



Enforcement Order No. EO 25-01

*Made under section 39 of the
AGRICULTURAL OPERATION PRACTICES ACT, RSA 2000, c A-7 (AOPA)*

Date issued: March 11, 2025

Issued by: Tracey Krenn, Inspector
Compliance and Enforcement Division
Natural Resources Conservation Board (NRCB), Red Deer Office

Issued to: Harvey Gaston Garnier, Yvonne May Garnier, & Anthony Garnier
PO Box 481
Marwayne, AB T0B 2X0

**Basis for Order: Constructing a confined feeding operation without a permit; and
Failure to comply with the terms and conditions of a permit**

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

**Harvey Gaston Garnier
Yvonne May Garnier
Anthony Garnier**

on the basis that they expanded a beef confined feeding operation (CFO) without a permit when a permit is required and failed to comply with the terms and conditions of their existing permit. The operation located at NE16-053-03-W4M is an NRCB permitted (Approval RA24034) 1,800 beef feeder CFO.

The operation is located at NE16-053-03-W4M, in the County of Vermilion River, in the Province of Alberta approximately 9 km east of Dewberry, Alberta. The CFO and land are owned jointly by Harvey Gaston Garnier and Yvonne May Garnier (owners). The CFO is operated by Anthony Garnier (operator), the son of Harvey and Yvonne Garnier. On February 28, 2025, NRCB Approval Officer (AO) Sarah Neff issued an NRCB approval permit (RA24034) for 1,800 beef feeders to be located in the main (north) pens and the northeast pens. The operation does not have any municipal development permits.

Background and investigation

On December 18, 2023, I issued Compliance Directive CD23-10 to Harvey Gaston Garnier, Yvonne May Garnier, and Anthony Garnier for the construction of a beef confined feeding operation without a permit when a permit is required. At that time the operation consisted of 11 pens: six newly constructed permanent pens located in the northeast corner (northeast pens) of the parcel; plus, two existing permanent main pens located along the north boundary (north pens) of the parcel directly south of the older barns; plus, three large pens located to the south (south pens).

Directive CD23-10 had two directive requirements: 1) to cease using the main north pens and the northeast pens until a permit had been obtained. 2) permit or manage the south pens according to NRCB's Operational Policy 2015-2 (CFO/SFBS Policy), Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (For Cattle Operations) (CFO/SFBS Policy).

On January 4, 2024, I re-issued CD23-10 with an amendment to correct an error in the number of northeast pens in directive #1, from three pens to six pens.

As stated above, the operation has received an NRCB permit for the main north pens and the northeast pens. A permit has not been obtained for the south pens therefore they must be operated as seasonal feeding and bedding sites according to the NRCB's CFO/SFBS Policy.

Throughout 2024 I had numerous conversations, text messages and email correspondences with Anthony Garnier regarding the requirements in the directive and more specifically the requirements in the NRCB's CFO/SFBS Policy that he needed to comply with. A couple of those numerous interactions are detailed below.

On July 4, 2024, at the request of Anthony Garnier I extended directive #1 in CD23-10 (relating to the main north pens and northeast pens) to September 1, 2024.

On September 6, 2024, at the request of Anthony Garnier I again extended directive #1 in CD23-10 to October 15, 2024.

November 5, 2024 – I drove by the site. There were cattle present in the two main north pens, but the six northeast pens were all empty. The three large south pens also appeared empty.

On January 29, 2025, I attended NE16-053-03-W4M with AO, Sarah Neff, as a follow-up to CD23-10, and all subsequent deadline extensions. Upon arrival at the site, we met with Anthony Garnier. Anthony toured us around the site. The two existing main north pens by the old barns were occupied with cattle. Anthony advised the pen furthest to the north had 250 head (N1). The other existing pen (N2) directly south of this had 200 head. I confirmed with Anthony the type of livestock. He stated they are all beef feeders (450 - 900 lbs), and they do not feed cattle to finish weights.

Pen layout and livestock numbers are shown on Google Earth Pro Aerial Imagery dated June 5, 2024, as labelled by Inspector T. Krenn (**Appendix A**).

Three of the six northeast pens – which were unauthorized construction and were not to be occupied as per directive #1 of CD23-10 until a permit had been issued – were occupied. Anthony advised there were 200 feeders in the pen located furthest to the north and east (NE3). The pen directly south (NE6) had 8 feeders which were being sorted. The pen furthest to the north and west (NE1) contained 75 head, which Anthony advised were their own replacement heifers.

Next, we attended the three large south pens. Under directive #2 of CD23-10, the south pens were managed to meet all the characteristics in Table 1 of the CFO/SFBS Policy (if

they had a permit for the other pens) and in Table 2 (if they did not have a permit for the other pens). Cattle were lined up and eating from what appeared to be feed bunks along the north fence line. Anthony stated there were 250 head of backgrounders (feeders) in the south pen furthest to the east (S3), 200 head of backgrounders (feeders) in the middle south pen (S2), and 250 head of backgrounders (feeders) in the south pen furthest to the west (S1). Anthony advised that in the spring they remove all the manure from these pens. Northwest of the south pens Anthony advised there were 68 head of backgrounders. I stated again the Table 1 factors for assessing facilities adjacent a CFO as per the CFO/SFBS Policy. I stated the way the 68 head of cattle to the northwest of the south pens were being managed (in a large open area with temporary fencing that could be revegetated in the spring, with 360 degree access to the feeding area and manure is spread over a large area (manure does not need to be removed)) was what we would consider seasonal as opposed to the way he was managing the north, northeast, and south pens. He stated he understood but still didn't agree with the government's reasoning for the different requirements in the legislation.

