information received from written responses to the application, information in the technical document, measurements from historical aerial photos, and other portions of the decision summary, will provide the basis for the reasons.

For grandfathering determinations triggered by an **authorization** application, the reasoning to support the determination will either appear in an appendix in the decision summary (including reasoning on notice and directly affected parties), or will appear in the form of a stand-alone determination.

Where notice has been waived under section 11(3) of the AOPA Administrative Procedures Regulation, the grandfathering decision report will be sent to the municipality and the applicant, and will be published on the NRCB website.

8.0 Cancelling permits that include grandfathering determinations

On occasion, an approval officer may cancel an NRCB-issued permit, where a grandfathering determination was made as part of the permit application process and explained in the decision summary. In those cases, the CFO's grandfathered status and capacity determination set out in the cancelled permit, or supporting documentation, remain in effect.

9.0 Validity of deemed permit today

A grandfathering determination ascertains factual considerations such as: whether there was a CFO on the site on January 1, 2002, and if so, what categories and types of livestock the operation was feeding on January 1, 2002. A grandfathering determination does not make findings of the status of the operation on the day the grandfathering determination is made. The current status of the operation "today," however, is likely to provide valuable information that an operator or potential lender, seller, or purchaser would like to know.

Determining the current status of a confined feeding operation, including whether a deemed permit in 2002 is still the same deemed permit today, may require decisions related to abandonment, disturbance or alteration of facilities or CFOs occurring between 2002 and "today" (i.e. the date of the grandfathering determination).

9.1 Facilities or CFOs that have been abandoned

This issue is whether, at some point between 2002 and "today" (i.e. the date of grandfathering determination), the CFO or manure storage facility has been abandoned.

In a decision concerning a grandfathered (deemed) permit determination (RFR 2020-04 *Stant Enterprises Ltd.*), the Board implied that where 18 years have passed since the time window used in a grandfathering, it may be appropriate to evaluate a question of abandonment.

Assessing abandonment is not a prescribed process in AOPA. Rather, it is a possible basis for cancelling a permit. Under section 29(1)(b) of AOPA, the Board (or an inspector or approval officer with delegated authority) may cancel a permit if the confined feeding operation, manure storage facility, or manure collection area to which the permit relates "is abandoned." The authority to cancel a permit under section 29(1)(b) applies equally to cancelling a grandfathered permit.

NRCB Operational Policy 2016-3: Permit Cancellations under AOPA Section 29 provides guidance on whether an operation or facility has been abandoned, and if so, whether to cancel a permit for that operation or facility. Some key principles from that policy include:

1. Various factors need to be considered when assessing whether an operation (or facility) has been abandoned.
2. The owner's intent regarding future use is a key factor.
3. An approval officer may amend the permit rather than cancelling it if only part of an operation has been abandoned.

Field services staff bear the burden to establish that an operation (or facility) has been abandoned.

9.2 Deemed facilities that have been disturbed or altered since 2002

Facilities that are deemed to have an AOPA permit retain that deemed status only as long as the essential conditions of those facilities remain as they were on January 1, 2002. The policy objective behind grandfathering is to protect legitimate expectations and reduce unfairness to operators who did not receive adequate notice of AOPA Part 2 from being expected to conform to the “new” standards. When AOPA was being developed, the expectation was that, over time, older facilities would adhere to AOPA’s requirements as they were upgraded or replaced. The idea is that, prior to AOPA, operators made their investment decisions on the basis of the rules as they stood at the time, and that it would be unfair to subject those operators to the new rules.

If an operator substantially changes the liner of a grandfathered manure storage facility or collection area, then the policy objective behind grandfathering that liner is erased. In addition, as a general rule, if a deemed facility is changed in a way that constitutes “construction” under AOPA, including the NRCB’s interpretation, then that facility will lose its deemed status. This rule applies even where the “construction” does not alter the existing liner (e.g. but where capacity of manure storage or collection increases). Further explanation of what constitutes “construction” is provided in NRCB Operational Policy 2012-1: Unauthorized Construction, and Livestock Pen Floor Repair and Maintenance Fact Sheet.

See example: Board decision RFR 2019-04 *Sundown Feeders*.

Appendix A: Scenarios where physical capacity method is appropriate even with a municipal permit

Scenario 1: The municipal permits only cover facilities that were built closer to 2002 (newer facilities)

The CFO was originally constructed without a municipal permit because the municipality did not have a permit requirement at that time. After the permit requirement was adopted, the CFO obtained a municipal permit specifically for a new facility or other modification or expansion to the original CFO. The municipal permit was therefore not meant to cover all of the facilities that the CFO had before the permit was issued. (In some cases, the municipal permit for the new facility also referred to the CFO's total capacity with the new facility. However, in some of these cases, the wording and history of the permit suggest that the capacity reference was intended more for descriptive purposes than as a regulatory limit on the CFO's total capacity.)

- Use physical capacity method consistent with evidence

Scenario 2: The municipal permits cover only facilities that were built long ago (older facilities)

In this case, the municipality dropped or waived its permitting requirement for CFO expansions or modifications that were made after the CFO was originally permitted.

- Use physical capacity method consistent with evidence

Scenario 3: The CFO owner constructed facilities or added livestock numbers beyond those authorized by the municipal permit.

In the NRCB's experience, municipal enforcement of these permit requirements varied widely. In many instances, the municipality did not appear to have vigorously enforced its permit requirement when such construction or expansion occurred.

- Use physical capacity method consistent with evidence

Scenario 4: As of January 1, 2002, a CFO's municipally permitted facilities were physically capable of confining more livestock than the total number allowed by its permit. In some instances, these CFOs were actually confining and feeding more livestock than their permitted number on January 1, 2002. In other instances, CFOs had stayed below their permitted maximum of livestock, but are now requesting a deemed capacity based on their physical capacity.

- Use physical capacity method consistent with evidence

Contact the Natural Resources Conservation Board at the following offices. Dial 310-0000 to be connected toll free.

Edmonton Office

4th Floor, Sterling Place
9940 - 106 Street
Edmonton AB T5K 2N2
T 780-422-1977

Airdrie Office

Airdrie Agriculture Regional Centre
97 East Lake Ramp NE
Airdrie AB T4A 0C3
T 403-340-5241

Lethbridge Office

Agriculture Centre
100, 5401 - 1 Avenue S
Lethbridge AB T1J 4V6
T 403-381-5166

Morinville Office

Provincial Building
201, 10008 - 107 Street
Morinville AB T8R 1L3
T 780-939-1212

Red Deer Office

Provincial Building
303, 4920 - 51 Street
Red Deer AB T4N 6K8
T 403-340-5241

NRCB Reporting Line: 1-866-383-6722

Email: info@nrcb.ca

Web address: www.nrcb.ca

Copies of the *Agricultural Operation Practices Act* can be obtained from the King's Printer at www.kings-printer.alberta.ca or through the NRCB website.

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From: [Tracey Krenn](#)
To: [REDACTED]
Cc: [Carolyn Taylor](#)
Subject: PB24003 - Notice of a Grandfathered (Deemed) Permit Determination Request Urichuk Farms Ltd. - NW03-55-15-W4M
Date: August 20, 2024 11:37:58 AM
Attachments: [Grandfathering Program Information Package FAQs.pdf](#)
[Grandfathering \(Deemed Permit\) Operational Policy 2023-1.pdf](#)

Good morning Bill & Sharon,

Thank you for response August 16, 2024, regarding Urichuk Farms Ltd. Grandfathering Determination. As part of my investigation, I will be addressing the operation's deemed capacity and footprint as they existed on or about January 1, 2002, when the Agricultural Operation Practices Act (AOPA) came into effect. In addition, the state and cost of repair of the facility will be addressed in Section 6.1 Abandonment of the final Decision Report.

Whether new or existing, any livestock operation (CFO) is required to ensure it does not pose a risk to the environment. In accordance with the NRCB's Grandfathering (Deemed Permit) Operational Policy 2023-1, if an existing facility poses a risk to the environment, it will be addressed by NRCB Compliance in accordance with the Compliance and Enforcement Operational Policy 2016-8, independent of the grandfathering determination.

The NRCB may investigate any risk to the environment or inappropriate disturbance or require action to be taken to mitigate the risk, as determined by the NRCB.

Please provide the approximate location of the manure windrows so that a complaint file can be opened, and your concern can be investigated. Please forward the information to tracey.krenn@nrcb.ca.

For your reference I have attached the Formal Grandfathering Determinations Frequently Asked Questions and the NRCB Grandfathering (Deemed Permit) Operational Policy 2023-1.

Kind regards,

Tracey Krenn

Inspector

Natural Resources Conservation Board

#303, 4920 – 51st Street

Red Deer, AB T4N 6K8

Tel: 403-318-8199

Email: tracey.krenn@nrcb.ca

Website: www.nrcb.ca

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Formal Grandfathering Determinations

Frequently Asked Questions

1. What does it mean to be grandfathered?

If a confined feeding operation existed before January 1, 2002, when the *Agricultural Operation Practices Act* (AOPA) came into effect, the owner or operator of the operation is deemed to have been issued a permit—in other words the operation is considered to be grandfathered—under section 18.1 of AOPA.

2. What is a formal grandfathering determination?

A formal grandfathering determination is the process through which NRCB staff investigate what your operation's deemed capacity and footprint were on January 1, 2002 when AOPA came into effect. The process can take up to eight months when the NRCB does not have dedicated resources in place to assist with grandfathering determinations.

3. When I read the legislation, it looks like my operation is already considered grandfathered. So why do I need a formal grandfathering determination from the NRCB?

Even if your operation is considered grandfathered under section 18.1 of AOPA, your status and permitted livestock numbers and facilities might not be on your municipal permit, your operation might not have a previously issued permit, or there may have been changes to your operation since 2002. If this is the case, you have nothing official to provide a bank or a prospective buyer if you are seeking to refinance, expand, or sell your operation. Having the NRCB make a formal grandfathering determination to confirm your permitted livestock numbers ensures that your grandfathered status is verified and documented. This includes confirming the permitted livestock type, number of livestock, and CFO facilities at your operation.

4. What are the benefits of being formally grandfathered?

Official confirmation of your grandfathered status helps to protect your confined feeding operation should zoning or planning changes occur in your municipality. It also confirms the status of your confined feeding operation in case a financial institution requests confirmation of your permit status, or you want to sell your operation.

5. How do I go about seeking a formal grandfathering determination?

Fill out and submit a Grandfathering Determination Request form, obtained from an NRCB staff member or on the NRCB website, including your name, land location, existing permits, and the livestock type and capacity of your CFO facilities on January 1, 2002 that you are claiming. You should also include any records you have to support your claim. These can include aerial imagery, personal photos, livestock purchase records, livestock sales records, tax records, feed purchase records, etc. Once the NRCB receives this form and supporting information, a staff member will be assigned to work with you throughout the process to confirm your claims. Public notice may also be required as part of the process.

6. If I request a formal grandfathering, won't that open me up to excessive regulation from the NRCB?

No. This program is NOT intended as a means to identify and punish older operations. The program is intended to help operators obtain important documentation in case they need to sell, refinance, or expand their operations, and to confirm their status before more time passes and records from pre-2002 become even more difficult to find.

7. I'm already grandfathered. Could anything invalidate my operation's status?

If your operation was abandoned, if you constructed or modified it without a permit, or if you are creating a risk to the environment it could invalidate all or part of your grandfathered status.

8. What are my rights and obligations under AOPA as a grandfathered operation?

All livestock operations, including grandfathered confined feeding operations must manage their manure, any manure runoff, and keep records in compliance with the legislation. Grandfathered operations must also ensure that the operation's footprint, livestock capacity, manure storage capacity, and livestock category are the same as they were on January 1, 2002, and don't create a risk to the environment.

9. My operation is grandfathered. What limitations are there for expanding?

Your operation can continue to operate as it did in 2002, as long as you don't make any changes that would require a permit (extra pens, barn additions, increased manure storage, or increases in animal numbers) or create a risk to the environment (contamination of groundwater or surface water). If you do any of these things, you will need to speak to the NRCB about a new permit. If you want to expand your operation you will need to meet the requirements set out in AOPA for any new or expanding facilities.

