



NRCB | Natural Resources
Conservation Board

**Decision Report PR24002 for
Grandfathered (Deemed) Permit Determination
under the
Agricultural Operation Practices Act
Garry Olson Farms Ltd.
SW 12-44-23 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 poultry operation located on SW 12-44-23 W4M (this quarter section will be referred to as “Olson Farms”). Olson Farms is located in the County of Wetaskiwin, approximately 16 kilometres west from the Hamlet of Ferintosh. The process of ascertaining livestock capacity and livestock type under a deemed permit is known commonly as a “grandfathering” determination.

Olson Farms claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status. A grandfathering determination is necessary in this case because I am uncertain whether the CFO was over threshold on January 1, 2002, and would have required a permit under AOPA (see NRCB Operational Policy 2023-1: Grandfathering (Deemed Permit), part 3.2).

Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross appointed as an NRCB inspector, I investigated the deemed permit status of the CFO. I also determined the capacity of the CFO that was in place on January 1, 2002.

In this case, the operator bears the onus of providing sufficient evidence to support their claim ([Operational Policy 2023-1: Grandfathering \(Deemed Permit\)](#), part 2.3).

The CFO is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities had capacity to confine livestock at or greater than the permit threshold sizes under AOPA. (See Operational Policy 2023-1: Grandfathering (Deemed Permit), part 2.3).

To determine whether the CFO meets these two criteria, the NRCB may need to consider, among other things:

- a. whether the operation was a “confined feeding operation” or something else on January 1, 2002;
- b. what category(ies) of livestock the operation was confining and feeding on January 1, 2002;
- c. whether the operation was at livestock numbers that exceeded the AOPA thresholds;
- d. the footprint of the operation on January 1, 2002;
- e. what facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics
- f. how each of those facilities was being used on January 1, 2002

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 enclosure to confine livestock at the CFO on January 1, 2002 – section 18.1(2)(a) 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....

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 turkey toms/breeders is 1,000 for a registration and 30,000 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 date

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 waived for indoor operation

Ordinarily, notice of a deemed permit determination is given to those parties who would be entitled to notice under AOPA for a new CFO with the same capacity as what the operator is claiming as deemed. However, section 11(3) of the Administrative Procedures Regulation provides:

11(3) An approval officer may waive the notice for indoor confined feeding operations if the inspector finds that the livestock type and the capacity of the structures can be reliably determined by viewing historical aerial photographs and owner or operator records.

In my capacity as an approval officer, I waived the notice of deemed permit determination in this case. This is because I have sufficient information through aerial photographs, owner/operator records, and an onsite inspection, so that both the capacity of the structures and the type of livestock that was confined can be reliably determined.

3.0 Evidence

3.1 Information from operator Scott Olson

Scott Olson provided a document to support the claimed grandfathered capacity of 10,000 turkey toms/breeders.

This document was dated 1988 and stated the quota of the operation, with a total annual production number of 267,294 kg (see Appendix A).

I also interviewed Scott Olson on August 15, 2024. Scott toured me around each of the existing barns and explained the barns have been in use since before 2002 and there have been no changes to the facilities since then.

3.2 Other evidence

I found that the livestock type and capacity of the structures could reliably be determined by viewing historical aerial photos. I was able to locate historical Valtus aerial imagery from 1999-2003 for the operation. This image provides a clear view of the operation between those years, and the facilities that existed at the time. The image includes the 3 southern barns, the north barn, and the east barn. These match the existing facilities that were included in the application (see Appendix B).

Additionally, a memo was issued to Gary Olson on August 23, 2013, on behalf of the NRCB, which detailed a grandfathering determination of the operation. The memo states that during the investigation, it was determined that the operation existed prior to 2002, and that the capacity of the existing facilities aligned with the allocated quota of 221,294 kilos, as well as the densities claimed by Gary Olson (see Appendix C).

4.0 Analysis and findings

4.1 CFO footprint and structures

The evidence set out above and attached as appendices shows that Olson Farms operated an above threshold CFO prior to 2002. Based on my August 15, 2024 site inspection, I conclude that the footprint of the CFO today is the same footprint that existed on January 1, 2002.

Based on this evidence, I have concluded that on January 1, 2002, this CFO consisted of the following manure storage facilities and manure collection areas:

- 3 South barns
- North barn
- East barn

4.2 Livestock type

As to livestock type, the supporting materials show the CFO operated as a turkey toms/breeders CFO.

4.3 CFO livestock capacity

The Grandfathering (Deemed Permit) Policy at 6.3.3 provides that, 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 registration.