I advised Anthony I would be issuing an Enforcement Order (EO) as he was not in compliance with all the requirements in the compliance directive I had issued in December 2023. He stated he needed to make a living. I asked if all the cattle other than the 75 replacement heifers from his own herd were all being custom fed for neighbours or others. He stated that was correct. Anthony advised that when the engineer was at the site, she had tested the soils for the south pens and advised he would need to haul in 1 ½ feet of clay to meet AOPA's requirements. He stated he planned on having these pens permitted later this year. Again, I advised Anthony that I would be issuing an EO. I stated I wanted to be clear so that it wasn't a surprise. I stated once the south pens were depopulated in the spring, he would not be able to use them unless he met all the criteria in Table 1 of the CFO/SFBS Policy or had the pens permitted.

Furthermore, the main north and northeast pens had been populated prior to a permit being issued, prior to completion of the catch basins, and prior to the NRCB inspection and written approval to populate being provided.

Failure to comply with the terms and conditions of a permit and CFO permit required

AOPA's permit requirements are intended to reduce the potential for groundwater contamination and surface water runoff, and to lessen the nuisance impacts of CFOs on neighbours. Without complying with permit requirements, the regulatory objects in AOPA may be compromised.

The *Agricultural Operation Practices Act* ("AOPA") at section 13(1) prohibits a person from commencing construction or expansion of a CFO for which an approval or registration is required unless they hold that permit. The Part 2 Matters Regulation of AOPA defines "expansion" with respect to a CFO, as the construction of additional facilities to accommodate more livestock.

"Confined feeding operation" is defined in AOPA as:

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;

“Seasonal feeding and bedding site” is defined in AOPA as “an over-wintering site where livestock are fed and sheltered.” The NRCB’s Operational Policy 2015-2 Distinguishing Between CFOs and SFBS (for cattle operations) provides guidance on differentiating between the two types of operation.

The livestock number threshold in AOPA for requiring a permit for a CFO with beef feeders is 200 for a registration and 500 for an approval.

In addition, AOPA at section 13(2) requires a person who holds an approval or registration to comply with and operate in accordance with the terms and conditions of the permit. Condition #7 in NRCB permit RA24024 states:

The co-permit holders shall not repopulate feedlot pens 1-4 until catch basins 1-4 and the protective berms have been constructed, and the facilities have been inspected by NRCB personnel and confirmed by them, in writing, to have been constructed in accordance with the terms and conditions of this permit.

In Approval RA24024, pens 1-4 refer to the north main pens and the northeast pens. Based on my site inspection on January 29, 2025, and follow-up conversations with the operator both the main north and northeast pens were populated, the catch basins had not been constructed and written approval to use the pens had not been provided. On February 27, 2025, through communication with the operator, I confirmed that these factors were still true prior to the NRCB permit being issued on February 28, 2025, resulting in non-compliance with permit condition #7 above.

In considering the issuance of Approval RA24034 for the main north and northeast pens as CFO pens, the south pens are considered adjacent to a CFO and are required to meet all the factors in Table 1 of the NRCB CFO/SFBS Policy (**Appendix B - page 11**).

Based on the information provided previously by the operator during and following the initial site inspection on October 26, 2023, and information provided by the operator during the site inspection on January 29, 2025, I have determined that the south pens were not being operated as a SFBS according to the NRCB CFO/SFBS Policy for the following reasons:

- The three large south pens were populated at the time of inspection, the dimensions of the pens had been modified (shortened) since my initial site inspection using a mixture of permanent and portable fencing, fence line feeding with permanent bunks was being utilized, there was not 360 degree access to a feeding area, manure would need to be removed and stockpiled or spread, there was no vegetation evident, and therefore did not meet all the factors listed in Table 1 of the CFO/SFBS Policy.
- These pens did not meet all the factors in Table 1, for a facility adjacent to a CFO, and therefore, are currently considered a CFO.

Failure to operate the south pens as a SFBS adjacent to a CFO, according to NRCB CFO/SFBS Policy Table 1 factors, defaults the status of those pens to unauthorized CFO pens requiring a permit.

Based on my observations, my site inspection of January 29, 2025, my conversations and communication with Anthony Garnier, and my understanding of the operation on February 27,

2025, I confirmed that the factors described above were still true prior to the NRCB permit being issued on February 28, 2025. The south pens do not meet all the factors in Table 1 and do not meet the requirements of a SFBS adjacent to a CFO, according to the CFO/SFBS Policy, resulting in non-compliance with permit condition #7 above. I conclude that Harvey Gaston Garnier, Yvonne May Garnier, and Anthony Garnier have contravened section 13(1) and 13(2) of AOPA for the reason that they have:

- 1) failed to comply with condition #7 in their NRCB permit, Approval RA24034 (section 13(2)); and
- 2) failed to operate the south pens as a SFBS according to the NRCB CFO/SFBS Policy, therefore defaulting the status of these pens to unauthorized construction and population of CFO components without a required permit (section 13(1)).

Under Section 39(1) of AOPA, if in the opinion of the Natural Resources Conservation Board, a person is contravening or has contravened AOPA or its regulations, the Board may issue an enforcement order:

- (c) directing the person to stop engaging in anything that is described in the enforcement order, subject to any terms or conditions set out in the order;
- (d) directing the person to undertake any investigation, construction, alteration, repair, or other measures specified in the enforcement order, within the time specified in the enforcement order; and
- (f) specifying the measures that must be taken in order to effect compliance with the approval, registration, authorization, variance, cancellation, this Act or the regulations.

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

An Enforcement Order is being issued because:

- (a) Harvey Gaston Garnier, Yvonne May Garnier, and Anthony Garnier have failed to comply with Directive #2 of Compliance Directive CD23-10 as amended January 4, 2024, as they have continued to operate the south pens (as a facility adjacent a CFO), without a permit when a permit is required; and
- (b) Harvey Gaston Garnier, Yvonne May Garnier, and Anthony Garnier have failed to comply with condition #7 of their NRCB Approval RA24034.