10. How do I know whether I'm already grandfathered?

The best way to check whether your operation is already grandfathered is to contact the NRCB regional office closest to you and talk to an NRCB inspector or approval officer.

11. What happens if I expanded my operation since 2002?

The NRCB's goal is to bring operations into compliance with the AOPA requirements. NRCB staff will work with you to get through the permit application process if it is determined that you need a permit for any changes made to your operation since 2002.



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GRANDFATHERING (DEEMED PERMIT)

Operational Policy 2023-1

Agricultural Operation Practices Act
April 3, 2023

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1.0 Definitions

The terms “**deemed**” and “**grandfathered**” are interchangeable in this policy.

References to “**capacity**” in this policy, in relation to deemed approvals and registrations, refer to a confined feeding operation’s (CFO’s) livestock numbers, not to the scope of the CFO’s facilities. “Capacity” in relation to deemed authorizations means volume for liquid manure storage and tonnage for solid manure storage.

“**Confined feeding operation**” means fenced or enclosed land or buildings where livestock 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 residences, livestock seasonal feeding and bedding sites, equestrian stables, auction markets, race tracks, or exhibition grounds (section 1(b.6) of the *Agricultural Operation Practices Act* (AOPA)).

The term “**deemed capacity**” refers to the maximum number of livestock, or maximum volume or tonnage of manure storage, allowed by a CFO’s deemed permit as determined under section 18.1(2) of AOPA.

“**Deemed approval, registration, or authorization**” refers to a permit held by the owner or operator of a CFO or manure storage facility (MSF) that is grandfathered under section 18.1(1) of AOPA.

“**Field services staff**” for the purposes of this policy means an NRCB-appointed approval officer or inspector (see [section 2.4](#) of this policy).

“**Grandfathered CFO footprint**” means the dimensions of the entire CFO including all MSFs or manure collection areas (MCAs) that held a municipal development (MD) permit, or existed on January 1, 2002.

“**Grandfathered facility**” means an MSF or MCA that is covered by an MD permit, or existed on January 1, 2002 at above AOPA thresholds, with identified dimensions.

“**Manure collection area**” (MCA) means the floor of a barn, the under-floor pits of a barn, the floor of a feedlot pen, and a catch basin where manure collects, but does not include the floor of a livestock corral.

“**Manure storage facility**” (MSF) means a facility for the storage of manure, composting materials, and compost, and a facility for composting, but does not include such a facility at an equestrian stable, an auction market, a race track, or exhibition grounds.

“**MD permit**” means a municipal development permit, or a licence, permit, or other approval issued under the *Public Health Act*.

“**Physical capacity**” refers to the number of livestock that a CFO can confine and feed based on the capacity of the enclosures to confine livestock.

2.0 Introduction

2.1 Purpose

The purpose of this policy is to guide participants in grandfathering determinations under AOPA. The frequency and complexity of grandfathering determinations have increased in recent years, as we move further away from January 1, 2002. While the process of determining a grandfathered (deemed) permit under AOPA is unchanged, the documentation involved in the process has evolved.

This policy combines the substance of two previous grandfathering policies, and fills in policy and procedural gaps that have become evident. A goal of operational policies is to contribute to transparency in how the NRCB administers AOPA. A single, comprehensive policy on grandfathering determinations enhances consistent decision-making among NRCB approval officers and inspectors. This policy also aims to streamline the grandfathering process.

In enacting this policy, the NRCB is repealing Operational Policy 2016-6 Public Notice for Grandfathering Decisions, and Operational Policy 2016-5 Determining Deemed Capacity for Grandfathered Confined Feeding Operations.

2.2 Historical background

When Part 2 of the AOPA came into force on January 1, 2002, the grandfathering of CFOs was a transitional matter in the legislation that enacted Part 2 (*AOP Amendment Act, 2001*). At that time, in brief, if a confined feeding operation did not hold a MD permit as of January 1, 2002, the new standards under Part 2 of AOPA applied to that operation (in terms of permits), but only when the operation expanded.

In 2004, section 18.1 was added to AOPA to provide for deemed permits where a confined feeding operation held an MD permit on January 1, 2002, or where it did not have a permit but “existed.” There is no end point to the operation of section 18.1. As a result, CFOs or manure storage facilities (MSFs) that existed or had a permit on January 1, 2002 are still eligible to be “grandfathered” today.

For many years, the NRCB Board had no jurisdiction to hear a dispute over grandfathering determinations, and a party could only seek a remedy at the Court of Queen’s (King’s) Bench. In a 2012 judicial review of a grandfathering determination, *Unland v Natural Resources Conservation Board*, 2012 ABQB 501, the Court of Queen’s Bench stated that an NRCB grandfathering investigation must be thorough, objective, and supported with written reasons.

In 2017, the Natural Resources Conservation Board (NRCB) Board added section 11 to its AOPA Administrative Procedures Regulation, to provide some guidance on authority and procedure for grandfathering determinations. The Regulation also provided a way to dispute a grandfathering determination at the NRCB Board, instead of in court. Since section 11 was added, the Board has treated grandfathering determinations somewhat like permit applications – e.g. the notice procedure for grandfathering determinations uses AOPA’s application notice procedures. However, because grandfathering determinations determine the state of affairs at January 1, 2002, they require findings of fact that are not part of AOPA permit applications.

2.3 Current context

Grandfathering is generally how legislation exempts existing operations from new regulatory requirements. Lawmakers typically create “grandfathering” exceptions in order to respect prior policies and regulations that generated legitimate expectations and to avoid unfairness for investors who expected a specific regulatory regime.

AOPA recognizes CFOs and MSFs that held an MD permit, or that existed, on January 1, 2002. The owners or operators of those facilities are “deemed” to hold a permit under AOPA. Before that date, CFOs and MSFs were regulated by municipalities or under the *Public Health Act*.

Section 18.1 of AOPA addresses the grandfathering of CFOs in essentially two steps:

1. Section 18.1(1) lists three categories of CFOs (or MSFs) that are considered to have a “deemed” (i.e., grandfathered) approval, registration, or authorization under AOPA.

2. Sections 18.1(2) and (3) state how grandfathered “capacity” is to be determined for each of the three categories described in section 18.1(1).

In a grandfathering determination, an NRCB field services staff will need to address the following questions regarding the state of the site on January 1, 2002:

1. Was the operation a “confined feeding operation” or something else (e.g. a seasonal feeding and bedding site, a cow/calf site)?
2. Was the operation operating at, or permitted for, livestock numbers that exceeded the thresholds in AOPA for requiring a permit?
3. What, if any, permits or licences did the operation hold (or had pending applications for)?
4. What facilities (manure storage facilities or manure collection areas) existed, or were permitted?
5. What was the footprint of the CFO or MSF?
6. What category(ies) of livestock was the CFO confining and feeding, or permitted to confine and feed? What type(s) of livestock in that category? What livestock numbers were permitted or being held for each type of livestock?
7. How were the facilities being used?

In the case of a grandfathering determination requested by an operator or landowner, the onus is on the operator or landowner to provide sufficient evidence to support their claim. The operator has the responsibility to locate and provide records and other evidence to meet the standard of proof for each relevant fact. The standard of proof is on a balance of probabilities (more likely than not). Field services staff may ask clarifying questions and seek particular documents (see [section 6, Investigation](#), below). The quantity, quality, and type of records and other supportive evidence required to meet the onus will vary from case to case. If the grandfathering determination is not being requested by the landowner or operator, the inspector will notify both the landowner and operator to give them an opportunity to provide input and evidence.

The NRCB recognizes the inherent difficulties in grandfathering investigations and determinations. With the passage of time since January 1, 2002, the likelihood of locating records and the reliability of witness evidence fades. Some municipalities have not retained their records. Some operations have changed ownership and relevant records may not have accompanied the shift in owners. Some neighbours who lived near the operation in 2002 may no longer live there. These issues naturally present increasing challenges not just to operators, but also to neighbours, municipalities, and NRCB field services staff.

As with all operational policies, field services staff have discretion to deviate from this policy when its strict application would be clearly unfair, or in other necessary and appropriate circumstances. However, field services staff may wish to seek guidance from management before deviating from this policy. If they do choose to deviate from this policy, field services staff should provide written reasons to support their approach.

2.4 Who can make grandfathering decisions

Historically, both NRCB approval officers and inspectors have made grandfathering determinations under AOPA.

However, section 11(1) of the AOPA Administrative Procedures Regulation calls specifically on NRCB “inspectors” to make those determinations. Sections 11(2), (4), (5), and (8) repeat this reference to NRCB inspectors. By contrast, section 11(3) refers to NRCB approval officers, rather than inspectors. That provision deals with deciding whether to waive the notice process in section 11. However, it may be impractical for approval officers to make those waiver decisions, but no other decisions relating to grandfathering.

In practice, NRCB approval officers are all cross-appointed as inspectors (and vice versa). Accordingly, the regulation's primary focus on inspectors also includes approval officers. The NRCB interprets section 11 as intending to empower both inspectors and approval officers to make grandfathering determinations required by that section, and all references below to NRCB inspectors include approval officers.

As for division of tasks on a given grandfathering determination, if a grandfathering determination is:

1. associated with an application = approval officer
2. not associated with an application and there are no NRCB-issued permits = inspector
3. not associated with an application, has received NRCB permits in the past (including authorizations) and the approval officer is still in an active role = the approval officer, though they may consult with the inspector if the inspector has more recent interactions with the operation. If the approval officer is not still in an active role = inspector.

3.0 Types of grandfathering determinations

Field services staff may issue a grandfathering determination in the following three ways:

3.1 In conjunction with an approval or registration application

Type of trigger – approval or registration application for CFO expansion where:

1. the application is likely to be denied, and the operator seeks assurance of what capacity and facilities the operation is currently permitted for
2. there is a dispute about whether construction is unauthorized (i.e. built after January 1, 2002 without a permit)
3. it is necessary to determine which existing facilities or footprint are grandfathered and exempt from having to meet AOPA regulations (section 20(1.2) and 22(2.2) of AOPA).

In those contexts, the NRCB has historically addressed grandfathering through the NRCB's permitting process.

A key feature of this process is that applications for approvals and registrations are subject to public notice and provide an opportunity for municipalities and other directly affected parties to submit written comments. Public notice for the grandfathering determination runs simultaneously with public notice for the application. Directly affected parties may submit a request to the NRCB's Board to review permit decisions issued by approval officers. Under section 11(7) of the Administrative Procedures Regulation, this right also exists for seeking review of grandfathering determinations on which those permit decisions are based.

3.2 In conjunction with an authorization application

Type of trigger – authorization application for a facility at an existing CFO with a deemed permit where:

1. an approval officer needs to verify what the operator is claiming, to determine minimum distance separation (MDS) at a CFO or MSF, where the proposed MSF or MCA is moving closer to a neighbouring residence, or
2. an approval officer is uncertain whether the CFO was over threshold on January 1, 2002 and therefore would have required a permit under AOPA.

Sometimes CFO owners apply for authorizations to modify their CFOs, when the NRCB has not previously permitted those CFOs or determined that the CFOs are grandfathered. In these instances, the NRCB may need to determine whether the CFO is grandfathered before deciding whether to issue the authorization. This grandfathering determination may be needed

because the NRCB only issues authorizations to NRCB-permitted operations and to operations that have a deemed permit under section 18.1 of AOPA.

Until the NRCB adopted the original version of the Public Notice for Grandfathering Decisions policy in 2016 (Operational Policy 2016-6), approval officers made the grandfathering determination as part of their process for deciding whether to issue the authorization. However, AOPA does not require public notice or an opportunity for affected individuals to comment on authorization applications. In this way, the consolidated approach effectively precluded public notice and participation in the related grandfathering decisions.

The 2016 policy outlined how approval officers should use the public notice process for grandfathering determinations. Since June 2017, section 11 of the AOPA Administrative Procedures Regulation for grandfathering decisions has codified this approach.

