



**NRCB** | Natural Resources  
Conservation Board

**Grandfathered (Deemed) Permit Determination**  
**under the**  
***Agricultural Operation Practices Act***  
**966827 Alberta Ltd. (Merrick Campbell)**  
**SW-12-55-27-W4**  
**File # PB24001**

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## 1.0 Introduction and Background

This document sets out the written reasons for my determination of the livestock capacity and type in a deemed permit under the *Agricultural Operation Practices Act* (AOPA). The subject of the determination is a beef operation located on SW-12-55-27-W4 (this quarter section will be referred to as “the site”). The site is located in Sturgeon County, approximately 24 kilometres Southwest of Morinville. The process of ascertaining livestock capacity and livestock type under a deemed permit is known commonly as a “grandfathering” determination.

On February 2, 2024, Merrick Campbell of 966827 Alberta Ltd. contacted the Natural Resources Conservation Board (NRCB) and requested that the NRCB conduct a grandfathering determination for their beef confined feeding operation (CFO). The CFO operates under the corporate name of 966827 Alberta Ltd. and the land is owned by Merrick Campbell.

The confined feeding operation (CFO) has a Certificate of Compliance #5-92-08 issued by Alberta Agriculture and Alberta Environment on December 14, 1992. Certificate of Compliance #5-92-08 recognized that there was an existing 1,000 head beef feedlot at this site (Appendix A).

This CFO does not have a development permit from Sturgeon County. Under section 18.1(1)(a) of AOPA, CFOs that existed (even without a municipal development permit) on January 1, 2002, are grandfathered.

It is therefore necessary for me to determine:

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

On February 2, 2024, Merrick Campbell submitted a grandfathering determination request to the NRCB on behalf of 966827 Alberta Ltd. The grandfathering determination was requested at SW-12-55-27-W4 and it claimed 1,000 beef finishers (Appendix B).

For the reasons that follow, I concluded that under section 18.1 of AOPA, the CFO at SW-12-55-27-W4, currently owned by 966827 Alberta Ltd. (Merrick Campbell) has a deemed approval with the capacity for 1,000 beef finishers. The CFO has not been abandoned and the deemed NRCB permit under AOPA is still valid today.

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

## 2.0 Context and Process

### 2.1 Legal Context

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

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

The question of whether there was a “confined feeding operation” on this site on January 1, 2002 may turn on the definition of “CFO” in AOPA. In AOPA, “confined feeding operation” is a defined term in section 1(b.6):

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

To be grandfathered, a CFO must have been at or above AOPA threshold numbers on January 1, 2002. The Part 2 Matters Regulation under AOPA identifies the threshold to require a permit for beef finishers is 150 animals for a registration and 350 animals 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 NRCB 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 was feeding 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 Operational Policy 2023-1: *Grandfathering (Deemed Permit)*, 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.

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 crises. Thus, the 2000 to 2004 range was meant to generate sufficient evidence to apply this pragmatic and flexible approach.

### **2.4 Notice**

Under Part 2 Matters Regulation of AOPA, the municipality where the CFO is located is an affected party (see section 5 of the regulation). As such, the NRCB provided notice of the grandfathering investigation to Sturgeon County and invited comments. The NRCB also sent information to Alberta Environment and Protected Areas.

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

In this case, the claimed capacity is 1,000 beef finishers, which puts the distance for affected persons entitled to notice under section 19(1) of AOPA at 1.0 miles. The distance is set out in section 5 of the Part 2 Matters Regulation.

On March 6, 2024, notice of the grandfathered (deemed) permit determination request was published in the *Morinville Press*. In the notice, I advised of the claim by Merrick Campbell on behalf of 966827 Alberta Ltd. for a deemed permit for 1,000 beef finishers, and I invited the public to provide written submissions related to the facilities, livestock capacity, and type of livestock produced by the CFO on January 1, 2002. I also invited the public to apply for status as directly affected parties. The deadline for written submissions was April 5, 2024.

