

Compliance Directive

AGRICULTURAL OPERATION PRACTICES ACT, RSA 2000, c A-7

Directive #: CD 23-10

Date issued: December 18, 2023 (**Amended January 4, 2024**)

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

Attention: **Harvey Garnier and Yvonne Garnier (Property Owners) & Anthony Garnier (Operator)**

This directive relates to the construction of a beef confined feeding operation (CFO) without a permit when a permit is required.

The current operation consists of 11 pens: six newly constructed permanent pens (200 head/pen) located in the northeast corner of the parcel; plus, two existing permanent main pens (300 head/pen) located along the north boundary of the parcel directly south of the older barns; plus, three large pens (200 head/pen) located to the south.

A maximum of 1,300 cows and a maximum of 3,000 backgrounder calves weighing 500 – 800 lbs (categorized as “Feeders” as per the *Agricultural Operation Practices Act*) are custom fed over the winter.

The operation is located at NE 16-53-3-W4 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. The CFO is operated by Anthony Garnier, the son of Harvey and Yvonne Garnier.

The unauthorized construction consists of converting the historical cow/calf operation to a commercial custom feeding operation and the construction of new feedlot type pens, without a permit, when a permit is required as per Section 13(1) of the *Agricultural Operation Practices Act* (AOPA).

The conversion to a CFO consists of:

- six newly constructed feedlot type pens (permanent infrastructure and fence line feeding); and

- utilizing the original cow/calf herd facilities for commercial custom feeding for a maximum of 1,300 cows and 3,000 backgrounder calves (feeders).

Part 2 of AOPA came into effect on January 1, 2002. The CFO did not receive a municipal development permit prior to that date, nor a Natural Resources Conservation Board (NRCB) permit for the construction of a CFO since that date.

Background and Investigation

On October 16, 2023, NRCB received a complaint of an unregistered CFO with over 1,000 cattle being operated in Vermilion County. The complainant was also concerned with the large drain on water levels and supply and stated that the operation had been ongoing for multiple years with an increase in the number of head each year.

On October 17, 2023, I conducted a search of NRCB's electronic database and paper filing system and did not find record of a municipal development permit or a permit issued by the NRCB for a CFO at NE 16-53-3-W4. I also conducted an initial review of Geocortex and Google Earth aerial imagery for this location which showed the following:

- In Valtus Aerial Imagery taken on a date between 1999 and 2003 (Appendix A), are what appear to be two or three pens just south of the barns (which are located directly south of Highway 45), a large pen area located in the northeast corner of the parcel directly south of Highway 45 and east of the barns, and a large pen located south of the treed area and south of where the residence is located.
- Google Earth Aerial Imagery dated September 2007 provides a clearer image of the site (Appendix B).
- Sometime after 2015, as shown on the Valtus Aerial Imagery (Appendix C), but prior to September 2019, as shown on the Google Earth Aerial Imagery (Appendix D), a large, fenced pen area was constructed directly west of the residence and an accessory building was constructed to the east of the existing southern pen.
- After 2019 six new pens were constructed in the northeast corner of the parcel and the large pen directly south of the residence was divided into three pens with exterior feed bunks placed along the northern fence line. These areas have been added to the September 2019 Google Earth Aerial Imagery for reference (Appendix D).

On October 17, 2023, I contacted the owner, Harvey Gaston (Gus) Garnier, and advised of the complaint received by the NRCB. Gus advised he had operated a purebred Angus herd, but for personal reasons had sold the Angus herd in 2019 and was now operating a small feedlot operation with approximately 2,500 head of cattle. Gus advised that at present there were 300 calves on site for backgrounding and that the cows are kept on 20-to-50-acre size parcels and fed over the winter but gone before spring. Gus advised he will be receiving approximately 1,400 cows, (600 head from one source and 800 head from another source), to feed over the winter. Gus confirmed that they only feed over winter months, all backgrounding calves are gone by April 1st and some even by March 1st. Gus advised that he has 10 quarter sections on which he moves manure stockpiles every year.