ORDERS:

To mitigate any possible risks to the environment and potential nuisances to any affected neighbours, Harvey Gaston Garnier, Yvonne May Garnier, and Anthony Garnier shall take all necessary and appropriate measures to comply with AOPA and its regulations, and with NRCB Approval RA24034, at the facility located at NE16-053-03-W4M. (Pen labels below reflect labels at page 2 of **Appendix A** to this enforcement order) In particular, Harvey Gaston Garnier, Yvonne May Garnier, and Anthony Garnier shall:

1. By **March 31, 2025**, remove all the livestock from the two main north pens (N1 & N2) and the six northeast pens (NE1 – NE6) and by **April 15, 2025**, remove, spread or stockpile all the manure from those pens in accordance with AOPA.
2. Not repopulate the main north pens and northeast pens, identified as pens 1-4 on NRCB permit Approval RA24034, until permission has been granted by the NRCB in writing.
3. After **July 1, 2025**, ensure that the operation of the three south pens (S1, S2, & S3) meet all the characteristics in Table 1 (Factors for accessing facilities adjacent to a CFO) in the CFO/SFBS Policy, unless an NRCB permit has been obtained for those pens to operate as a CFO. Failure to meet all these factors, will result in further enforcement action which could include being required to depopulate the south pens and not use those pens for confine feeding livestock, or manure storage.

Any of the deadline dates contained above may be extended in writing, but only by the NRCB, at the sole discretion of the NRCB.

Harvey Gaston Garnier, Yvonne May Garnier, and Anthony Garnier shall allow the NRCB access at any reasonable hour, with or without advance notice, to the CFO land and structures for the purpose of assessing compliance with the orders contained in this enforcement order, or for the purpose of determining whether the legislation is being complied with.

All actions required above shall be in compliance with AOPA and its implementing regulations and shall not violate any other law. These requirements, including any deadlines, remain in effect until otherwise directed by the NRCB in writing.

The NRCB posts all enforcement orders on the NRCB public website.

CONSEQUENCES OF NOT COMPLYING WITH THIS ORDER

If any person to whom this enforcement order is directed fails to comply with any part of this enforcement order, the Natural Resources Conservation Board may apply to the Court of King's Bench for an Order of the Court directing those persons to comply with the enforcement order, under section 42 of the *Agricultural Operation Practices Act*.

When an enforcement order is issued to more than one person, all persons named in the Order are jointly responsible for carrying out the terms of the Order, under section 43 of the *Agricultural Operation Practices Act*.

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

(Original signed)

Tracey Krenn

Inspector, Compliance and Enforcement Division

Natural Resources Conservation Board

Cc: County of Vermilion River (*sent by email*)

APPENDICES:

- A. Google Earth Pro Aerial Imagery June 5, 2024 – labelled by T. Krenn
- B. NRCB Operational Policy 2015-2 (CFO/SFBS Policy), Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (For Cattle Operations) – Table 1

SERVICE OF ORDER:

Delivered to: Harvey Gaston Garnier	Delivered to: Yvonne May Garnier	Delivered to: Anthony Garnier
Method of Delivery: via Email	Method of Delivery: via Email	Method of Delivery: via Email
Date of Delivery: March 11, 2025	Date of Delivery: March 11, 2025	Date of Delivery: March 11, 2025

INFORMATION: RIGHT TO REQUEST A REVIEW OF THIS ENFORCEMENT ORDER

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

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

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

- a) a clear and concise statement of the facts relevant to your request
- b) the grounds on which your request is made
- c) a brief explanation of the harm that has resulted or will result from the enforcement order addressed in your request
- d) a brief description of the remedy you seek; and
- e) the name, address in Alberta and telephone number, and the fax number and email address, if any, of you or your representative (if you have one).

If you want the enforcement order suspended until the Board's review is completed, you must also be clear about this in your written request for review and provide your reasons for asking for a suspension of this enforcement order.

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

Because this enforcement order does not extend the 10 working day deadline in section 15(2) of the Regulation, the deadline for you to file a request for review by the Board is **4:30 p.m. on March 25, 2025**.

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

APPENDIX A - Google Earth Aerial Imagery June 5, 2024 - labelled by T. Krenn

Date: 2025.01.29

Location: NE 16-035-03-W4M

Inspector: T. Krenn

Overview of NE 16-035-03-W4M showing parcel boundaries (Valtus Aerial Imagery 2023)



NE 16-035-03-W4M (Google Earth Pro Aerial Imagery June 5, 2024)



Site Inspection: January 29, 2025. Labelled by T. Krenn, Inspector

Pens:

- N1: 250 Feeders (450 – 900 lbs)**
- N2: 200 Feeders (450 – 900 lbs)**
- NE1: 75 replacement heifers from the operator’s own herd (excluded from Total)
- NE2: Empty
- NE3: 200 Feeders (450 – 900 lbs)**
- NE4: Empty
- NE5: Empty
- NE6: 8 Feeders (sorted)**
- S1: 250 Feeders (450 – 900 lbs)**
- S2: 200 Feeders (450 – 500 lbs)**
- S3: 250 Feeders (450 – 500 lbs)**
- Total: 1,358 Feeders (450 – 900 lbs)**

Note: Livestock type and numbers as provided by Anthony Garnier during the site inspection. The 75 replacement heifers and the cattle (68 & 278) in the areas identified as SFBS were excluded from the total livestock number for determining threshold.