I consulted the NRCB’s Technical Guideline Agdex 096-81 “[Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002](#)”. For turkey toms/breeder operations, the following calculation is provided:

Calculated animal # = Barn size (ft²), divided by space allocation (3.5 ft²/bird)

For Olson's operation:

3 South barns: (11,088 ft²/each barn) / (3.5 ft²/bird) = 3,168 turkey toms/breeders

3,168 x 3 barns = 9,504 turkey toms/breeders

North barn: (10,000 ft²) / (3.5 ft²/bird) = 2,857 turkey toms/breeders

East barn: (18,000 ft²) / (3.5 ft²/bird) = 5,143 turkey toms/breeders

9,504 + 2,857 + 5,143 = 17,504 turkey toms/breeders

In using the calculator, I found that the 3 south barns, north barn, and east barn, had the combined capacity for 17,504 turkey toms/breeders. Due to changes in production, regulations, and density, it's reasonable that the requested grandfathered number of 10,000 turkey toms/breeders is lower than the calculator.

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

The AOPA threshold for a registration for turkey toms/breeders is 1000. Given the analysis above, I find that this CFO had capacity for 10,000 turkey toms/breeders which is above the threshold. Accordingly, the CFO was above threshold on January 1, 2002 and has a deemed permit.

4.5 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 of 10,000 turkey toms/breeders is within a reasonable range of the physical capacity on January 1, 2002 – in other words, would the claimed 10,000 turkey toms/breeders have fit into these barns in 2002?

The claimed capacity of 10,000 turkey toms/breeders is within a reasonable range of the physical capacity of the CFO on January 1, 2002, as calculated above.

5.0 Affected person 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.

In this case, as notice was waived, the only affected party in this determination is the municipality in which the operation is located (Wetaskiwin County). The owner/applicant, Garry Olson and Scott Olson, and Wetaskiwin County are directly affected parties.

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, 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 were abandoned, that might invalidate its deemed permit today.

Operational Policy 2023-1: Grandfathering (Deemed Permit), part 9.0 suggests that field services staff assess the validity of a deemed permit today. 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.

Under Operational Policy 2023-1: Grandfathering (Deemed Permit), part 9.1, I considered whether the CFO has been abandoned since January 1, 2002. I considered factors relevant to abandonment, as identified in [Operational Policy 2016-3: Permit Cancellations under AOPA Section 29](#). As noted in several site visits and discussions with the operator, the CFO facilities have been in continual use since 2002. I therefore conclude this CFO has not been abandoned.

6.2 Disturbed liner

The Grandfathering (Deemed Permit) Policy states that 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.

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](#).

In this case, there is no information that any liners or protective layers for the CFO facilities were disturbed in a way that would constitute “construction” and would invalidate the deemed permit.

7.0 Conclusion

Having reviewed all the evidence listed above, I have determined that on January 1, 2002, Olson Farms’ operation at SW-12-44-23 W4M, had the capacity to operate a 10,000 turkey toms/breeders CFO. Therefore, under section 18.1 of AOPA, the owner or operator of the CFO has a deemed registration with the capacity for 10,000 turkey toms/breeders.

I have determined that the CFO has not been abandoned, has not had any of its liners disturbed, and the deemed NRCB permit under AOPA is still valid today. Please see Deemed (Grandfathered) Permit PR24002.

Furthermore, I conclude that the only directly affected parties of this decision are Garry and Scott Olson, and the Wetaskiwin County.

January 16, 2025

(Original signed)
Sarah Neff
Approval Officer

8.0 Appendices

- A. Document provided by Scott Olson
- B. 1999-2003 Valtus Imagery
- C. Historical grandfathering memo

APPENDIX A - Document provided by Scott Olson

A.T.G.M.B.