In addition, on March 1, 2024, 27 notification letters were sent to people who (according to Sturgeon County) reside on or own land within a 1.0 mile radius of the operation who might have relevant information as to the capacity and type of livestock that the CFO produced around January 1, 2002. The notification letters included information similar to that in the newspaper notice.

The NRCB published notice of the grandfathering determination on its public website at [www.nrcb.ca](http://www.nrcb.ca), as well as the grandfathering determination request form submitted by Merrick Campbell.

### **3.0 Evidence**

#### **3.1 Information at the NRCB**

The confined feeding operation (CFO) has a Certificate of Compliance #5-92-08 issued by Alberta Agriculture and Alberta Environment on December 14, 1992. The Certificate of Compliance was issued to Don Campbell and Sons (including Merrick Campbell). Certificate of Compliance #5-92-08 recognized that there was an existing 1,000 head beef feedlot on SW-12-55-27-W4 (Appendix A).

#### **3.2 Information from Merrick Campbell**

Merrick Campbell provided eight documents to support the claimed grandfathered capacity of 1,000 beef finishers.

The first document dated January 7, 2000 is a cattle and feed inventory as of December 31, 1999 (Appendix C). This document shows that there were a total of 305 fat steers and heifers (average weight of 1,100 lbs) at this operation, along with 147 head of weaned calves (average weight of 500 lbs).

The second document is an aerial image of the operation dated May 12, 2001 (Appendix D). This image shows nine pens at this operation, with what appear to be cattle in many of them.

The third document is an inventory of cattle as of December 31, 2001 (Appendix E). This document lists a total of 150 fat steers and heifers, along with 143 weaned calves and 188 grass steers at this operation.

The fourth document is a cattle and feed inventory as of January 3, 2003 (Appendix F). This document lists the following cattle inventory: 68 weaned steer calves, 87 weaned heifer calves, 96 fat heifers (1,300 lbs), 41 grass steers (1,200 lbs) and 151 grass steers (1,200 lbs).

Both documents (Appendix E & F) also indicate that the Campbells were a member and were feeding cattle under the Fort Feeders Co-op Association. The association provides loans to producers for purchasing and feeding cattle.

Documents five, six, seven and eight are fat cattle sale records for December 12, 2003, December 22, 2003, February 20, 2004, and April 16, 2004 (Appendix G). These records show that finished (“fat”) yearling steers and heifers were being sold from this operation at the average finished weights of 1250-1350 lbs.

On February 13, 2024, NRCB Approval Officer Nathan Shirley and I met with Merrick Campbell. At this time, we also inspected all of the operation’s facilities. Merrick Campbell provided the following information about his operation:

- Around 2002, feedlot animals were both home raised and purchased. The majority of the feedlot animals were purchased, approximately 50 animals annually were home raised.
- This operation would purchase cattle in the winter and background them. In the summer these cattle would go to pasture and then come back to the feedlot in the fall where they were finished and then sold as finished animals the following spring.
- Around January 1, 2002, the feedlot pens were not typically used in the summer as the animals were on pasture. However, sometimes larger framed calves were kept in feedlot pens in the summer and finished.
- The feedlot was always separate from the cow-calf herd. There were separate pens and the cow-calf herd was managed to the south of the feedlot or to the east of the feedlot
- The cows always calved on grass, there were no “calving pens” at the operation.
- Currently, this operation backgrounds calves in the feedlot pens during the summer and up until November/December. The backgrounders are fed silage.
- Handling and sorting corrals are located north of “Pen #7” and the feed mill is located north of “Pen #8” (Appendix I).
- During the site inspection, Merrick Campbell provided me with the bunk lengths of each pen.

### **3.3 Information from Municipality**

Under the Part 2 Matters Regulation under AOPA, the municipality where the CFO is located is an affected party (see section 5 of the regulation). As such, Sturgeon County is an affected party and is also a directly affected party in this deemed permit determination, as they would be if this were an application for an approval today.