APPENDIX B - NRCB Operational Policy 2015-2 (CFO/SFBS Policy), Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (For Cattle Operations)



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**DISTINGUISHING BETWEEN
CONFINED FEEDING
OPERATIONS AND SEASONAL
FEEDING AND BEDDING SITES
(FOR CATTLE OPERATIONS)**

Operational Policy 2015-2

Agricultural Operation Practices Act
June 11, 2015

Revised July 5, 2018

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1. Introduction

The *Agricultural Operation Practices Act* (AOPA) requires permits for the construction and operation of “confined feeding operations” (CFOs) whose livestock numbers are over prescribed thresholds. The act’s definition of CFOs excludes “seasonal feeding and bedding sites” (SFBSs). The act defines a seasonal feeding and bedding site, but the definition is ambiguous and challenging to apply in many cases, especially for many cattle operations.

From 2004 to 2015, the NRCB used a “balance of factors” approach to distinguish an SFBS from a CFO. This approach provided flexibility to account for site-specific circumstances. However, this flexibility gave rise to concerns about consistency and clarity.

In 2015, the NRCB adopted a new policy to provide a transparent and more consistent method for NRCB Field Services staff to use when determining whether a cattle facility is a CFO or an SFBS. The core of the 2015 policy was a decision making guide. The guide’s first part was a decision tree (with two decision levels) and the second part was a table of nine factors. Use of the decision tree could lead to a final CFO or SFBS determination without needing to consider the factor table. However, in certain circumstances, the decision tree required applying the factor table in order to make a final determination.¹

The 2015 guide was the culmination of several years of discussions among the NRCB, Alberta Agriculture and Forestry, and interested stakeholders. However, even when it adopted the 2015 policy, the NRCB recognized that the policy would likely need additional refinement after it was ground-truthed and following further research, analysis, and discussion.

The new guide attached to this policy is based on this additional effort since 2015. As with the previous guide, the new guide consists of two main parts—a decision tree and a factor table. However, the new guide aims to provide even more clarity, transparency, and consistency by adding one more level to the decision tree and a table of factors for assessing facilities adjacent to a permitted CFO. These additions should reduce the number of determinations that will be required using the factor table at the end of the guide.

Section 2 of this policy provides background on the legislative basis for the guide and how the guide has evolved from the factor-based approach. Section 3 provides an overview of the guide, and sections 4 and 5 provide additional detail. Section 6 addresses staff documentation of their CFO/SFBS determinations using this guide.

1.1 Uses of the policy

This policy is *only for facilities that confine cattle*, which are by far the most common type of SFBS livestock facility. To date, the NRCB has developed a separate policy for making CFO/SFBS determinations for meat goat operations. (See NRCB Operational Policy 2016-9: *Meat Goat CFO Determinations*.) If SFBS determinations are needed for facilities that confine other livestock types, determinations should be made on a case-by-case basis, based on the expertise of Field Services staff and considering all relevant factors.

Where applicable, this policy can be used for classifying current facilities, deciding the acceptable parameters for future uses of a facility, determining whether a facility “existed as a CFO” facility on January 1, 2002, or for other grandfathering purposes.

1. In 2016, the NRCB made minor, non-substantive revisions to the narrative part of the 2015 policy, but did not change the two-part guide. For brevity, the previous policy is referred to as the “2015 policy.” The guide attached to that policy is the “2015 guide.”

This policy includes non-discretionary and discretionary aspects. However, as with any NRCB policy, Field Services staff have discretion to modify the policy when strictly applying it would be manifestly unfair, or in other necessary and appropriate circumstances.

1.2 Decision options

This policy does not preclude Field Services staff from concluding that a given facility is neither a CFO facility nor an SFBS. For example, a pasture used solely for summer grazing is neither a CFO nor an SFBS, because cattle aren't being fed in the pasture. (As used in this guide, the term "fed" means providing any type of feed system other than grazing.)

1.3 Facilities used for short term handling and non-commercial purposes

The attached guide does not apply to the confinement and feeding of cattle in a facility used solely for short term handling—sorting, processing, treating, shipping, quarantining, or receiving. The NRCB does not view these - as CFO facilities. Nor does their presence indicate that the overall operation is a CFO, because many or most pure grazing operations include one or more short term handling facilities. (Accordingly, the NRCB does not consider short term handling facilities when determining a grandfathered CFO's deemed capacity.)

Similarly, the NRCB does not consider confining cattle in a facility for an operator's domestic or personal, non-commercial purposes to be a CFO-type use of the facility, regardless of when the confinement occurs. Examples of this usage include raising their own 4H cattle and feeding cattle for personal consumption. (However, facilities used for personal, non-commercial purposes may need to be permitted under AOPA if they are part of an above-threshold CFO.)

2. Background

Section 1(b.6) of AOPA defines a "confined feeding operation" (CFO) as "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..." That definition exempts several types of facilities from the CFO definition, including "seasonal feeding and bedding sites" (SFBSs). Section 1(i) of AOPA defines an SFBS as an "over-wintering" site where livestock are "fed and sheltered." The act does not define "over-wintering" or "fed and sheltered." The NRCB therefore needed to interpret these terms and provide policy guidance for distinguishing between a CFO facility and an SFBS.

2.1 Livestock "over-wintering"

The term "over-wintering" is commonly used in the livestock industry. The NRCB interprets the term based on this usage, and by reading it in light of AOPA's purposes. From these standpoints, the NRCB views "over-wintering" to generally refer to a limited period during which livestock cannot subsist solely or even partially on grazing. This inability to graze is due to either a lack of new grass, or other climate-related reasons (for example, extremely low temperatures or deep snow). During this period the operator **would be** grazing the livestock if grass were available.