On October 26, 2023, Inspector Cathryn Thompson and I conducted a site inspection of NE 16-53-3-W4. After meeting initially with the owner, Gus Garnier, we met with Anthony Garnier, the owner's son, and operator of the site. Anthony confirmed he was aware of the NRCB but was unaware of permitting requirements under AOPA, however was willing to

obtain any permits required to ensure the operation is compliant. Inspector Thompson and I went over questions regarding the operation with Anthony using NRCB's seasonal feeding and bedding site (SFBS) worksheet and then used NRCB's Operational Policy 2015-2 (CFO/SFBS Policy), [Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites \(For Cattle Operations\)](#) to show Anthony how we would be deciding if the operation was considered an SFBS or a CFO.

Based on the questions on the SFBS worksheet, Anthony provided the following information regarding the operation:

- The operation is not solely a cow-calf operation.
- The area for the operation is neither pastureland nor annually cropped, however it would be possible to seed the three large pens southwest of the feedlot area.
- Animals are not fed when grazing is available as animals are only on site from fall to spring.
- The type of livestock includes backgrounders and custom feeding a cow herd.
- The bedding site is in the same spot every year.
- The operation includes "portable" feed bunks (fence line feeding) but they are not moved and many of them cannot be moved due to their location.
- There is not 360-degree access to the feeding area.
- The feeding area is not moved within or across years.
- There is fence line feeding in all pens.
- Manure is hauled out of the pens in the spring.
- Eight (north pens) out of the 11 pens have permanent infrastructure.
- Based on the information provided by Anthony at the time of the site inspection the number of backgrounders that can be contained in each pen include:
 - 3 pens x 200 head/pen = 600 head
 - 6 pens x 200 head/pen = 1,200 head
 - 2 pens x 300 head/pen = 600 head
 - TOTAL # of Backgrounders = 2,400 head
- Currently they purchase 600 calves and custom feed 1,500 weaned calves from various sources for backgrounding purposes. Calves start at 500 pounds and leave at 800 pounds.
- They also custom feed 1,400 cows from various sources (e.g., neighbours) in 10-acre parcels until spring before the cows calve.
- One month before the cows calve, they are sent back to their owners.
- 2,000 of the backgrounding calves are kept from fall to spring and 400 of their own calves are kept and grass fed after spring.
- The maximum number of calves they would background is 4,000 head. "

At the time of our initial discussions with Anthony, based on the information he provided, and the characteristics outlined in Table 2 of the CFO vs SFBS Policy, the operation had characteristics of both a CFO and an SFBS, but with the CFO characteristics appearing to be more prominent.

Inspector Thompson and I then conducted a visual site inspection with Anthony. Site photos are attached (Appendix E). Based on the information provided by the operator and as per the visual inspection, we determined that the site consisted of:

- two main existing permanent pens with no vegetation, fence line feeding, backgrounders weighing 500 to 800 lbs. without 360° access to the feeding area, manure to be hauled out of pens and stockpiled or spread, a permanent bedding site, and \geq 170 animals/acre.
- six newly constructed northeasterly pens with permanent fencing, no vegetation, fence line feeding, backgrounders weighing 500 to 800 lbs. without access to 360° feeding, manure to be hauled out of pens and stockpiled or spread, a permanent bedding site, and \geq 170 animals/acre.
- three large pens located just south of the residence and southwest of the feedlot pens that displayed more characteristics of an SFBS: temporary/moveable fencing and exterior fence line feed bunks, over 50 per cent vegetation, access to pastureland, and the potential for the pen areas to be seeded; when asked if the temporary fence and feed bunks are moved, the operator stated they could be moved.