3.3 As a stand-alone grandfathering decision

“Stand-alone” grandfathering determinations are those investigated and made in a context other than part of a permit application.

Types of trigger:

1. a request by the owner or operator of a CFO or MSF for a grandfathering determination
2. a complaint where determination of the existence of a deemed permit – or the terms and conditions of a deemed permit – is required for the NRCB to respond to the complaint
3. a question whether the operation requires an AOPA permit or not – in other words, whether the operation was above threshold on January 1, 2002
4. a dispute about construction being unauthorized (i.e. built after January 1, 2002 without a permit); an inspector may need to resolve what is grandfathered and what is unauthorized (not grandfathered) in the context of whether to assess an existing facility’s risk to the environment or to require a permit, or
5. a question about sufficiency of manure storage capacity or a manure handling plan.

An inspector will use their judgment to determine whether all parts of a grandfathering determination are required to respond to the complaint.

Lenders, prospective CFO buyers, or municipalities may ask the NRCB to make a grandfathering determination for purposes of financial contingencies or land use planning. Under these circumstances, field services staff will only make a grandfathering determination in response to a request made directly by a CFO owner or operator, or when a CFO owner (or landowner) consents to a request made by a lender, buyer, or municipality.

4.0 Initiating the grandfathering process

Prior to initiating a grandfathering determination, field services staff may wish to obtain the following information:

1. legal land description(s) of the facility or operation to be grandfathered
2. corporate name of the operator (if applicable)
3. landowner name(s)
4. operator name(s), if different from landowner names. Note, if an operator is requesting a grandfathering determination and the operator is not listed on the land title then consent from the landowner must be given
5. categories and types of livestock being confined in 2002
6. number of livestock being confined in 2002
7. a list of all MSFs or MCAs associated with the operation
8. supporting documentation (see records section at [section 7.1](#) of this policy below)

4.1 Preliminary deemed capacity estimate (no claim from owner/operator)

The NRCB Board has recognized that grandfathering determinations may be resource- and time-intensive (RFR 2021-08 / EO 21-01 Schooten and Sons at page 8). In the absence of a claim from the owner or operator, it is sometimes difficult for field services staff to identify the claimed capacity for the public notice of a grandfathering determination. It is also difficult for NRCB inspectors to address an overpopulation complaint in a timely way without knowing the (deemed) permitted capacity of the CFO.

As such, it may be helpful for field services staff to conduct a preliminary assessment to estimate the deemed capacity of a CFO or MSF. This preliminary assessment may be based on:

1. conversations or correspondence with the operator
2. existing MD permits, and other permits or documents that might mention capacity (e.g. water licensing), from the NRCB CFO database and hard copy file
3. aerial photos or satellite imagery of the site around January 1, 2002. For example, field services staff may be able to estimate rough square footage of the footprint and facilities using GeoCortex or Google Earth
4. applying the rough square footage of the footprint in the Agdex 096-81: Calculator for Determining Livestock Capacity for Operations as they Existed on January 1, 2002, and
5. site inspection to determine what facilities appear to have been built pre-2002 and what facilities appear to have been constructed or altered post-2002.

In general, field services staff use this information to develop a preliminary estimate of deemed capacity. Field services staff communicate the preliminary estimate to the operator, and the operator may agree or disagree with it. If the operator agrees, field services staff will use the estimated capacity for the public notice (and may use that capacity as foundation for compliance action in relation to an overpopulation complaint). If the operator disagrees, field services staff will use the larger capacity in the public notice. Either way, field services staff will proceed with a grandfathering determination under the following procedures.

5.0 Public notice

5.1 When public notice is required

Public notice of a grandfathering determination is required if the situation does not fall into either of the two exceptions discussed below ([section 5.2](#)).

The following procedures are in addition to, and consistent with, those set out in section 11 of the AOPA Administrative Procedures Regulation. They apply when public notice is required.

If the grandfathering determination is part of an expansion application (i.e. an approval or registration), notice of the grandfathering determination should be combined with notice of the application to expand. If the grandfathering determination is part of an authorization application or conducted as a stand-alone process, and does not meet the exceptions outlined in [section 5.2.](#), then public notice is required.

5.1.1 What must be included in the public notice

All public notices must identify the location and the CFO or MSF being claimed as grandfathered, as required in subsection 11(4) of the AOPA Administrative Procedures Regulation. Subsection 11(4) prescribes the content of notices, including when responses are due, and any other matters field services staff deem appropriate

to include in a notice. In addition to covering the subjects listed in subsection 11(4), the notice will state that all responses will be treated as non-confidential.

For a stand-alone grandfathering determination of a CFO, the public notice, when required, must also include a number and type of livestock that is being claimed. If the operator does not specify a claimed number and type of livestock, the field services staff may do a preliminary deemed capacity assessment ([section 4.1](#)).

If the deemed capacity at the end of the investigation is determined to be lower than the capacity in the public notice, there is no need to re-publish a notice. If the deemed capacity is determined to be higher, notice may need to be re-published.

For grandfathering determinations associated with an approval, registration, or authorization application, public notice should include the fact of a grandfathering claim as part of the application and the type of livestock claimed. The claimed livestock capacity is optional for the notice.

For grandfathering of a manure storage facility only, notice to affected parties under AOPA must include the dimensions of the facility being claimed as grandfathered, and type of manure stored in the facility.

5.1.2 Method of notice

Field services staff will adopt the process for notification used in applications under sections 19 and 21 of AOPA, and as further explained in NRCB Operational Policy 2016-7: Approvals.

Section 31 of the AOPA Administrative Procedures Regulation gives field services staff several options for deciding how to provide notice, when notice is required.

5.1.3 Who must be notified

Field services staff inform the municipality in which the operation is located that the operation has requested the NRCB to conduct a grandfathering determination. This notification may act as notice to the municipality as a directly affected party. At this time, field services staff should determine if public notice is required as mentioned above.

Section 11(2) of the AOPA Administrative Procedures Regulation directs notice be given to

those parties who would be entitled to notice under section 19(1) or 21(1) of ... [AOPA] for a new manure storage facility or confined feeding operation with the same capacity.

Sections 19(1) and 21(1) of AOPA (and the Part 2 Matters Regulation that they refer to, in turn) define the scope of “affected parties” that are entitled to notice of AOPA permit applications. For approval and registration applications, affected parties include owners of and residents on land within a prescribed distance from the proposed development. The prescribed notification distance is derived from a formula that is based on the requested category, number, and type of livestock. For authorization applications, affected parties will include the local municipality as well as any other municipalities that are “affected” under the Part 2 Matters Regulation.

Solely for the purpose of determining the notification distance, approval officers and inspectors will base the CFO's "capacity" on the largest of the following three numbers:

1. the deemed capacity claimed by the CFO owner
2. the estimated capacity determined by field services staff, or
3. the CFO's current physical capacity.

To determine who owns land or resides within this distance, the NRCB will follow the same process as that used for permit applications according to NRCB Operational Policy 2016-7: Approvals.

5.2 When public notice is not required

5.2.1 Existing MD permits

Public notice is not required if an MD permit pre-dates January 1, 2002 and specifies the capacity and livestock type. The AOPA Administrative Procedures Regulation considers it unnecessary to solicit public input for a CFO constructed "pursuant to a [pre-2002] development permit" when the permit resolved all relevant issues as to the CFO's deemed capacity. Under section 11(2) of the Regulation, notice is not required for that situation.

An MD permit for a CFO is considered a "deemed" permit under section 18.1(1) of AOPA, if the permit was issued before January 1, 2002, and if the livestock capacity allowed by the MD permit is greater than the AOPA permit threshold. In this case, the MD permit will be recognized as an AOPA permit effectively issued by the NRCB.

If the operator does not dispute the capacity authorized in the MD permit, then a grandfathering determination is not required.

In the following circumstances, however, notice for a CFO with an MD permit may be required:

1. if the MD permit does not state the CFO's capacity, or livestock category and type, and the NRCB must make a deemed capacity determination, or
2. if the CFO owner claims a grandfathered capacity that is greater than the capacity stated in their MD permit.

5.2.2 Notice waived for indoor CFOs (with or without MD permit)

The purpose of the waiver of notice in section 11(3) of the AOPA Administrative Procedures Regulation is to create a shortcut for those operations where it is plain what was permitted or what existed in 2002, and public notice will not elicit any useful information. The reason for this approach is that, in the NRCB's view, it is generally much easier for staff to make the necessary factual determinations for indoor facilities than for outdoor pens, based on site visits, aerial photos, and other available records. These facts relate essentially to whether CFO facilities existed on January 1, 2002, their dimensions, their physical capacity, and how they were being used. The exception for indoor CFOs is discretionary under section 11(3) of the Regulation.

Many CFOs with indoor barns (e.g. dairy) for their primary livestock also have some outdoor pens for replacement or other ancillary livestock, or for temporary confinement of their primary livestock.

Given this reality, the NRCB interprets the reference to "indoor" CFOs in section 11(3) as referring to the primary CFO facilities for confining and feeding livestock. If those

primary facilities are indoor, the NRCB will treat the entire CFO as indoor for purposes of this subsection.

Section 11(3) states that field services staff may exercise discretion to waive public notice if, at a minimum, the livestock type and capacity of the structures can be reliably determined by viewing historical aerial photographs and owner/operator records.

For example, waiving public notice for a dairy may be appropriate under the following circumstances:

1. There is reason to believe that the facilities and the number of stalls counted today are the same as what existed on January 1, 2002.
2. Information is available about the practices on January 1, 2002. E.g. if it is obvious where a dairy kept their dries and replacements in 2002.
3. The dairy is predominantly indoor.
4. Historical aerial photographs support the claim of both capacity and type.
5. Records from the owner/operator support the claim of both capacity and type. These records may include milking records, testimonials from neighbours or employees, photographs inside the facilities, etc.

A waiver of public notice means neighbours will not have an opportunity to provide evidence or submissions relating to the grandfathering investigation.

Accordingly, if field services staff decide to waive public notice under section 11(3) of the Regulation, the reasons for the waiver should be clearly set out in the grandfathering decision report or the Decision Summary, as applicable.

6.0 Grandfathering investigation

The following subsections apply to both application-related and stand-alone grandfathering investigations.

The investigation focuses on facts as they existed on January 1, 2002. However, the NRCB generally uses a pragmatic and flexible approach toward applying the January 1, 2002 grandfathering date. Field services staff may seek evidence about the operation between 2000 and 2004, acknowledging that the range is not meant to re-define the January 1, 2002 date in section 18.1 of AOPA.

Considering the operational details for two years before and two years past the January 1, 2002 grandfathering date may be useful if witnesses do not remember what occurred on the exact date of January 1, 2002. Also, considering how an operation functioned over a range of dates might provide additional context for typical daily operational functions.

This approach is reasonable because a more rigid or stricter application of the January 1, 2002 grandfathering date could lead to unfair results. For example, if on January 1, 2002 an operation happened to have emptied its enclosures, had temporarily shut down, or were partway through rebuilding or constructing the enclosures on that date, the capacity of the CFO may not be representative of the typical daily operations during that period. The 2000 to 2004 range is meant to generate sufficient evidence to apply this pragmatic and flexible approach.

If the grandfathering determination is being completed in response to a complaint and is not being requested by the landowner or operator, notification regarding the grandfathering determination must be sent to both the landowner and operator. In this way, the landowner or operator will still have an opportunity to provide field services staff with input and evidence.

6.1 Record collection

6.1.1 Operator records

Since the onus is on the operator or owner to establish the likelihood of their claimed capacity, the operator or owner requesting a grandfathering determination should provide records that support their claim in the grandfathering request. These may include, but are not limited to:

1. milking records
2. shipping and handling records (purchase or sale receipts)
3. feeding records or receipts
4. water licences and/or registrations
5. municipal permits
6. certificate of compliance (e.g. Alberta Agriculture)
7. aerial photographs
8. ownership records
9. site plans or drawings
10. livestock nutrition or veterinarian records
11. testimonials from operators and third parties
12. calving and breeding records
13. income tax records (year ending inventories)
14. government program records
15. premise ID records
16. daily journals

Sometimes a record from the past (e.g. inspection report, letter, part of a decision summary) indicates a grandfathering determination was previously done by the NRCB. Even if not in a formal report form, the previous NRCB determination is valid. However, sometimes a partial supplemental determination may be required – for example, to determine the deemed footprint or facilities.