ADDENDUM TO QUOTA HISTORY

PRIORITY NO.	NAME	EQUIV. 1979 QUOTA	ROUND 1 INCREASE 1979	ROUND 2 INCREASE	1988 POTENTIAL KG
				<u>1985</u>	
24	DOWHAN, J.	10,000	5,000	44,226KG	177,004
25	KOCH, ANDREW	15,000	*	44,226KG	177,004
				(DELAY TO 1987)	
26	ZOLKEWSKI POULTRY FARM	10,500	5,000	44,226KG	181,430
				<u>1987</u>	
27	OLSON, G. (1/2 OF G & R)	8,200BR	BREEDER	44,226KG	35B
28	MUNTZ, G.	18,400	*	44,226KG	207,101
29	RIVERBEND TURKEY FARMS	13,800	5,000	44,226KG	210,641
				<u>1988</u>	
30	MACMILLAN COLONY	21,000	*	44,226KG	137,171 <i>w/100g</i>
31	CROSSROADS TURKEY FARM	21,000BR	*	44,226KG	309,749 <i>265,523</i>
32	CULLUM FARMS LTD.	16,300BR	5,000	5,000+	183,234
33	SPRINGSIDE COLONY	21,500	*	44,226KG	234,542
34	BALL FARMS LTD.	20,025BR	5,000	44,226KG	265,523
35	(FRY, W.T.) M. LOWEN	18,900	5,000	44,226KG	132,745
35A	ENARSON, F.R. & RAY	17 & 27]	10,000	44,226KG	267,294
35B	OLSON, ARCHIE AND GARRY	18 & 27]	-	-	267,294
36	(URAGI, KYOZO) MERTZ BREEDER	27,400BR	5,000	44,226KG	184,226
37	GIBBONS TURKEY RANCH	35,850	-	44,226KG	361,566
38	POLAK TURKEY FARMS	38,700	-	44,226KG	386,794
39	LOWEN, HERMAN	38,800	-	44,226KG	141,597
40	LETH, NICK	38,400	-	44,226KG	410,694
41	CARSTAIRS TURKEY FARM	22,500	-	14,528KG	445,252

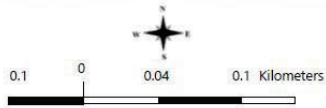
MARCH 9, 1981 +:

THE BOARD HAD A REQUEST FROM CULLUM FARMS LTD. FOR 7350 MORE BREEDER QUOTA. THE BOARD DECIDED TO GIVE THE FARM AN ADVANCE OF 5,000 BREEDERS TO BE COUNTED AGAINST THE NEXT QUOTA INCREASE.

- INDICATES NO REQUEST

APPENDIX B - 1999-2003 Valtus Imagery

Natural Resource Conservation Board



Projection: NAD_1983_10TM_AEP_Forest
Map Scale: 4,514
Printed on: October 29, 2024 10:47:43 -06:00



Comments:

Olson Valtus 1999-2003

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MEMO

August 23, 2013

To: Michael Wenig, Legal Counsel

From: Barb Hazelton, Inspector
Francisco Echegaray, Approval Officer
Field Services Division – Red Deer

Re: Gary Olson – Grandfathering Determination

This memo contains our findings from an investigation of the status of a turkey operation located at SW 12-044-23 W4, in Wetaskiwin County. The turkey operation is currently owned and operated by Mr. Gary Olson. Mr. Olson's father purchased the property, and started producing turkeys in the 1960s. Gary joined his father in the turkey operation in the early 1970s, and eventually acquired ownership of the property and operation.

Our findings are in response to a request by Mr. Olson for the NRCB's verification of the grandfathered status of this turkey operation.

When we initially contacted Mr. Olson to set up a site visit, we requested him to make available records and information regarding the turkey operation previous and around January 1, 2002. During a site visit on August 22, 2013, Mr. Olson gave us a tour of the facilities and stated he has not increased the size of any of the facilities since 1999. While on site, we ascertain the age and the measurement of the facilities. Mr. Olson further supplied records from the Alberta Turkey Growers Marketing Board from as early as 1976, up until 2013. Some of the records show that previous to 2002, Mr. Olson was allocated an annual quota of 221,294 kilos.

During our site visit we observed that the operation has five barns. These barns were compared with satellite images of the site taken in 1999, and with other satellite images taken after 2005 up until 2011. Based on this comparison, we are satisfied that there has been no new construction or expansion of this turkey operation or its manure storage facilities since the image taken in 1999. This conclusion corresponds with the information provided by Mr. Olson that the last barn was built on or before 1999.

Following are the calculated areas of the five barns on site

Barn# 1:	929m ²
Barn# 2:	1858m ²
Barn# 3:	1019m ²
Barn# 4:	1019m ²
Barn# 5:	1019m ²

For these reasons, in addition to our observations and discussions with Mr. Olson, we determined that these facilities were built and in operation before January 1, 2002.

In addition to assessing whether the turkey operation existed on January 1, 2002, we conducted calculations to establish the turkey operation's capacity on that date. These calculations are based on the "Recommended

Code of Practice for the Care of Handling of Farm Animals" for chickens, turkeys and breeders from hatchery to processing plant, by the Canadian Agri-Food Research Council (2003).

We have calculated a total barn area of 5,844m². Using turkey stocking densities of 0.37m² per heavy toms and of 0.19 to 0.28m² for hens, the calculations show a total capacity of either 15,795 toms, or a range between 20,871 to 30,758 hens. Mr. Olson sometimes produces only toms, sometimes only hens; however, he normally produces a combination of both. These capacities align with the allocated quota of 221,294 kilos, as well as with the densities claimed by Mr. Olson.