On December 5, 2023, after emailing Anthony a list of questions for clarification as to the operation of the facility, we had a phone conversation discussing the matter. During our phone conversation Anthony confirmed the following:

- On January 1, 2002, his father ran a cow/calf operation, backgrounded their own calves, and some years purchased 300-400 calves for backgrounding. This number varied from year to year. No custom feeding was done.
- The northeast pens were previously one large pen, which was used for various purposes: cows for calving that were fed in the middle of the pens, or calves that were then moved to grass or sometimes they remained in the pens and were fed.
- The number of calves purchased for backgrounding varies from year to year. Some years they do not purchase any calves for backgrounding, other years they purchase up to 1,000.
- Currently Anthony has 300 of his own calves in the northeastern pens and 500 of his dad's calves are in the south pens. Again, this number varies from year to year.
- All pens are utilized (two main pens, the six northeast pens, and the south pens) for their own purchased calves, plus the custom fed cows and calves.
- The cows and calves are fed over the winter until spring.
- There are no cow/calf pairs. They sold all their cow/calf pairs three years ago.
- Cows and calves are not placed in specific pens.
- They feed 3,000 calves: 2,000 calves from various sources and 1,000 of their own that they purchase at market.
- The calves are placed in all the pens (two main pens, northeast pens & south pens).
- They only fence line feed over the winter months. They do not feed in the summer.
- The maximum number of livestock includes 1,300 cows and 3,000 calves.
- I confirmed with Anthony that when referring to "backgrounders" Anthony is referring to calves 500-800 lbs. that are categorized as feeders (450- 900 lbs.) as per AOPA threshold levels. Anthony confirmed this was correct and that they do not finish calves.

I explained that based on our discussions, site inspections, and the factors identified in Tables 1 & 2 of the CFO/SFBS Policy (which I provided to Anthony and went over with him on site), his operation is considered a CFO, based on the following reasons:

- Although cattle are not fed between July 1st – September 15th, the facility is not part of a cow/calf operation.
- The two main pens have permanent fencing, no vegetation, fence line feeding, backgrounders weighing 500 to 800 lbs. without 360° access to the feeding area, manure to be hauled out of pens and stockpiled or spread, a permanent bedding site, and > 170 animals/acre. Because these comprise most of the factors for a CFO as listed in Table 2, it is a CFO.
- The six newly constructed northeasterly pens have permanent fencing, no vegetation, fence line feeding, backgrounders weighing 500 to 800 lbs. without access to 360° feeding, manure to be hauled out of pens and stockpiled or spread, a permanent bedding site, and > 170 animals/acre. Because these pens also displayed most of the factors listed in Table 2, it considered a CFO.
- The three large south pens are more SFBS-type pens but would be considered adjacent to a CFO. Due to adjacency, these pens would be required to meet all the factors in Table 1 in order to be considered an SFBS. They do not have 360° feeding, currently they have external fence line feed bunks that are not moved within or across years. Subsequently they do not meet all the factors in Table 1 and therefore they are not considered SFBS facilities.

I advised Anthony that I would be issuing a compliance directive requiring the operator to obtain an NRCB permit, and that sufficient time would be given to submit an application. I suggested July 1, 2024, as the date for compliance.

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 compliance with permit requirements, the regulatory objectives in AOPA may be compromised.

The *Agricultural Operation Practices Act* ("AOPA") at section 13(1) prohibits a person from constructing a CFO for which an approval or registration is required unless they hold that permit.

"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."

A "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 operations.

In addition, as part of NRCB Policy 2015-2, a flowchart is used to assess a facility adjacent to a CFO. If the facility is adjacent to a CFO, it is considered an SFBS only if it has all the characteristics listed in Table 1 of the policy. Under Section 2 (approval) and Schedule 2 of

the Part 2 Matters Regulation, an approval is required for a CFO containing 500 head or more of feeders (450 – 900 lbs.).

Based on my observations, my conversations with Gus Garnier and Anthony Garnier, and my site inspection of October 26, 2023, I conclude that the owner and operator of the operation located at NE 16-53-3-W4 have contravened section 13(1) of AOPA by constructing a CFO, without a permit, when a permit is required.