6.1.2 Field services review

The following records, if available, may assist NRCB field services staff in making a grandfathering determination:

1. land title search
2. corporate search
3. historical municipal records (development permit application forms)
4. aerial photographs (Google Earth Imagery, GeoCortex, County/MD, etc.)
5. historical NRCB records (hard copy and database entries), including correspondence relating to CFO status
6. Alberta Environment and Protected Areas records (water well licensing)
7. records from a site inspection (see [Section 6.2 Site inspection](#) for more details)
8. records from an operator interview (if applicable); the interview may be recorded and should have two field services staff present
9. Agriculture and Irrigation records (dairy inspection records, cattle feeders' records)
10. *Public Health Act* licences, permits, or approvals
11. records from livestock industry associations

6.2 Site inspection

NRCB field services will conduct a site inspection with the operator to gather information about the operation as it existed in 2002 such as:

1. grandfathered CFO footprint (based off aerial photos, drawings)
2. facilities in operation (based off aerial photos, drawings, or other evidence)
3. permanent vs. temporary infrastructure, such as feed bunks and watering stations
4. infrastructure inside facilities, and condition of existing infrastructure (does it look as if it was constructed pre-2002?)
5. pit wells, pumphouses
6. location of fences over time
7. alteration (interior or exterior) or abandonment of facilities
8. water wells (e.g. stock vs. domestic use)
9. number of stalls for dairy barns
10. management practices (e.g. free range birds with access to the outside)
11. feeding practices (e.g. CFO vs seasonal feeding and bedding site (SFBS))
12. air photographs to assess whether any unauthorized construction occurred since January 2002
13. handling and processing facilities
14. feeding regime (permanent feed bunks vs portable round bale feeders)

Field services staff will interview the operator in conjunction with the site inspection. The interview can be informal or formal, though it will be more formal when there is little or no documentation, or where there is conflicting evidence.

6.2.1 Outdoor facilities at CFOs

When investigating outdoor facilities at CFOs, field services staff will also consider whether the operation was an SFBS, solely a cow/calf operation, or a CFO on January 1, 2002. See:

- a. Operational Policy 2015-2: Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (for Cattle Operations);
- b. Operational Guideline 2019-1: Sheep Confined Feeding Operation Determinations; and
- c. Operational Guideline 2016-9: Meat Goat CFO Determinations

In the absence of certainty over whether an operation was an SFBS, cow/calf operation, or CFO in 2002, the NRCB will use current standards to make this determination.

6.2.2 Environmental risk assessment

While at the site, field services staff will take the opportunity to gather information about potential risks posed by existing MSFs and MCAs to groundwater and surface water. Generally, field services staff use the NRCB's Environmental Risk Screening Tool (ERST) to assess site-specific risks. Field services staff will also use their professional judgment, and may wish to access the expertise of the NRCB's Science and Technology division when assessing risks to the environment.

If an existing facility poses a risk to the environment, then:

1. the permit may include conditions to address the risk following NRCB policy if the grandfathering determination is part of an application for an approval, registration, or authorization, or
2. the risk will be identified to NRCB compliance for follow up under NRCB policy if it is a stand-alone or complaint-triggered grandfathering determination.

6.3 Determining capacity

6.3.1 Permitted capacity

An MD permit for a CFO is considered a “deemed” permit under section 18.1(1) of AOPA, if the permit was issued before January 1, 2002, and if the livestock capacity allowed by the municipal permit is greater than the AOPA permit threshold.

To identify the permitted livestock capacity, field services staff will consider MD permits. The NRCB’s CFO database houses many municipal permitting documents, but may not be exhaustive. For this reason, it may be helpful for field services staff to check hard copy files, and to seek information from the municipality.

Certificates of compliance from government departments are not “development permits” under AOPA and are not themselves a deemed permit. However, the information contained in a certificate of compliance may be helpful in a determination of physical capacity.

6.3.2 Physical capacity

For determining facilities’ capacity under a deemed **approval or registration**, field services staff will determine on a balance of probabilities what the capacity of the enclosures to confine livestock was on January 1, 2002.

Field services staff may also refer to Technical Guideline Agdex 096-81 *Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002*. While this guideline is a tool for determining physical capacity, field services staff have discretion in how they use the tool. For example:

- a. If the operator had a different management practice that doesn’t follow the guideline, discretion can be exercised as long as the rationale is explained.
- b. Field services staff may discount feed alleys, handling facilities, etc. when entering the numbers into the Agdex 096-81 calculator to account for the non-MSF and non-MCA portions of the total area.

The calculator may function as an aid to assessing the reasonableness of a claimed capacity. Operators are encouraged to provide evidence or describe their management practices in 2002 in addition to the results obtained using the Agdex 096-81 calculator and air photos.

For determining the capacity of facilities constructed under a deemed **authorization**, field services staff will consider evidence of the dimensions of MSFs (e.g. historical air photos, liquid levels, operator records), and evidence of manure management practices including the number and type of livestock that produced the manure that was stored at the facility. Field services staff can use Alberta Agriculture and Irrigation’s manure volume storage calculators for verification or supplementary guidance.

For any type of grandfathering determination of physical capacity, another tool is the *Manure Characteristics and Land Base Code* to provide some evidence of manure storage capacity (liquid) by back-calculating land base against claimed capacity. Field services staff may also consider the *2000 Code of Practice for Responsible Livestock Development and Manure Management*.

6.3.3 Determining which capacity method to use

If there is an MD permit that sets out capacity, and if the operator does not claim they are grandfathered at a greater capacity, then the deemed livestock capacity is what is in the permit (“permitted capacity”) under section 18.1(2)(b) of AOPA.

If an MD permit specifies capacity, but the operator claims a grandfathered capacity greater than that specified on the MD permit, then field services staff determine the capacity of the enclosures to confine livestock on January 1, 2002 (“physical capacity”) under section 18.1(2)(a) of AOPA.

If there is no MD permit, then field services staff determine the capacity of the enclosures to confine livestock (“physical capacity”) under section 18.1(2)(a) of AOPA.

See scenarios in [Appendix A](#).

7.0 Grandfathering decision

7.1 When a formal grandfathering report is not needed

It is unnecessary to complete a formal grandfathering report or provide notice for a CFO constructed pursuant to an MD permit issued prior to January 1, 2002, where the MD permit establishes the CFO’s deemed capacity and livestock category and type, and the deemed capacity and animal type match what an operator is claiming. In that situation, field services staff may issue a letter to the operator (with a courtesy letter to the municipality) recognizing the pre-2002 MD permit and the category, type, and capacity set out in that permit as a deemed permit under section 18.1 of AOPA.

7.2 Grandfathering reporting process

Where a written report is required to explain a grandfathering determination, section 11(5) of the AOPA Administrative Procedures Regulation requires that a report state:

1. whether affected parties that made submissions are directly affected
2. whether a deemed permit exists
3. any other terms or conditions included in the deemed permit; this will include terms and conditions deemed to exist under section 18.1(4) and any clarified under section 18.1(5).

Stand-alone grandfathering determinations also may include, but are not limited to, reasoning related to:

1. introduction and background
2. context of the deemed permit determination (legal authority, standard of proof, the process)
3. evidence submitted and considered (operator, municipalities, neighbours, affected persons, and directly affected parties, etc.)
4. findings based on records or inspections – whether the CFO existed; whether above threshold; footprint; capacity; directly affected parties
5. status of the deemed permit today
6. a list of all manure and livestock facilities.

For grandfathering determinations triggered by **approval or registration** applications, the reasoning to support the determination typically appears in an appendix in the decision summary supporting the permit decision. That appendix, in combination with information received from written responses to the application, information in the technical document, measurements from historical aerial photos, and other portions of the decision summary, will provide the basis for the reasons.

For grandfathering determinations triggered by an **authorization** application, the reasoning to support the determination will either appear in an appendix in the decision summary (including reasoning on notice and directly affected parties), or will appear in the form of a stand-alone determination.

Where notice has been waived under section 11(3) of the AOPA Administrative Procedures Regulation, the grandfathering decision report will be sent to the municipality and the applicant, and will be published on the NRCB website.

8.0 Cancelling permits that include grandfathering determinations

On occasion, an approval officer may cancel an NRCB-issued permit, where a grandfathering determination was made as part of the permit application process and explained in the decision summary. In those cases, the CFO's grandfathered status and capacity determination set out in the cancelled permit, or supporting documentation, remain in effect.

9.0 Validity of deemed permit today

A grandfathering determination ascertains factual considerations such as: whether there was a CFO on the site on January 1, 2002, and if so, what categories and types of livestock the operation was feeding on January 1, 2002. A grandfathering determination does not make findings of the status of the operation on the day the grandfathering determination is made. The current status of the operation "today," however, is likely to provide valuable information that an operator or potential lender, seller, or purchaser would like to know.

Determining the current status of a confined feeding operation, including whether a deemed permit in 2002 is still the same deemed permit today, may require decisions related to abandonment, disturbance or alteration of facilities or CFOs occurring between 2002 and "today" (i.e. the date of the grandfathering determination).

9.1 Facilities or CFOs that have been abandoned

This issue is whether, at some point between 2002 and "today" (i.e. the date of grandfathering determination), the CFO or manure storage facility has been abandoned.

In a decision concerning a grandfathered (deemed) permit determination (RFR 2020-04 *Stant Enterprises Ltd.*), the Board implied that where 18 years have passed since the time window used in a grandfathering, it may be appropriate to evaluate a question of abandonment.

Assessing abandonment is not a prescribed process in AOPA. Rather, it is a possible basis for cancelling a permit. Under section 29(1)(b) of AOPA, the Board (or an inspector or approval officer with delegated authority) may cancel a permit if the confined feeding operation, manure storage facility, or manure collection area to which the permit relates "is abandoned." The authority to cancel a permit under section 29(1)(b) applies equally to cancelling a grandfathered permit.

NRCB Operational Policy 2016-3: Permit Cancellations under AOPA Section 29 provides guidance on whether an operation or facility has been abandoned, and if so, whether to cancel a permit for that operation or facility. Some key principles from that policy include:

1. Various factors need to be considered when assessing whether an operation (or facility) has been abandoned.
2. The owner's intent regarding future use is a key factor.
3. An approval officer may amend the permit rather than cancelling it if only part of an operation has been abandoned.

Field services staff bear the burden to establish that an operation (or facility) has been abandoned.

9.2 Deemed facilities that have been disturbed or altered since 2002

Facilities that are deemed to have an AOPA permit retain that deemed status only as long as the essential conditions of those facilities remain as they were on January 1, 2002. The policy objective behind grandfathering is to protect legitimate expectations and reduce unfairness to operators who did not receive adequate notice of AOPA Part 2 from being expected to conform to the “new” standards. When AOPA was being developed, the expectation was that, over time, older facilities would adhere to AOPA’s requirements as they were upgraded or replaced. The idea is that, prior to AOPA, operators made their investment decisions on the basis of the rules as they stood at the time, and that it would be unfair to subject those operators to the new rules.

If an operator substantially changes the liner of a grandfathered manure storage facility or collection area, then the policy objective behind grandfathering that liner is erased. In addition, as a general rule, if a deemed facility is changed in a way that constitutes “construction” under AOPA, including the NRCB’s interpretation, then that facility will lose its deemed status. This rule applies even where the “construction” does not alter the existing liner (e.g. but where capacity of manure storage or collection increases). Further explanation of what constitutes “construction” is provided in NRCB Operational Policy 2012-1: Unauthorized Construction, and Livestock Pen Floor Repair and Maintenance Fact Sheet.

See example: Board decision RFR 2019-04 *Sundown Feeders*.