The "would be grazing" element of this SFBS definition excludes the winter-time confinement and feeding of finishers in a feedlot. This is because the finishers would not be grazing even if grass were available.²

2. In this policy, "finishers" refer to beef cattle that weigh at least 900 lbs. (This is the same definition as that used for "finishers" in Schedule 1 of the Part 2 Matters Regulation under AOPA.)

This concept of “over-wintering” may seem straight forward, but it can be difficult to apply to a site for several reasons. One is that climatic conditions (and accordingly the feasibility of grazing) vary throughout Alberta and can also vary on an annual basis in any given region of the province. Another reason is that there may be differing views on when a pasture or broader region can be grazed. These differences arise from varying management objectives for the livestock, and varying land managers’ objectives for the condition or health of the grass and broader ecosystem. In addition, the feasibility of grazing at a particular time of year may vary from operator to operator, depending on each operator’s ownership of or access to graze-able pastures.

In the NRCB’s view, the “classic” or clearly recognizable SFBS is a pasture or land that is cropped annually. (This policy uses the term “pasture” to mean a site that is generally grazable and is used for grazing.) At this “classic” SFBS, subsistence feed is brought to livestock at a time when grazing cannot be continued as the sole or primary feed source, due to climatic conditions. The classic SFBS may also include a natural shelter belt or an artificial structure to shelter livestock from extreme elements.³

This is just the classic SFBS. In reality, operators use a wide variety of facilities to confine livestock. Some of them may be an SFBS and some may be a CFO, so each one must be assessed on its own merits.⁴

In addition, individual facilities may be used differently from year to year depending on markets and other non-climate-related factors, so this variance may also need to be considered.

2.2 The factor-based approach in the 2004 guide

Because “over-wintering” is ambiguous, the NRCB previously distinguished a CFO from an SFBS by considering the totality or balance of several factors. The NRCB viewed these factors in light of AOPA’s objectives and the permit-based regulatory approach in AOPA.

In the NRCB’s view, AOPA’s objectives include

- minimizing the environmental risks and nuisances that are posed by large, dense concentrations of livestock and manure, and
- providing affected municipalities and citizens with reasonable opportunities to participate in the NRCB’s permitting of medium and large-sized CFOs.

AOPA’s formal permitting processes for CFOs (including public notice and comment provisions) support these objectives. Because these processes do not apply to an SFBS, the NRCB takes a cautious approach when determining whether a site is an SFBS or a CFO.

Before 2015, the NRCB’s factor-based approach used 11 factors set out in a table prepared by several NRCB staff around 2004.⁵ NRCB staff commonly refer to this table

3. The 2008 AOPA Reference Guide (p.13) contains two diagrams of a classic SFBS. This guide can be downloaded from Agriculture and Forestry website at: [http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/epw5592](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/epw5592).

4. As Agriculture and Forestry noted in a 2012 report, “there are a vast number of different management styles for SFBS in Alberta. No two sites are the same which is not surprising. (Agriculture and Forestry, “Seasonal Feeding and Bedding Site Determination Project – Final Report” (December 2012).)

5. A factor-based approach was also used by NRCB board members in their 2002 review decision, in *Prairie Feeders (Bassano) Ltd.*, NRCB Board Decision 2002-03.

as the “2004 guide.” The NRCB did not officially adopt the 2004 guide as policy, but NRCB staff did have access to it.

2.3 The hybrid decision tree and factor-based approach in the 2015 guide

The 2004 guide provided staff with considerable flexibility and discretion to account for site-specific circumstances. However, this flexibility gave rise to concerns about consistency and clarity. Around 2010, members of the Technical Advisory Group (TAG) started considering new approaches to address these concerns. As part of this work, the TAG members conducted numerous site visits and had many discussions. This TAG effort, together with several years of NRCB experience, considerable discussion among NRCB staff, and collaboration with Agriculture and Forestry, led to a better understanding of “over-wintering.” According to the 2015 policy, this work led to a general consensus that:

- a facility is a CFO facility if it is used to confine and feed cattle anytime between July 1 and September 15; and,
- a facility is an SFBS if it is used only to confine and feed components of a “cow-calf operation” outside of the July 1 – September 15 grazing period.

The 2015 guide adopted a decision tree with two levels, based on these two circumstances. If neither circumstance applied, then under the 2015 guide the factor table needed to be considered.

The 2015 factor table resembled the factor table in the 2004 guide, but removed three of the 2004 factors, modified several of the other factors to reflect current cattle management practices, and added livestock density as a new factor. As a result of these changes, the table in the 2015 guide was simpler than the 2004 guide.

3. Overview of the 2018 guide

As noted in section 1 above, the research and discussions since the NRCB adopted the 2015 guide led to a general consensus that one additional circumstance should be added to the decision tree, and that several refinements of the factor table, are warranted. The attached, new guide reflects this consensus. This section provides a brief overview of the guide; section 4 below explains the new aspects of the guide.

As with the 2015 guide, the 2017 guide starts with a decision tree and then uses a factor table to distinguish between CFO and SFBS facilities, if required.

Under the first level of the decision tree, a facility is *automatically* considered a CFO facility if it is used to confine and feed cattle between July 1 and September 15, no matter what type of cattle are being fed at that time or how the facility is used the rest of the year.

If the facility is not used for confined feeding during that time period, the next question is whether the facility is used only for a cow-calf operation outside of the “grazing period” (that is, when grass is generally available for grazing). If the facility meets this criterion, it is automatically considered an SFBS.

The third level of the decision tree addresses whether a facility is adjacent to a permitted CFO and, if it is, whether it should be considered a CFO facility or an SFBS. (Section 4 below provides guidance on determining adjacency.)

When applicable, the automatic classifications in the steps of the decision-tree provide greater consistency and certainty than a multi-factor determination.