Under Section 39(1) of AOPA, the NRCB may issue an enforcement order to a person if, in the NRCB's opinion, the person is, among other things, contravening AOPA or its regulations. As this is the first enforcement action at this site and the operator is willing to obtain any required permits, and in keeping with the principles of the NRCB Compliance and Enforcement Policy, a compliance directive is being issued at this time rather than an enforcement order.

DIRECTIVE:

To mitigate any possible risks to the environment and potential nuisances to any affected neighbours, Harvey Garnier, Yvonne Garnier, and Anthony Garnier, shall take all necessary and appropriate measures to comply with AOPA and its regulations. Harvey Garnier, Yvonne Garnier, and Anthony Garnier shall:

1. After July 1, 2024, not use the two main pens and the six northeastern pens located at NE 16-53-3-W4 to confine feed livestock above threshold levels as outlined in Schedule 2 of AOPA, or to store manure, if an NRCB permit for this operation has not been obtained; and
2. After July 1, 2024, if an NRCB permit has been obtained as identified in Directive #1, manage the three south pens located at NE 16-53-3-W4 to meet all the characteristics in Table 1 (Factors for assessing facilities adjacent to a CFO) in the CFO/SFBS Policy. Additionally, if an NRCB permit is not obtained, then manage the three south pens to meet the majority of SFBS characteristics listed in Table 2 (Factors for CFO/SFBS determinations) in the CFO/SFBS Policy.

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

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

Harvey Garnier, Yvonne Garnier, and Anthony Garnier shall allow the NRCB access at any reasonable hours, with or without advance notice, to the CFO's land and structures for the purpose of assessing compliance with this directive.

Given the seriousness of unauthorized construction of a CFO, the NRCB posts compliance directives for unauthorized construction on the NRCB's public website.

If Harvey Garnier, Yvonne Garnier, and Anthony Garnier fail to comply with this directive, the NRCB may take additional enforcement action.

(Original signed)

Tracey Krenn

Inspector, Compliance and Enforcement Division

Natural Resources Conservation Board

Cc: Vermilion River County

Appendices

- A. Valtus Aerial Imagery 1999-2003: NE 16-53-3-W4.
- B. Google Earth Aerial Imagery September 2007: NE 16-53-3-W4.
- C. Valtus Aerial Imagery 2015: NE 16-53-3-W4.
- D. Google Earth Aerial Imagery September 2019. Labelled by Tracey Krenn
- E. NE 16-53-3-W4 Site Photos taken October 26, 2023
 - a) PHOTO 1 – Unauthorized Construction - North Pens
 - b) PHOTO 2 – Unauthorized Construction - North Pens
 - c) PHOTO 3 – Unauthorized Construction - North Pens
 - d) PHOTO 4 – Main Pens
 - e) PHOTO 5 – South Pens (Adjacent CFO)