Appendix A: Scenarios where physical capacity method is appropriate even with a municipal permit

Scenario 1: The municipal permits only cover facilities that were built closer to 2002 (newer facilities)

The CFO was originally constructed without a municipal permit because the municipality did not have a permit requirement at that time. After the permit requirement was adopted, the CFO obtained a municipal permit specifically for a new facility or other modification or expansion to the original CFO. The municipal permit was therefore not meant to cover all of the facilities that the CFO had before the permit was issued. (In some cases, the municipal permit for the new facility also referred to the CFO's total capacity with the new facility. However, in some of these cases, the wording and history of the permit suggest that the capacity reference was intended more for descriptive purposes than as a regulatory limit on the CFO's total capacity.)

- Use physical capacity method consistent with evidence

Scenario 2: The municipal permits cover only facilities that were built long ago (older facilities)

In this case, the municipality dropped or waived its permitting requirement for CFO expansions or modifications that were made after the CFO was originally permitted.

- Use physical capacity method consistent with evidence

Scenario 3: The CFO owner constructed facilities or added livestock numbers beyond those authorized by the municipal permit.

In the NRCB's experience, municipal enforcement of these permit requirements varied widely. In many instances, the municipality did not appear to have vigorously enforced its permit requirement when such construction or expansion occurred.

- Use physical capacity method consistent with evidence

Scenario 4: As of January 1, 2002, a CFO's municipally permitted facilities were physically capable of confining more livestock than the total number allowed by its permit. In some instances, these CFOs were actually confining and feeding more livestock than their permitted number on January 1, 2002. In other instances, CFOs had stayed below their permitted maximum of livestock, but are now requesting a deemed capacity based on their physical capacity.

- Use physical capacity method consistent with evidence

Contact the Natural Resources Conservation Board at the following offices. Dial 310-0000 to be connected toll free.

Edmonton Office

4th Floor, Sterling Place
9940 - 106 Street
Edmonton AB T5K 2N2
T 780-422-1977

Airdrie Office

Airdrie Agriculture Regional Centre
97 East Lake Ramp NE
Airdrie AB T4A 0C3
T 403-340-5241

Lethbridge Office

Agriculture Centre
100, 5401 - 1 Avenue S
Lethbridge AB T1J 4V6
T 403-381-5166

Morinville Office

Provincial Building
201, 10008 - 107 Street
Morinville AB T8R 1L3
T 780-939-1212

Red Deer Office

Provincial Building
303, 4920 - 51 Street
Red Deer AB T4N 6K8
T 403-340-5241

NRCB Reporting Line: 1-866-383-6722

Email: info@nrcb.ca

Web address: www.nrcb.ca

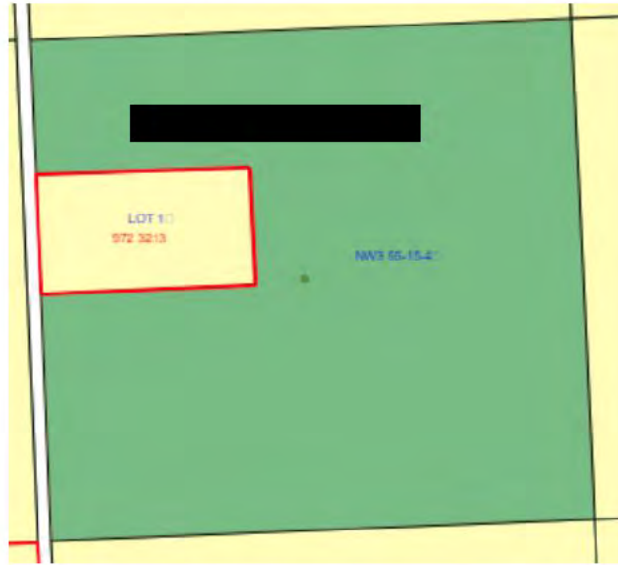
Copies of the *Agricultural Operation Practices Act* can be obtained from the King's Printer at www.kings-printer.alberta.ca or through the NRCB website.

Copyright 2023

PB24003

Urichuk Farms Ltd.

NW03-055-15-W4



Valtus 1999 - 2003

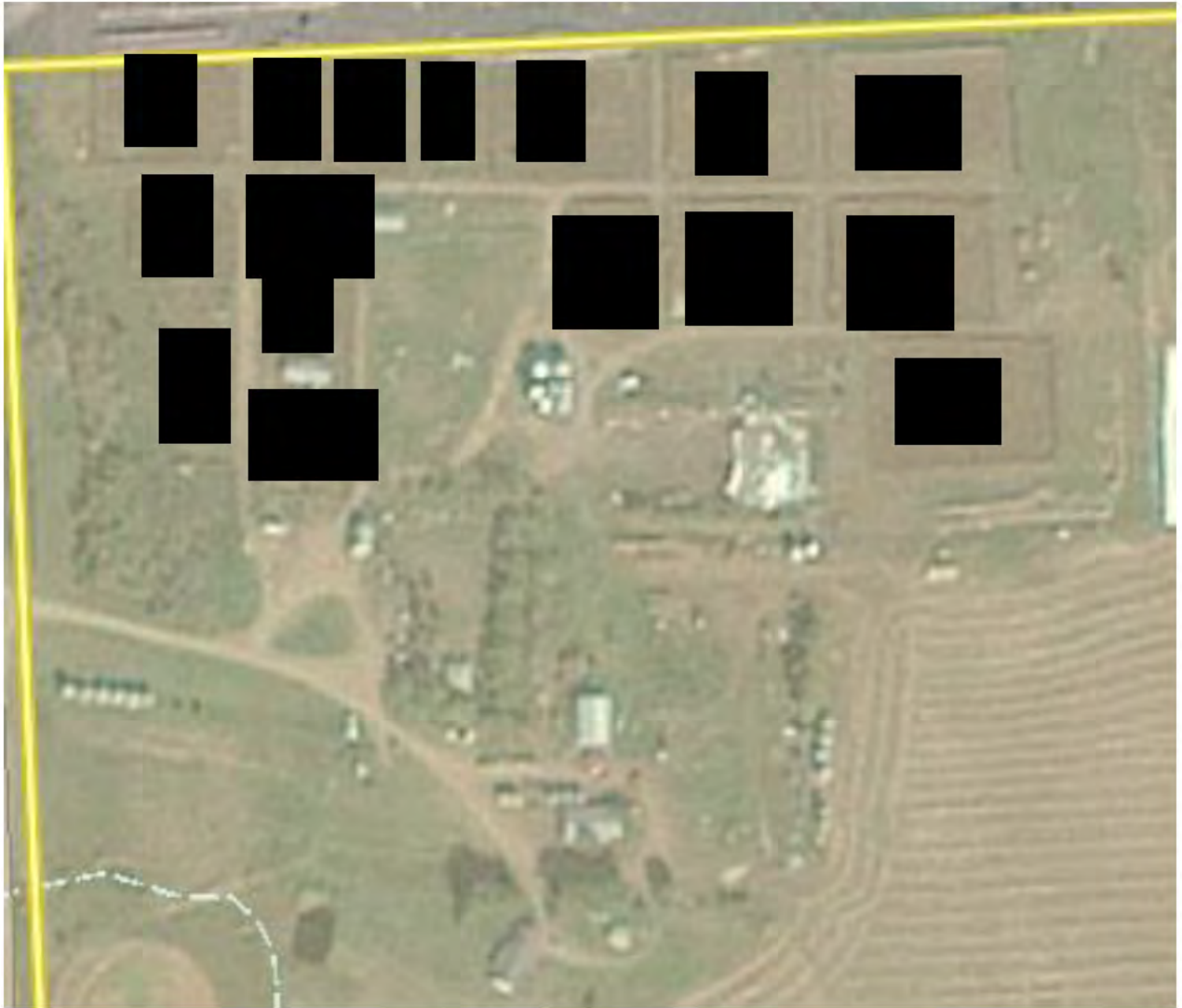


Google Earth Pro March 2010



Highlighted pens "13 & 14" not identifiable in 1999-2003 Valtus Aerial Imagery but visible in Google Earth Pro Imagery from 2010 and thereafter. Unable to discern actual year pens 13 & 14 built due to gap in available aerial imagery and the actual year the 1999 - 2003 Valtus imagery was taken.

Valtus 2013



Valtus 2014



Valtus 2015



Google Earth Pro April 2017



Google Earth Pro August 2020



Approximately 550 ft. from the southern most pens to the creek.

PB24003 – Livestock Capacity Determination – Urichuk Farms Ltd.

Calculator for Determining Livestock Capacity of Operations as they existed on January 1, 2002. Technical Guideline Agdex 096-81 February 2016. Table. 1. “Housed means the area where animals were fed, watered, and confined. The housed areas do not include alleyways or sorting areas.”

Beef animal number calculations for **Feeders (450-900 lbs) northern AB:**

Table 1. Beef animal number calculations

Type of Livestock	Space Allocation (ft ² /animal)	Bunk Space Full Feed (ft/animal)	Bunk Space Limited Feed (ft/animal)	Enter Pen Area (ft ²)	Enter Bunk Length (ft)	Pen Calculated Animal #	Bunk Space Full Feed Calculated Animal #	Bunk Space Limited Feed Calculated Animal #
Calculation	A	B	C	D	E	D ÷ A	E ÷ B	E ÷ C
Cows/finishers (900+ lbs) northern AB	250	1.0	2.5					
Cows/finishers (900+ lbs) southern AB	200	1.0	2.5					
Feeders (450-900 lbs) northern AB	200	0.8	2.0	346,621 337,408	4,298 2,235	1,733 1,687	5,372 2,793	2,149 1,117
Feeders (450-900 lbs) southern AB	175	0.8	2.0					
Feeder calves (<550 lbs) northern AB	175	N/A	1.3				N/A	
Feeder calves (<550 lbs) southern AB	150	N/A	1.3				N/A	

Pens 1-14
As per Operator

Summary of Pen Area (ft²) & Bunk Length (ft)

Google Earth Pro 2023 – Aerial Imagery

Pen 1 =	20,779.16 ft ²	245 ft
Pen 2 =	10,281.03 ft ²	228 ft
Pen 3 =	16,958.93 ft ²	270 ft
Pen 4 =	25,283.81 ft ²	330 ft
Pen 5 & 6 =	29,446.68 ft ²	515 ft
Pen 7 =	14,242.18 ft ²	230 ft
Pen 8 =	31,845.08 ft ²	340 ft
Pen 9 =	31,825.20 ft ²	350 ft
Pen 10 =	16,360.78 ft ²	265 ft
Pen 11 =	29,554.33 ft ²	350 ft
Pen 12 =	36,046.59 ft ²	375 ft
Pen 13 =	42,341.21 ft ²	400 ft
Pen 14 =	41,656.23 ft ²	400 ft