If a facility cannot be classified as a CFO or an SFBS under the three decision levels discussed above, then the facility must be assessed based on the nine factors listed in Table 2.

The overall guide should be applied while recognizing that cattle operations may include a wide variety of facilities to confine livestock. For a single operation, some facilities may be an SFBS and some may be a CFO facility. In addition, a single facility may be used as an SFBS at one time in a given cattle management cycle and as a CFO facility at a different time in the cycle. Therefore, the CFO/SFBS determination should be made on a facility-by-facility basis and, for each type of use of each facility.

To fully understand how a given facility is being used, Field Services staff should also consider how the facility use relates to:

- other facilities at the same overall operation
- the operation's overall cattle management cycle

If a given facility is used as a CFO for part of the year, it is considered to be a CFO. It requires an AOPA permit if the number of livestock confined in the overall CFO (that the facility is a part of) exceed the thresholds set out in the Part 2 Matters Regulation. This outcome holds true even if the facility is used as an SFBS (or for some other purpose, or not at all) for the remainder of the year.

A CFO/SFBS determination is valid only for the management practice and other relevant circumstances on which the determination is made. If the management practice or any of the assumptions used in making the determination change, the operation will need to be re-evaluated. That said, markets and other non-climate related factors may affect how a facility or area is used from year to year, so these variances may need to be considered when determining an operation's management practice as of a given time.

4. The three criteria in the decision tree part of the 2018 guide

4.1 A facility used for confined feeding between July 1 and September 15 is a CFO facility

As discussed in part 2 above, grazing periods vary throughout the province and depend in part on cattle and land management objectives, among other factors. These circumstances make it difficult to identify the *outer* limits of grazing periods. However, there is a general consensus that cattle can graze *anywhere* in Alberta from July 1 to September 15. This two and a half month summer period should therefore be considered as the *minimum* extent of a *non*-over-wintering period throughout Alberta.

Accordingly, under the guide, a facility used to confine and feed cattle during the July 1 to September 15 period is a CFO facility, rather than an SFBS. This result is regardless of how the facility is used at other times of the year, and regardless of the other factors in the decision tree and table below the decision tree. (As noted in section 1 above, however, a facility used for short term handling in the summer is not considered a CFO.)

4.2 A facility used solely to confine and feed a component of a cow-calf operation is an SFBS (unless feeding occurs during the grazing period)

As noted above, under the 2015 guide, a facility used solely for a cow-calf operation is automatically considered to be an SFBS, if no livestock are confined and fed in the facility during the July 1 – September 15 grazing period.

This approach is based on a consensus among TAG and Policy Advisory Group (PAG) members and was confirmed in a February 28, 2013 memorandum from the deputy minister of Agriculture and Forestry. The logic for this approach is that cow-calf operations are primarily grazing operations and the CFO definition in AOPA clearly excludes facilities where livestock are sustained by grazing. Thus, the existence of “pure” cow-calf pairs in a facility is an indication of “over-wintering” or, in other words, of a “seasonal feeding and bedding site.”

Based on the work of the TAG members, the NRCB believes that Alberta cow-calf operations typically have the following components:

- pregnant or lactating cows
- replacement heifers (purchased or raised)⁶
- bulls used for in-herd breeding
- cull cows⁷
- freshly weaned, homegrown calves produced from the operation’s own breeding herd, up until (but excluding) the calves’ second grazing season

A cattle facility used to confine and feed any of these cow-calf components outside of the grazing period will be considered an SFBS rather than a CFO facility. However, care must be taken to consider *all* uses of a given facility. A cow-calf operation can be part of a larger cattle operation, so a facility may be used not only for cow-calf purposes but also for confined feeding of cattle that are not part of the cow-calf component.

As noted above, a facility used solely for cow-calf purposes is considered an SFBS only if the facility is not used to confine and feed cattle during the **grazing period**. In the 2015 guide, the relevant **grazing period** was July 1 – September 15. However, the NRCB now believes that this time period is too narrow; the grazing period should cover the entire time when grass is generally available.

Under this approach, if a cow-calf operation is confining and feeding cattle in a facility within this period, the facility cannot automatically be considered an SFBS. Rather, the facility must be evaluated using the factors in table 2 of the guide. To determine when a grazing period generally occurs in a given region, Field Services staff should consider the grazing period used by grazing cooperatives in that region, or in similar regions.

4.3 When the facility is adjacent to a CFO

The 2015 policy stated that the user of the guide must consider the “proximity of the facility in question to an established CFO.” According to the 2015 policy, if the facility is “adjacent to a CFO and has permanent infrastructure, and is used for feeding any cattle, the facility should be considered part of the overall CFO, regardless of when that feeding occurs.”

The 2015 policy explained that this approach to “adjacent facilities” was based on the NRCB board members’ decision in *Prairie Feeders (Bassano) Ltd.*, NRCB Board Decision 2002-03.

6. According to Agriculture and Forestry and cattle industry specialists, cow-calf operations in Alberta typically retain 10 to 15 per cent of the cow breeding herd as potential replacements, but the percentage can be as high as 30 per cent.

7. According to Agriculture and Forestry and cattle industry specialists, up to 30 per cent of breeding cows are culled each year at cow-calf operations in Alberta.

While the 2015 policy noted that adjacency should be considered, the 2015 policy did not specifically incorporate this criterion into the accompanying guide.

The 2018 guide includes adjacency as the third level in the decision tree. Under this level, if the facility in question is an “adjacent facility” (that is, if it is adjacent to a CFO), then it is considered an SFBS only if it has *all* of the characteristics listed in Table 1 of the guide. The adjacent facility is a CFO facility if it lacks any one or more of these characteristics.