On March 15, 2024 I received a written statement from Sturgeon County in regards to this operation (Appendix H). In this written statement Sturgeon County confirmed that this operation holds a Certificate of Compliance (#5-92-08) dated December 14, 1992.

In their written statement, Sturgeon County also stated: “To our knowledge the cow-calf and feedlot operation has continued to operate since 1992. The County has no concerns with the Confined Feeding Operation.”

### **3.4 Evidence from Neighbours**

The newspaper notice in the *Morinville Press*, as well as the notification letters mailed to residents and owners within 1.0 miles of the CFO, invited people to provide written statements related to the capacity and type of livestock being confined by the CFO on January 1, 2002. I did not receive any written responses from neighbouring landowners or residents.

### **3.5 Evidence from Other Agencies**

On March 6, 2024 a notification letter was sent to Alberta Environment and Protected Areas. I did not receive a response from this agency.

## **4.0 Analysis and Findings**

### **4.1 Was There a CFO on Site on January 1, 2002?**

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

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

where

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

I considered the evidence above and concluded that nine pens (Appendix I) were part of a “CFO” on January 1, 2002. NRCB Operational Policy 2015-2: *Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (for Cattle Operations)* provides guidance on how to make this distinction for cattle operations. I used the decision tree and a factor table (Table 2) in this policy to make my conclusions.

In 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. From historical records I reviewed, and from my discussions with the operator, I concluded that around 2002, typically this operation did not feed cattle between July 1 and September 15 as the animals were sent to pasture. I understand that animals were sometimes fed in the CFO during the summer, however it was more common for them to be sent to pasture. Therefore, I moved onto the second level of this decision tree.

The second level of the decision tree asks the question if the facility is used only for a cow-calf operation outside of the grazing period. From my discussion with Merrick Campbell regarding the management and housing of the cow-calf herd and from historical records provided by Merrick Campbell which showed that this operation was feeding and selling finished animals (Appendices C and G), I conclude that this facility did not meet the criteria of being used only for a cow-calf operation around 2002. Therefore, I moved to the third level of this decision tree.

The third level of the decision tree addresses whether a facility is adjacent to a permitted CFO. In 2002, this facility did not meet this criterion. As a result, this facility (as of January 1, 2002) can not be classified as a CFO or a SFBS under this decision tree, and the facility must be assessed based on the nine factors in Table 2 of Policy 2015-2.

I assessed this facility (as of January 1, 2002) based on the factors in Table 2. I considered the combination of factors in this table, as no single factor is determinative of a CFO or SFBS. Because the footprint of the facility has not changed since 2001, I used aerial imagery from 2001 and 2020 (Appendices D and I) to assess the following nine factors:



<b>Generic Factors</b>	<b>Assessment of the facility as of January 1, 2002</b>	<b>CFO or SFBS Characteristic</b>
Timing of feeding in the facility	Typically animals were fed in facility when grazing was unavailable	SFBS
Livestock type	Finishers	CFO
Bedding site	Permanent, not moved within or across years	CFO
Feeding area	Fence line feeding using permanent bunks	CFO
Manure management	Concentrated in the facility. Manure must be removed and spread or stored	CFO
Density of confinement	Unknown	-
Infrastructure	Significant permanent infrastructure	CFO
Vegetation	No vegetation, pens are not used as pasture or annually cropped	CFO
Max # of animals being confined at any one time	<1,000 head	SFBS

Based on this assessment and the combination of factors, I conclude that as of January 1, 2002, this facility was used as a CFO, rather than a SFBS. See Appendix I for a map identifying which enclosures (pens) at this operation were used for confined feeding on January 1, 2002.

#### **4.2 Was the CFO Above AOPA Threshold on January 1, 2002?**

The AOPA threshold number for beef finishers is  $\geq 150$  animals. Based on the evidence provided by Merrick Campbell, I find that this CFO had capacity for 1,000 beef finishers, which is above the threshold. Accordingly, the CFO's livestock capacity was above threshold on January 1, 2002 and it has a deemed approval permit.