Provided by Operator

Pen Area	337,408 ft ²
Bunk Length	2,235 ft
Total Head	2,244

TOTAL = 346,621.24 ft² 4,298 ft

Valtus 1999 – 2003



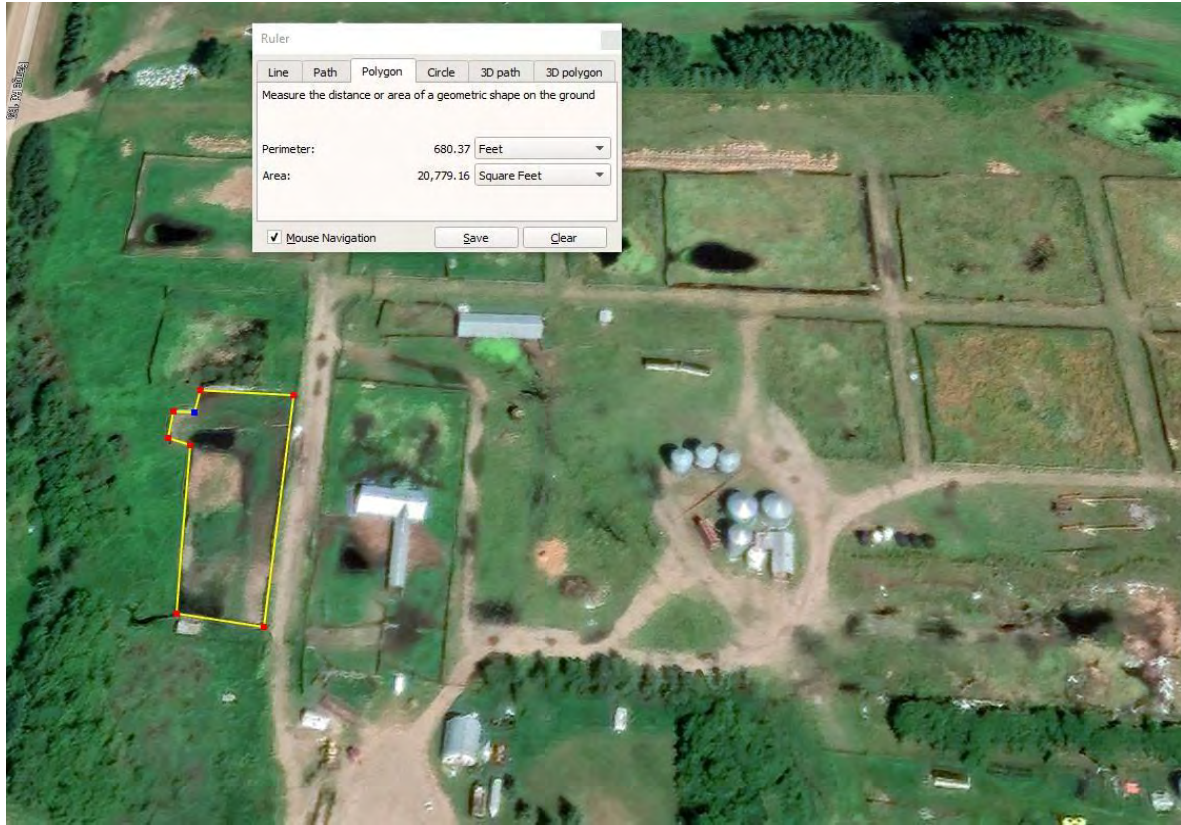
Google Earth Pro 2023



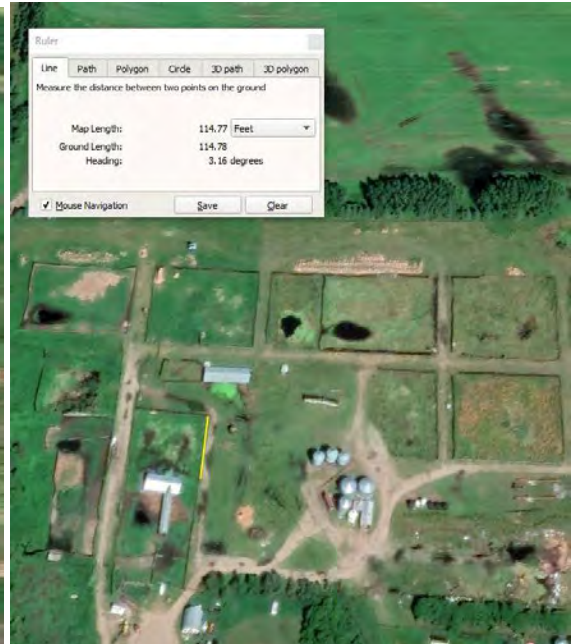
Fenceline Feeding – marked by “red” lines



Pen 1



Pen 2



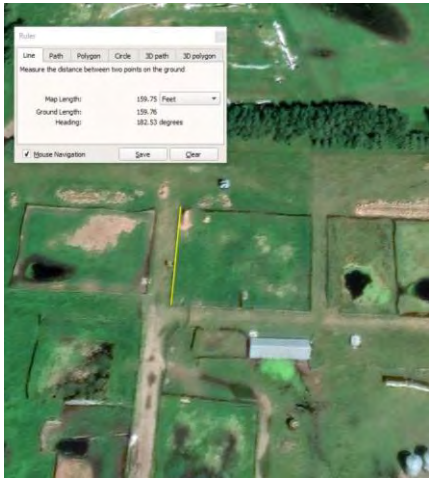
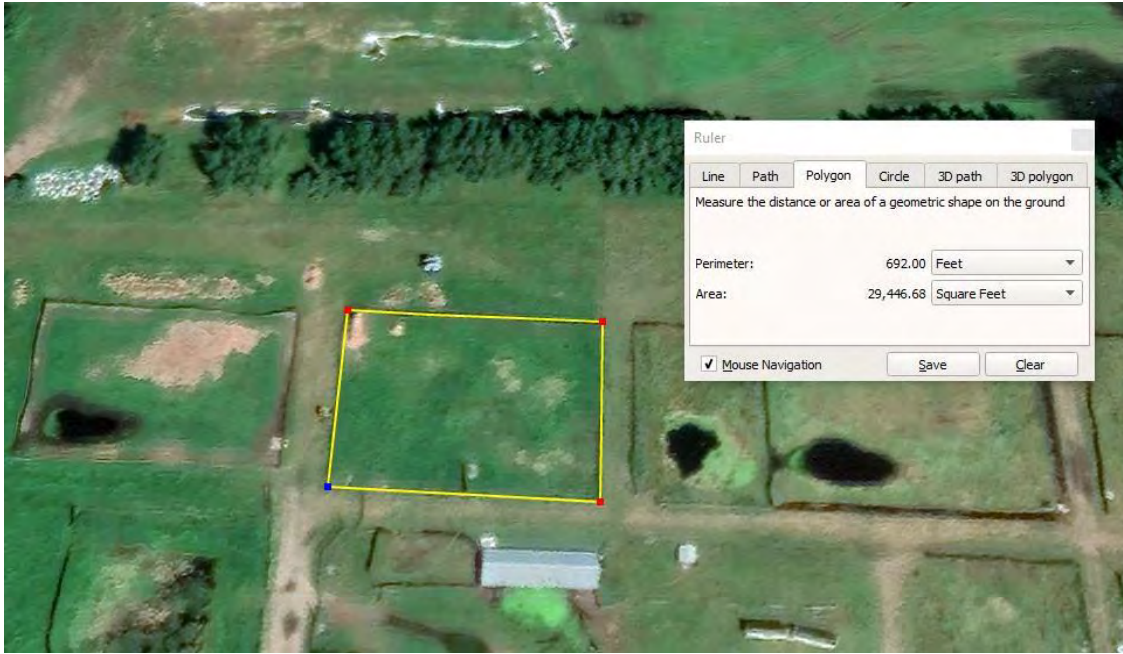
Pen 3



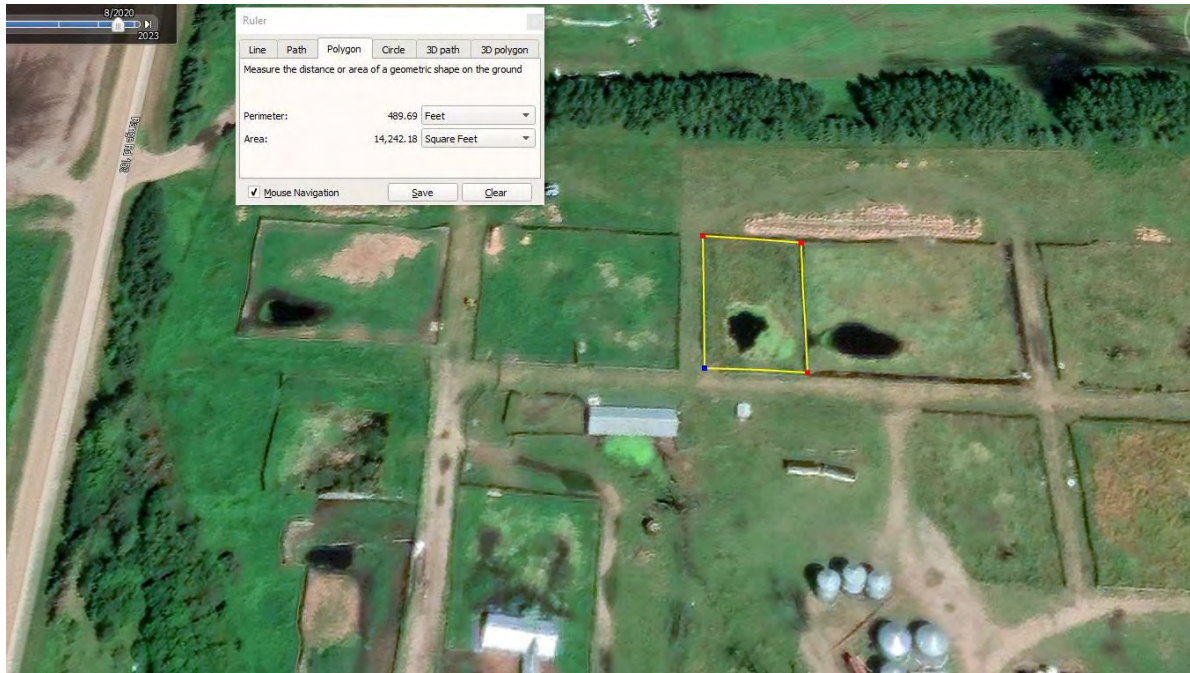
Pen 4



Pen 5 & 6



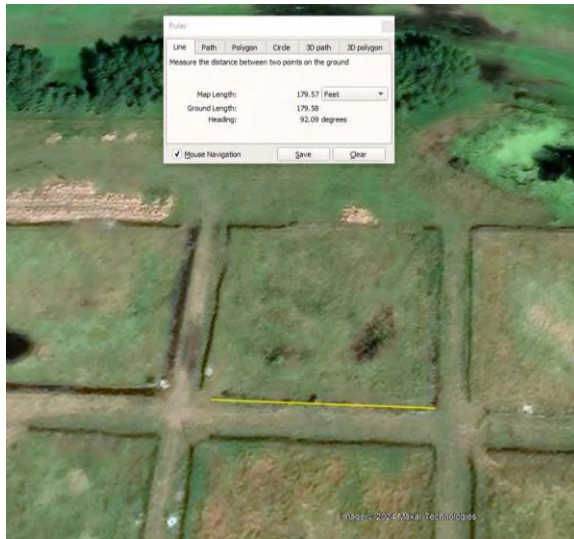
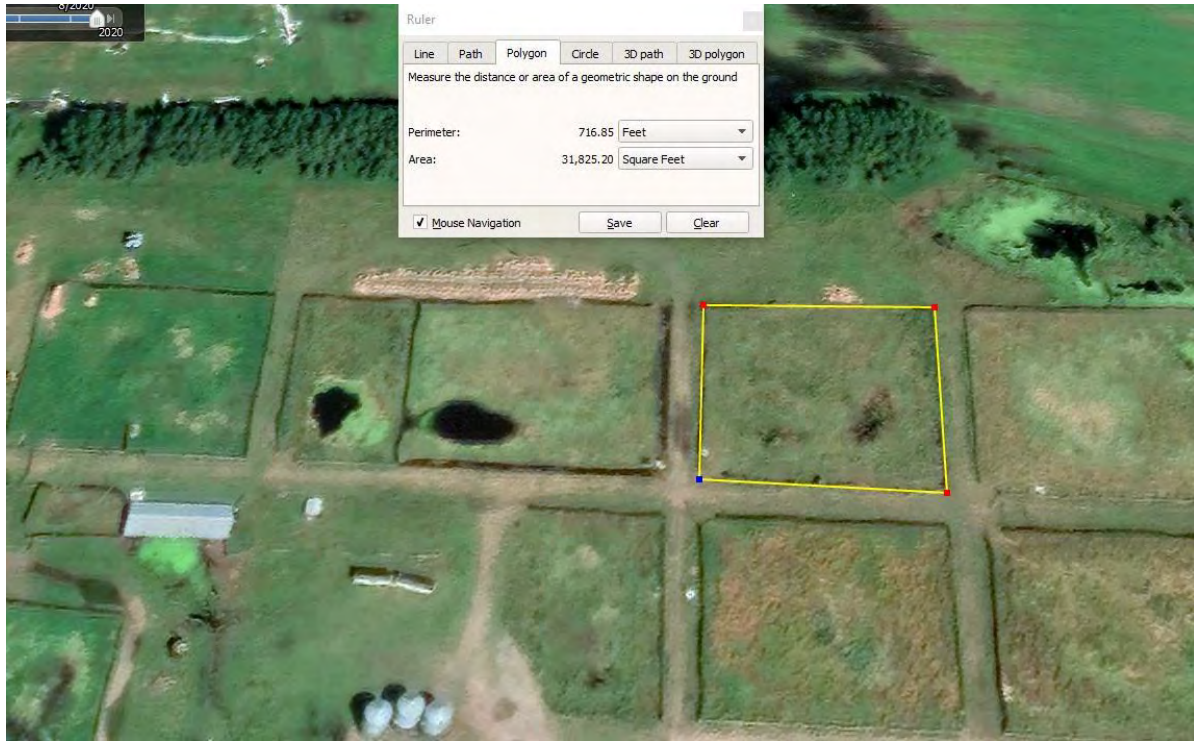
Pen 7