CD23-10 APPENDICES: NE16-53-03-W4

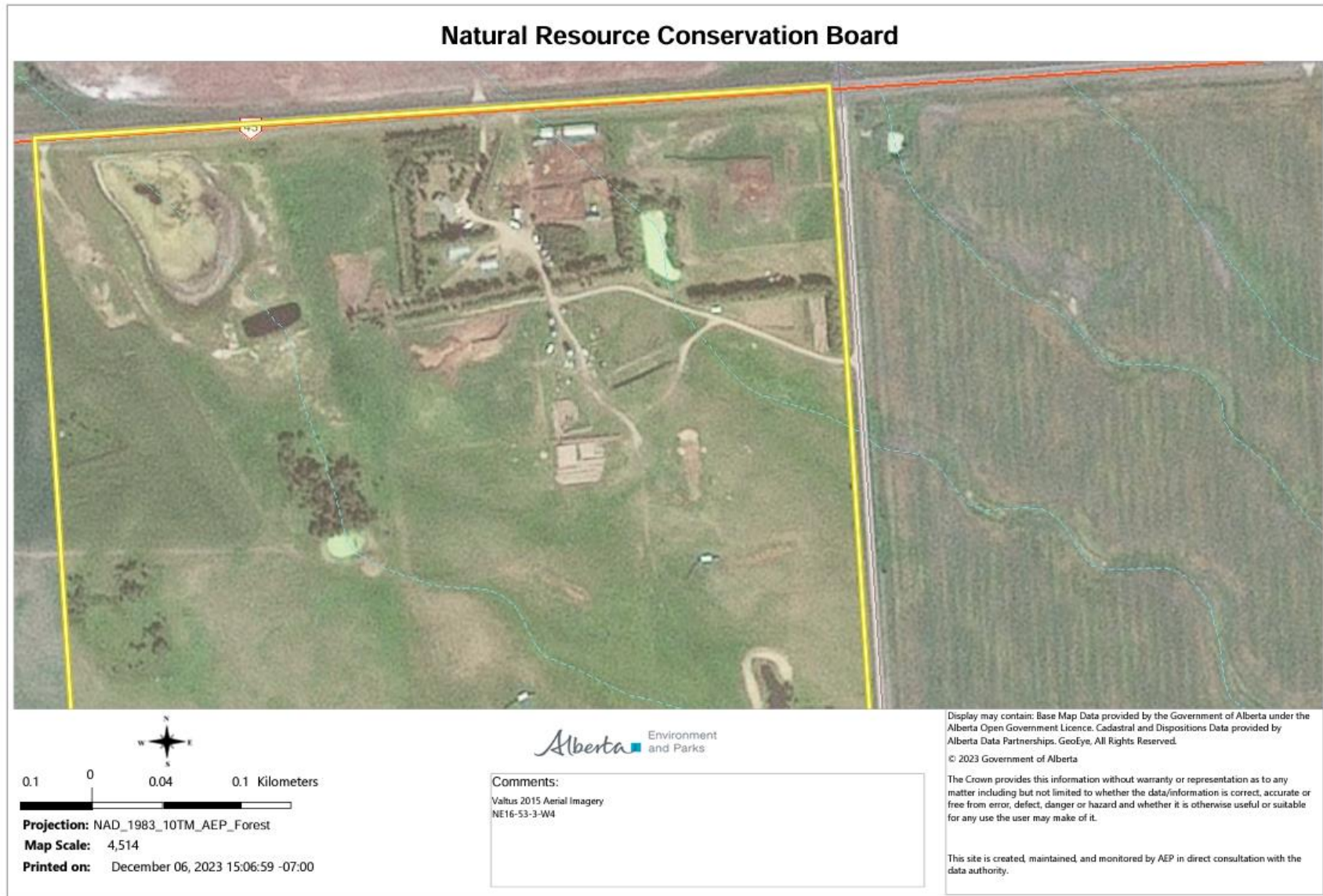
APPENDIX A: Valtus Aerial Imagery 1999-2003