If the NRCB considers an adjacent facility to be part of a CFO, the adjacent facility does not automatically require a permit under AOPA. To determine whether a permit is needed, the NRCB would also need to determine whether the CFO (including adjacent facilities) is above the permit thresholds in the regulations under the act.

4.3.1 The characteristics of an “adjacent SFBS” (Table 1)

Table 1 lists eight characteristics that essentially mirror the characteristics in the SFBS column of Table 2. Viewed together, the Table 2 characteristics provide a sliding scale for determining whether the subject facility is a CFO facility or an SFBS. The SFBS test in Table 1, for facilities that are adjacent to a CFO, is more rigorous than the test in Table 2, for non-adjacent facilities. Under Table 1, an adjacent facility can qualify as an SFBS only if it falls essentially at the very end of the sliding scale on Table 2. By contrast, a facility might qualify as an SFBS under Table 2, but not qualify under Table 1 if it is adjacent to a CFO.

This rigorous approach toward adjacent facilities is consistent with the board’s view, in *Prairie Feeders*, that adjacent facilities contribute incrementally to the nuisance and environmental risks posed by CFOs. Typically, the incremental risks of an adjacent SFBS are quite small, but the assumption applies only if a facility is at the far, SFBS end of the CFO-SFBS spectrum.

4.3.2 When a facility is considered “adjacent to a CFO”

Before applying the factors in Table 1, it is necessary to decide whether the facility in question is even “adjacent” to a CFO. A facility is clearly adjacent to a CFO when it shares a boundary with a CFO facility—that is, when the two facilities have a common fence line or feed alley.

However, the “common boundary” criterion should not be applied so literally or strictly as to frustrate the manure management purposes of AOPA and the board’s decision in *Prairie Feeders*. Thus, a facility in question might be considered “adjacent” to a CFO if the facility is within or adjoins the same quarter section where some or all of the CFO facilities are located.

Likewise, a facility might be adjacent to a CFO if the facility relies exclusively on power, water, labour, or other resources from a nearby CFO. In this circumstance, the facility in question is *functionally* adjacent even if not immediately adjacent from a geographical standpoint.

5. The multi-factor table in the guide (Table 2)

As noted in section 3 above, when none of the three characteristics in the decision tree lead to a conclusive CFO or SFBS classification, the factors in Table 2 must be used to classify the facility as a CFO facility or an SFBS (unless neither category fits).

The first column in the table (on the left side) lists each generic factor. The second and third columns state the typical “bookend” CFO and SFBS characteristics for each factor.

When assessing these factors, Field Services staff must consider their combination or totality. While each factor is indicative of a CFO or an SFBS, no single factor is likely determinative.

In addition, when considering all of these factors, staff must avoid giving the factors equal weight and then counting the number of factors that support each option. Rather, staff must make a qualitative assessment of all relevant factors based on their own experience and the underlying objectives described earlier.

A qualitative judgement is especially appropriate given that, for most of the generic factors listed in the first column, the characteristics listed in the second and third columns represent two ends of a spectrum. There will likely be instances where the observed characteristic for a given factor does not perfectly match either of the two characteristics listed in the table. (For example, the observed density could be somewhere between 170 and 100 animals per acre, rather than more than 170 or less than 100.)

In these instances, Field Services staff will need to decide whether the observed characteristic falls more toward the CFO or the SFBS end of the spectrum. If the observed characteristic is squarely in the middle, the relevant factor cannot be given any weight in the overall determination.

5.1 New factor: maximum number of animals being confined

The new factor in Table 2 is the maximum number of animals being confined in the facility at any one time. A facility containing more than 1,000 head is a typical characteristic of a CFO facility, while a facility with fewer than 1,000 head is characteristic of an SFBS.

These characteristics are based on the 2012 AF study discussed above. That study assessed several SFBSs in Alberta and found that the average number of head at those sites was about 1,000.

If the animals being confined in the facility in question include calves produced from the owner’s own cow/calf operation, NRCB staff should count those “home grown” calves only if they are combined with purchased feeders. If home grown calves are not combined with purchased feeders, then they are part of a pure cow/calf operation and are therefore not relevant to considering whether the facility has more or less than 1,000 head.

5.2 Excluded factor: runoff risks

As with the factor table in the 2015 guide, Table 2 in the new guide excludes risk of runoff. This exclusion is reasonable because both a CFO facility and an SFBS can pose runoff risks. The amount of risk depends on where a facility is located, and how it is constructed and managed. AOPA provides tools to address runoff risks from both types of livestock facilities. In addition, runoff risk is a partial function of the other factors listed in the table, so assessing it as a separate factor is somewhat redundant.

As the 2015 policy stated, the NRCB’s future experience in applying the factor table (and the overall guide) will likely provide information that will warrant further clarifying or otherwise modifying the factors.

6. Documenting the CFO/SFBS determination, and peer review

When making a CFO/SFBS assessment, Field Services staff should document how they applied the guide, starting with the decision-tree criteria and then the table, where applicable. This explanation must discuss how the staff considered each factor in the table (where applicable) and the observed characteristics relating to each factor. Staff must document their decision in writing even if they conclude that the facility is neither a CFO facility nor an SFBS.

The written explanation should also include any assumptions staff made and relevant information provided by the operator and other parties. Staff will provide a written copy of the CFO/SFBS determination to the cattle producer, and to other parties when appropriate.

The NRCB recognizes that CFO/SFBS determinations are often complex. Field Services staff should seek advice from management and their peers as they work through the analysis and documentation of a CFO/SFBS determination. The need for peer review is especially critical in situations where the CFO/SFBS guide is being used for grandfathering purposes (in other words, to determine whether a facility or operation existed as a CFO on January 1, 2002).