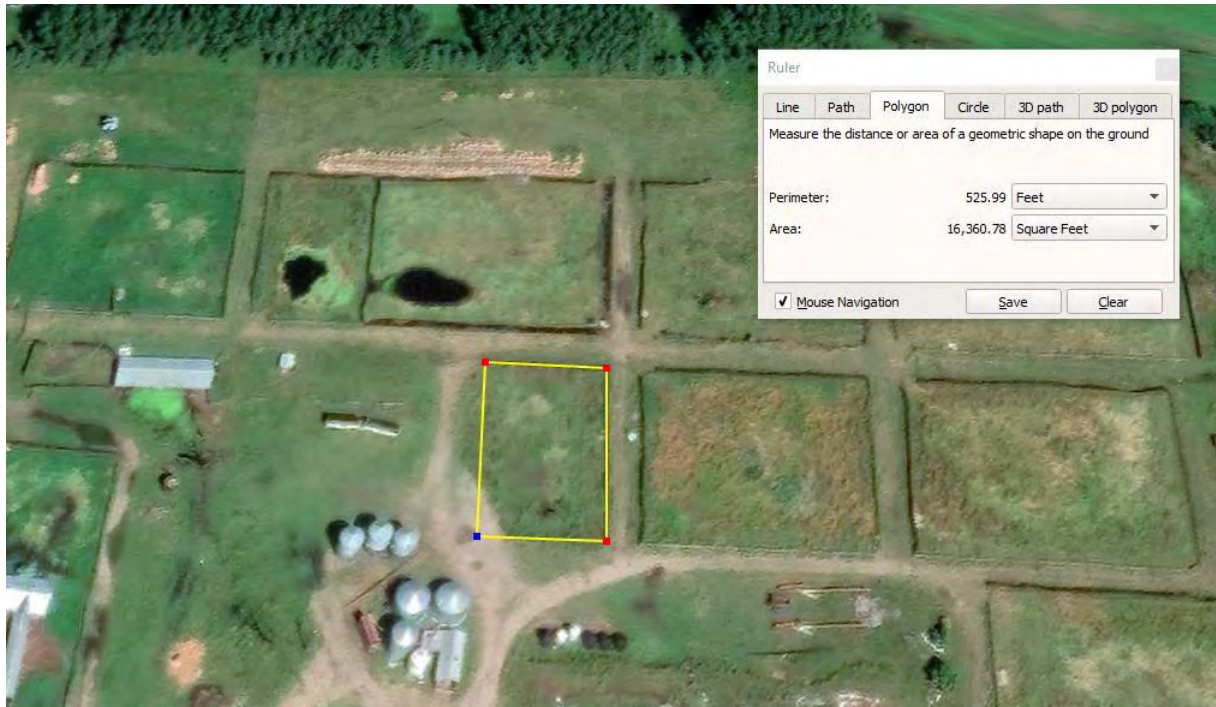
Pen 8



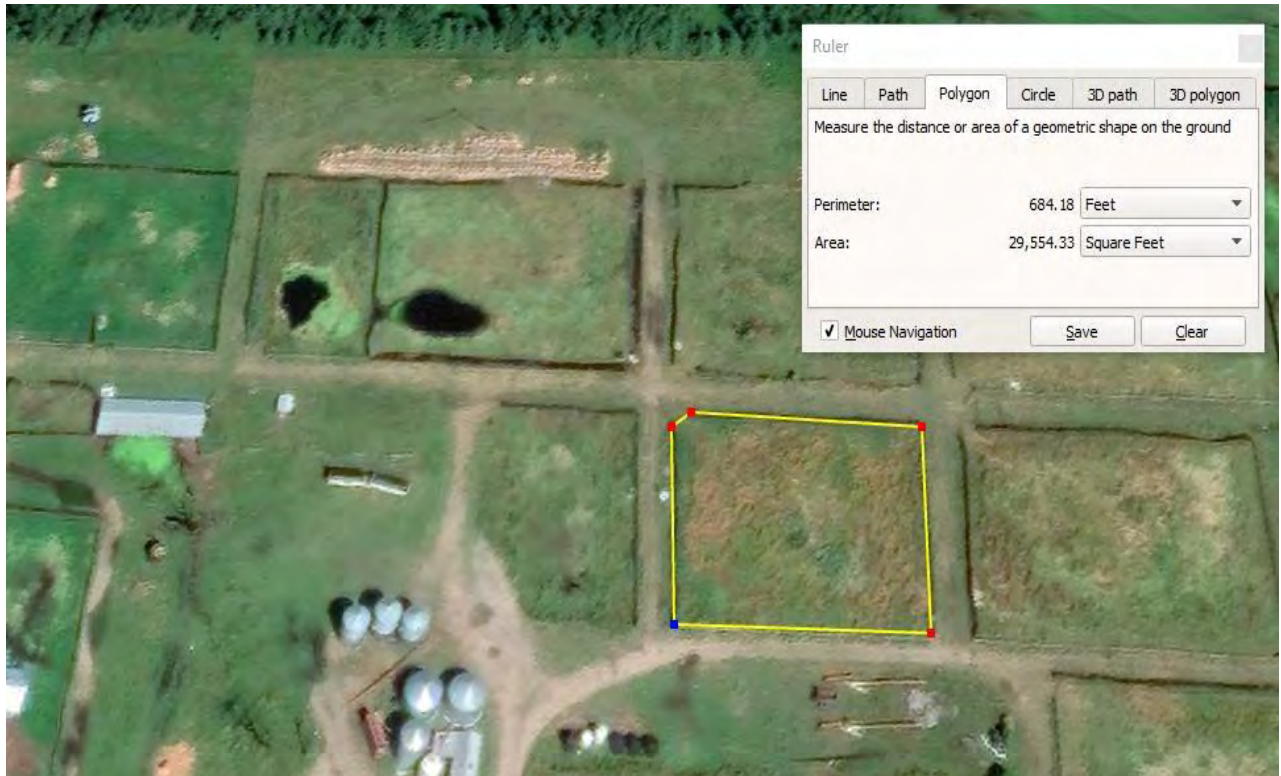
Pen 9



Pen 10



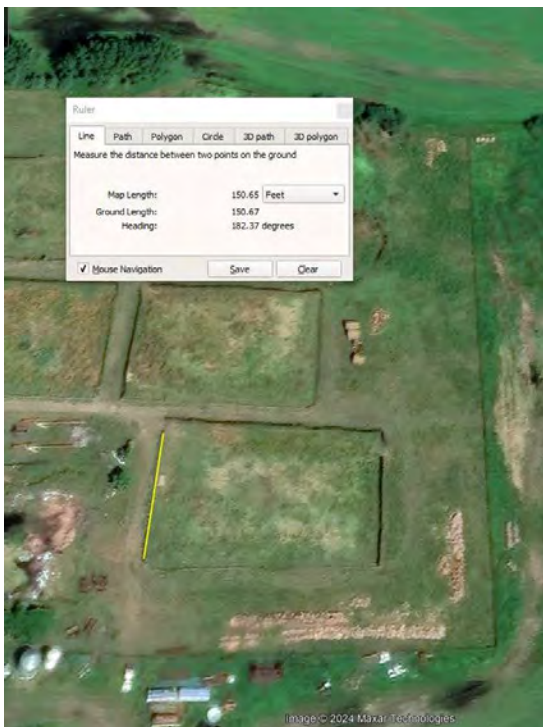
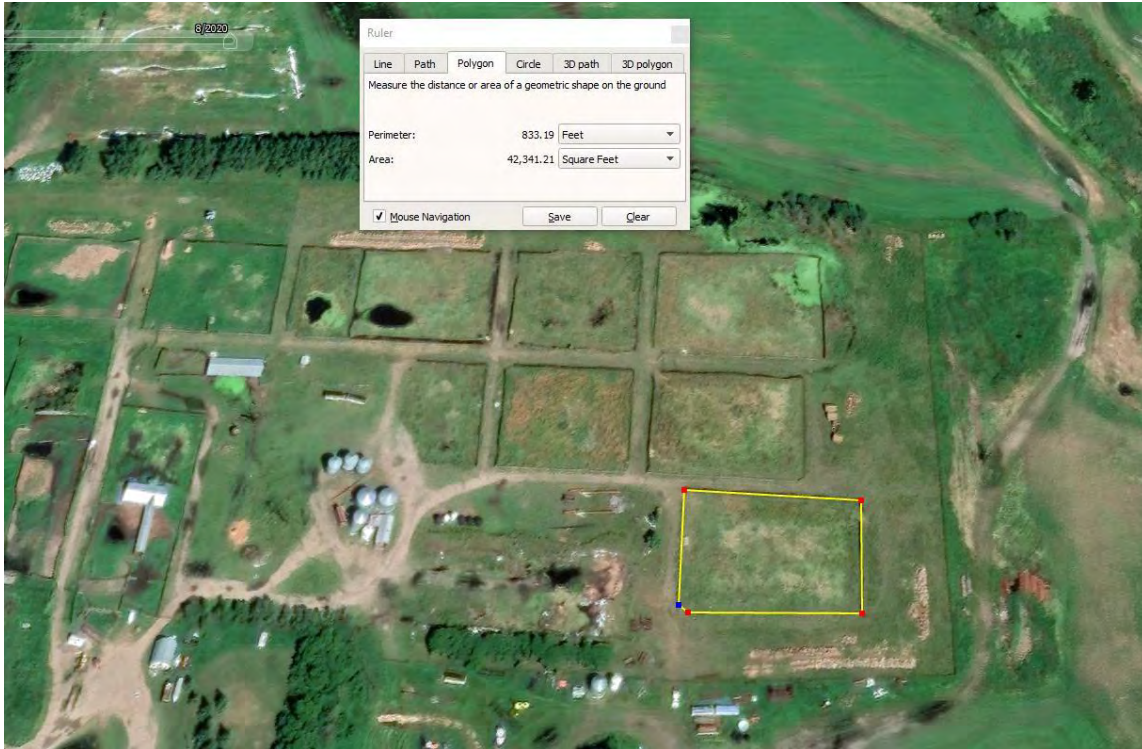
Pen 11