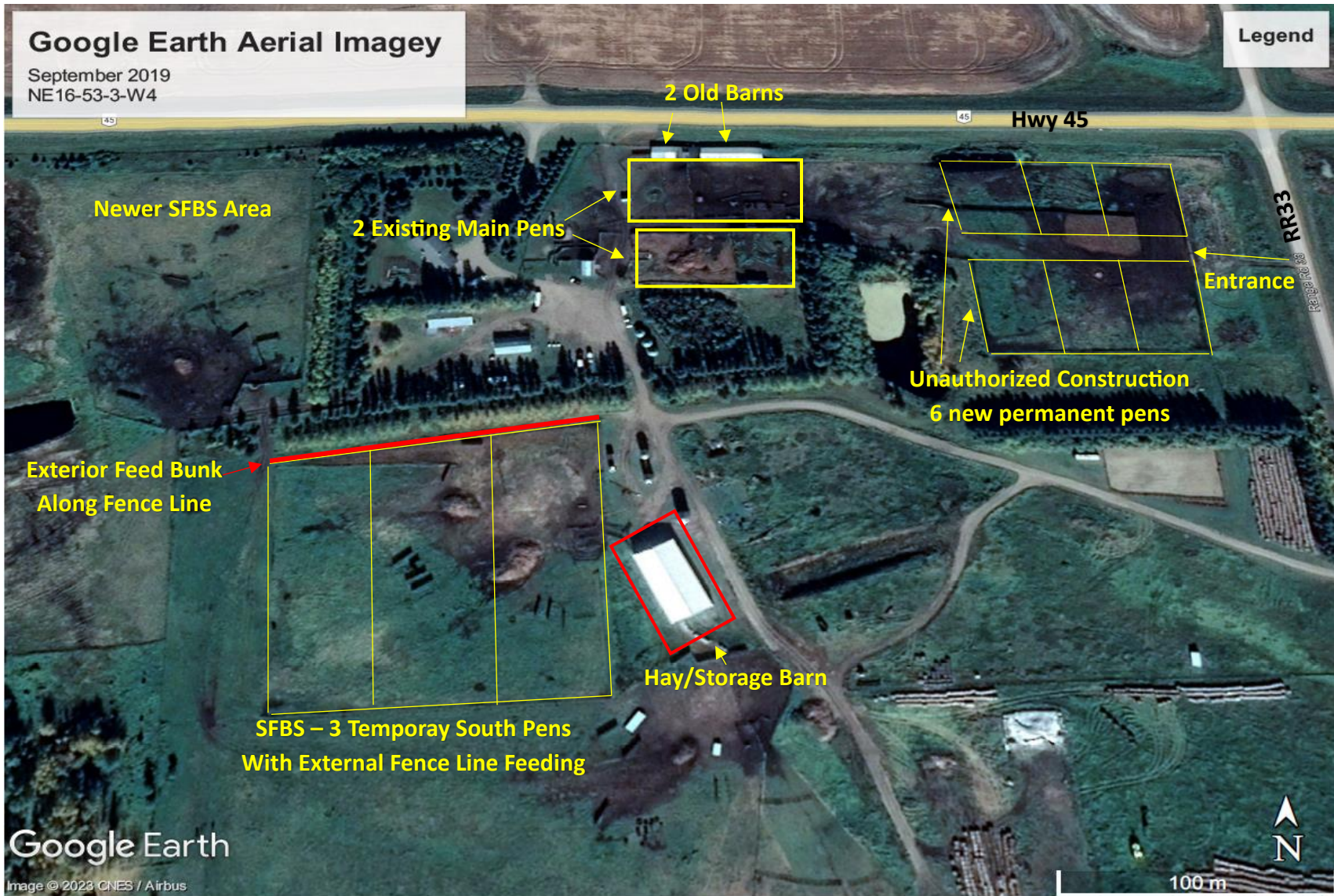
APPENDIX B: Google Earth Aerial Imagery September 2007



APPENDIX C: Valtus 2015



APPENDIX D: Google Earth Aerial Imagery September 2019 – Construction of Unauthorized Pens After 2019



APPENDIX E: NE16-53-3-W4 SITE PHOTOS – OCTOBER 26, 2023

a) PHOTO 1 – Unauthorized Construction – North Pens



Looking west from RR33 – permanent fencing, fence line feeding – NORTH PENS

b) PHOTO 2 – Unauthorized Construction – North Pens



Looking northwest from RR33 – NORTH PENS

c) PHOTO 3 – Unauthorized Construction – North Pens



Looking southwest from the corner of RR33 & Hwy 45 (Twp Rd 533) – NORTH PENS
Unauthorized Construction (Backgrounders – 6 pens x 200 head/pen = 1200 head)

d) PHOTO 4 – Existing Main Pen



Looking east from the west side of the existing pens directly adjacent Hwy 45 (Twp Rd 533) – MAIN PENS

e) PHOTO 5 – South Pens (Adjacent CFO)



Looking west at the 3 large south pens with external fence line feed bunks – SOUTH PENS