Guide for Distinguishing Between a Confined Feeding Operation (CFO) Facility and a Seasonal Feeding and Bedding Site (SFBS)

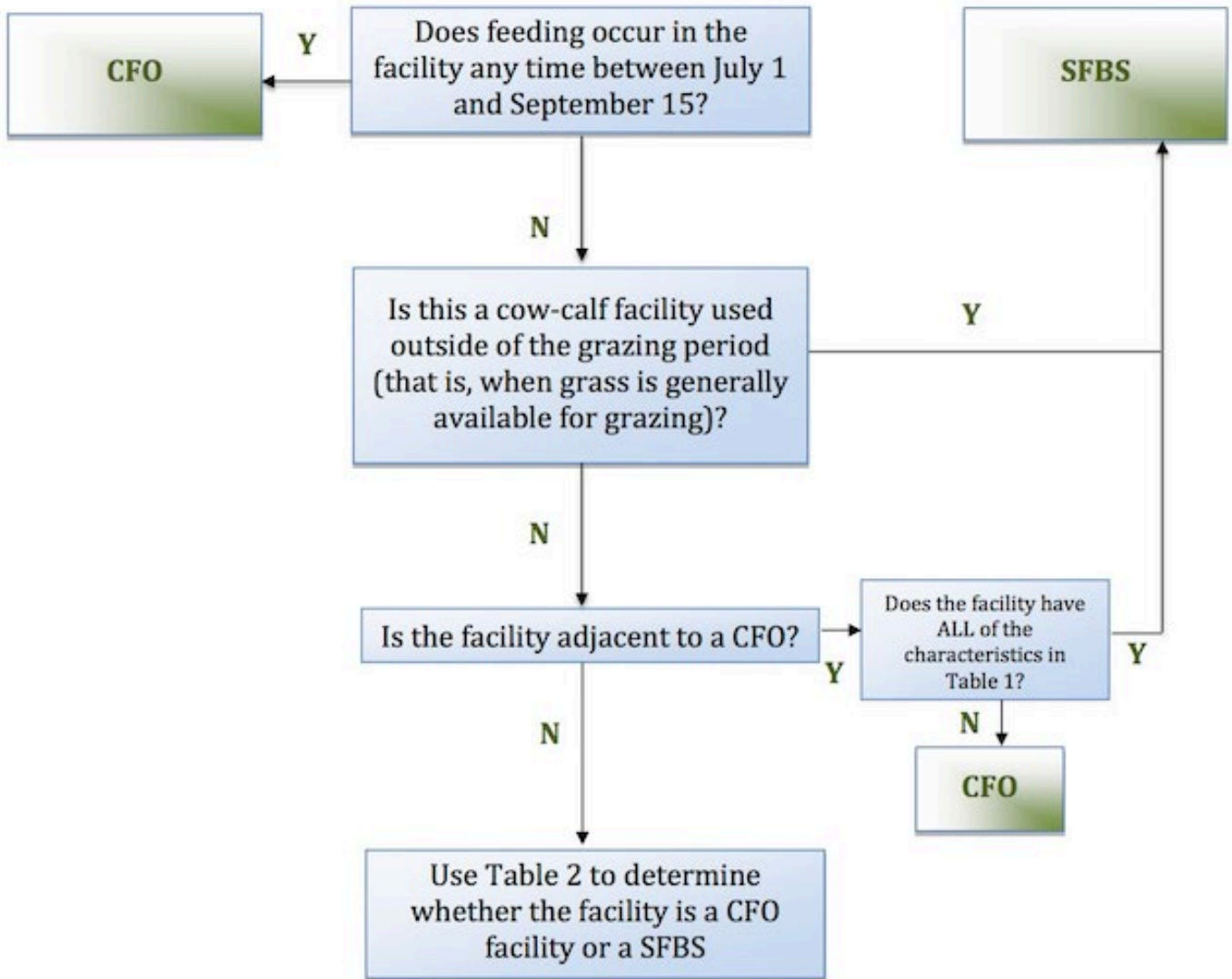


Table 1. Factors for assessing facilities adjacent to a CFO

Factors	Characteristics
Timing of feeding in the facility	Only when grazing is unavailable
Livestock type	Any livestock types other than finishers
Bedding site	Bedding sites are moved within or across years
Feeding area	Cattle have 360° access to the feeding area and the feeding area is moved within or across years
Manure management	Manure is spread over a large area requiring little or no management within the facility footprint.
Density of confinement	< 100 animals / acre
Infrastructure	Little or no permanent infrastructure
Vegetation	Pasture or annually cropped; the land has been and continues to be suitable for grazing, or the land has been and continues to be cropped

Table 2. Factors for CFO/SFBS determinations

Generic factors	Typical characteristics	
	CFO	SFBS
Timing of feeding in the facility	When grazing is available	When grazing is unavailable
Livestock type	Finishers or feeders (or mix of both), can also have backgrounders	Feeders or backgrounders (or mix of both)
Bedding site	Permanent	Moved within or across years
Feeding area	Fence line feeding using permanent bunks	Cattle have 360° access to the feeding area and the feeding area is moved within or across years
Manure management	Concentrated in the facility—must be removed and spread or stored	Manure is spread over a large area requiring little or no management within the facility footprint.
Density of confinement	≥ 170 animals / acre	< 100 animals / acre
Infrastructure	Significant permanent infrastructure	Little or no permanent infrastructure
Vegetation	No vegetation	Pasture or annually cropped; the land has been and continues to be suitable for grazing, or the land has been and continues to be cropped
Max # of animals being confined at any one time	> 1,000 head	< 1,000 head

Contact the Natural Resources Conservation Board at the following offices. Dial 310.0000 to be connected toll free.

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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
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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 Queen's Printer at www.qp.gov.ab.ca or through the NRCB website.

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