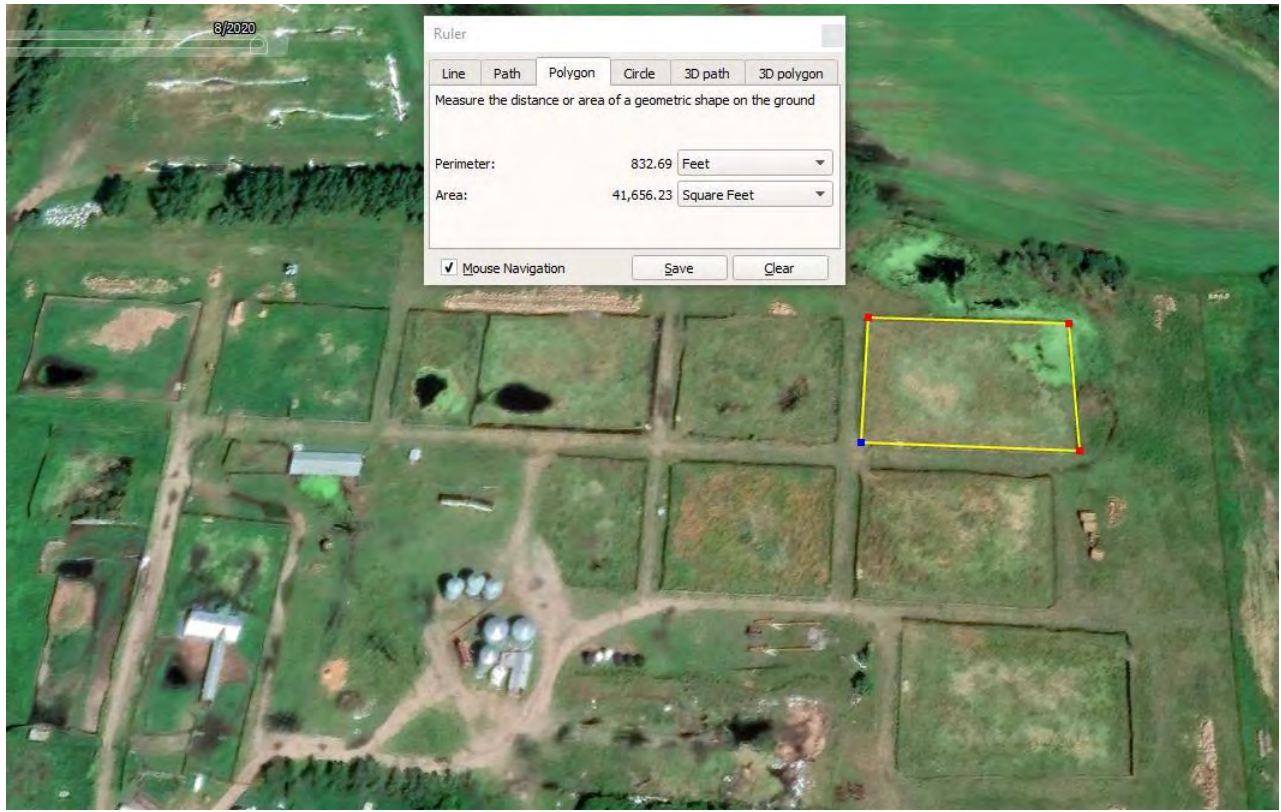
Pen 12



Pen 13

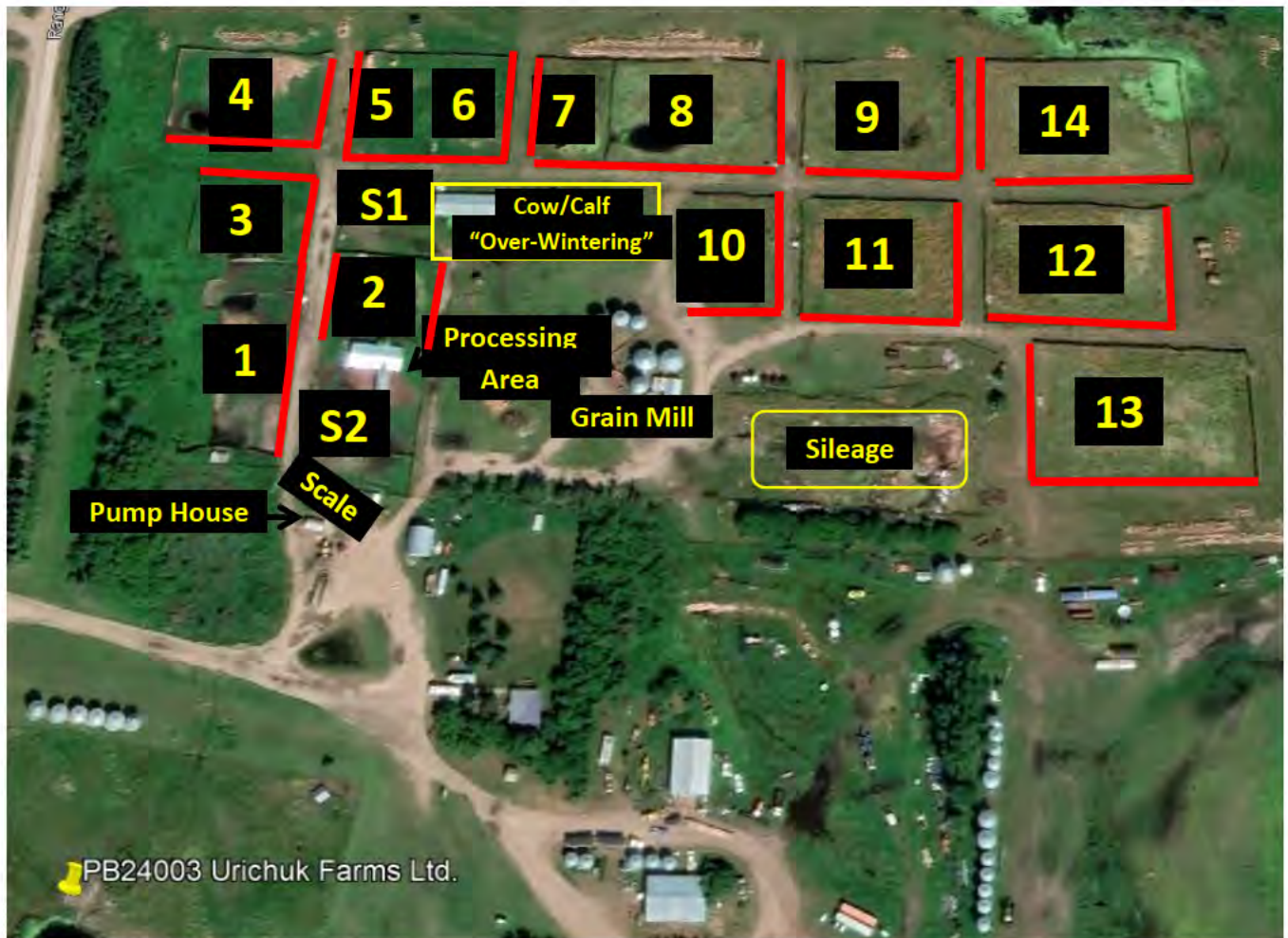


Pen 14



Information Supplied by Operator from Construction Detail (Appendix B) - Summarized

Pen #	Dimensions	Area (ft²)	Bunk Length (ft)	# of Head
1	208' x 80'	16,640	200	110
2	128' x 128'	16,384	128	110
3	128' x 144'	16,128	140	120
4	192' x 136'	26,112	175	170
5	152' x 96'	14,592	80	95
6	152' x 96'	14,592	80	95
7	152' x 96'	14,592	80	95
8	200' x 152'	30,400	184	202
9	192' x 152'	29,184	176	195
10	152' x 112'	17,024	112	112
11	152' x 184'	27,968	184	186
12	160' x 216'	34,560	216	230
13	168' x 240'	40,320	240	268
14	256' x 152'	38,912	240	256
TOTAL		337,408	2,235	2,244



Google Earth Pro – August 2020

Pens 1 & 3 were combined into one pen.

Pen 1 – The only pen with one side fence line feeding.

Pen 8 and Pens 3 & 4 have been upgraded to metal fencing.

Pen 9 – Decommissioned (a few remaining posts and a small portion of fence along the southwest corner where the concrete waterer is still located). Pen would need to be reconstructed.

Pen 10 – Decommissioned (remnants of the north fenceline, some post and rails along the east side, and the concrete waterer on the northeast side). Pen would need to be reconstructed.

In 2002, cow-calf herd around 75-100 head “over-wintering & calving only”. Increased over time to approx. 120 head. Pens 2, 3, 8 and S2 are currently being used for cow/calf (calving & over-wintering).

— Location of fenceline feeding

2024-06-20, 12:49 PM
+53.727867,-112.156474
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector



Looking northwest from the southeast side of the pumphouse and scale



Looking northeast at the grain mill located



2024-06-20, 12:51 PM
+53.728195,-112.154900
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

Silage Pit looking east from the west end



Pen 10 – looking northeast from the south side of the pen. A portion of the north fence line and east fence line remaining.



2024-06-20, 12:54 PM

+53.728558,-112.154320

Two Hills County No. 21 AB

BP24003

T. Krenn, Inspector

Pen 10

Pen 11

Standing on the road on the south side of Pens 10 & 11 looking north along the laneway between the two pens.



Pen 11 – Looking northeast from the southwest corner



Pen 11 – looking northeast along the south side of the pen



Pen 12 – Looking northeast from the southwest corner



Pen 12 – looking east along the south fenceline from the southwest corner



Pen 12 – Looking north from the south side of the pen



Pen 12 – looking northeast from the south side of the pen



Pen 13 – Looking southeast from the northwest corner



Pen 13 – Concrete waterer



Pen 13 – Looking southeast from the west side of the pen



Pen 13 – Looking east from the west side

2024-06-20, 1:08 PM
+53.729121,-112.153217
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector



Pen 12 – Looking southeast from the northwest corner

2024-06-20, 1:08 PM
+53.729121,-112.153217
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector



Pen 12 – Looking south along the west fenceline



Pen 12 – Looking east along the north fenceline from the northwest corner



Pen 14 – Looking northeast from the southwest corner



Pen 14 – Looking north along the west fenceline from the southwest corner



Pen 14 – Looking east along the south fenceline from the southwest corner



Pen 9 – Looking west from the southeast corner along what was the south fenceline (only a few posts and a portion of the fence along the southwest corner of Pen 9 remain)



Pen 9 - Looking north from the southeast corner



Pen 9 – Looking northeast from the southwest corner



2024-06-20, 1:12 PM
+53.729134,-112.154274
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

Pen 9 – Looking north along the west fenceline from the southwest corner



2024-06-20, 1:12 PM
+53.729134,-112.154274
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

Pen 8 – Looking northwest from the southeast corner (reconstructed using metal fencing and currently being used as an “over-wintering” site for their cow/calf herd)



2024-06-20, 1:16 PM
+53.729153,-112.155632
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

Pen 7 – Looking north from the southwest corner



2024-06-20, 1:16 PM
+53.729153,-112.155632
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

Pen 7 – Looking northeast from the southwest corner



Pens 5 & 6 (combines) – Looking west from the southeast corner of Pen 6 along the south fenceline



Pen 5 & 6 - Looking north along the east fenceline of Pen 6 from the southeast corner of Pen 6



2024-06-20, 1:18 PM
+53.729153,-112.155632
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

Processing Barn & addition – looking west from the northeast end



2024-06-20, 1:21 PM
+53.729195,-112.156387
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

Pen 5 & 6 – Looking north from the southwest corner of Pen 5 from the south fenceline at the west and north fencelines



Pens 5 & 6 – Looking northeast from the south fenceline (concrete waterer)



Pen 4 – Looking northwest from the southwest corner of Pen 5



2024-06-20, 1:23 PM

+53.729144,-112.156642

Two Hills County No. 21 AB

BP24003

T. Krenn, Inspector

Pen 3

Pen 4

Pens 3 & 4 - Looking west along the laneway between the pens from the east side of the pens



2024-06-20, 1:23 PM

+53.729144,-112.156642

Two Hills County No. 21 AB

BP24003

T. Krenn, Inspector

Pen 3

Pen 3 - Looking west from the south side of the pen



Pens 1 & 3 – Looking southwest from the northeast side of the pens (unable to access as cattle in area)



Sick Pen (S1) – Looking south from the north side of the pen



2024-06-20, 1:28 PM
+53.728827,-112.155509
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

Personal cow/calf “overwintering” and calving area – Looking west from the east side of the pen



2024-06-20, 1:29 PM
+53.728344,-112.156022
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

Personal cow/calf “overwintering” and calving area – Looking north from the south



Pen 2 – Looking northwest from the southeast side along the east fenceline



Pen 2 – looking west/northwest from the east fenceline



Processing Barn – Looking west from the east side



Processing Barn/Area – Looking southwest from the northeast side



2024-06-20, 1:31 PM
+53.728370,-112.156088
Two Hills County No. 21 AB
BP24003
T. Krenn, Inspector

Grain Mill – Looking east from the southwest