#### **4.3 CFO Footprint and Structures**

The evidence set out above and in the 2001 and 2020 aerial imagery (Appendices D and I) shows that the footprint of the feedlot has not changed since 2001. My February 13, 2024 site inspection, also confirmed that the feedlot footprint has not changed. 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 collection areas (MCAs). Because these measurements were taken on Google Earth 2020 aerial imagery, they are approximate measurements as some areas of the aerial image were difficult to see (see Appendix J for pen footprint measurements).

- Pen 1 – 36,142 ft<sup>2</sup>
- Pen 2 – 49,192 ft<sup>2</sup>
- Pen 3 – 21,921 ft<sup>2</sup>
- Pen 4 – 38,073 ft<sup>2</sup>
- Pen 5 – 9,998 ft<sup>2</sup>
- Pen 6 – 25,266 ft<sup>2</sup>
- Pen 7 – 37,059 ft<sup>2</sup>
- Pen 8 – 39,611 ft<sup>2</sup>
- Pen 9 – 29,857 ft<sup>2</sup>

This CFO also consisted of the following ancillary structures:

- Handling and sorting corrals

See Appendix I for a map of all MCAs and ancillary structures.

#### 4.4 Livestock Type

As to livestock type, the supporting materials show that this CFO was confining beef finisher cattle as the weights of the shipped “fat” cattle (averaging 1,250 lbs and 1,350 lbs, Appendix G) fall within the “cows/finishers (900+lbs)” category of the Part 2 Matters Regulation under AOPA.

#### 4.5 CFO Livestock Capacity

The NRCB *Grandfathering (Deemed Permit)* policy at 6.3.3 provides:

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

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

I took steps to verify if the claimed capacity of the feedlot (1,000 beef finishers) would have fit into the feedlot in 2002. As the footprint of the feedlot has not changed since 2002, I used Google Earth aerial imagery from 2020 to verify the livestock capacity.

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

The guideline says:

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

The guideline sets out different calculations for northern or southern Alberta – in this case, the CFO is in northern Alberta. Therefore, according to this guideline, pen space is 250 ft<sup>2</sup>/animal, full feed bunk space is 1.0 ft/animal and limited feed bunk space is 2.5 ft/animal.

The formulas for beef finisher calculations in northern Alberta include:

- Pen Calculated Animal Number = Pen Area (ft<sup>2</sup>) ÷ 250 ft<sup>2</sup>/animal
- Bunk Space Full Feed Calculated Animal Number = Bunk Length (ft) ÷ 1.0 ft/animal
- Bunk Space Limited Feed Calculated Animal Number = Bunk Length (ft) ÷ 2.5 ft/animal

I used Google Earth aerial imagery from 2020 to determine the approximate area of the nine pens at this site. The total calculated pen area was 287,119 ft<sup>2</sup>(Appendix J). I also verified the bunk lengths that were provided to me during my February 13, 2024 site inspection using this aerial imagery. The total bunk length for these nine pens is 1,248 feet.

Therefore, by using the calculated pen areas and bunk lengths for this site (Appendix J), Agdex 096-81 suggests that for this site, the pen footprint space would allow a total capacity of 1,148 beef finishers. The full feed bunk space would allow a total capacity of 1,248 beef finishers and the limited feed bunk space would allow a total capacity of 499 beef finishers.

Based on this analysis, the claimed capacity of the feedlot (1,000 beef finishers) fits within the Agdex 096-81 calculated capacity range of 499 to 1,248 beef finishers.

#### **4.6 Reasonable Range of Physical Capacity**

I assessed whether the claimed capacity (1,000 beef finishers) is within a reasonable range of the physical capacity on January 1, 2002 – in other words, would the claimed 1,000 beef finishers have fit into these pens in 2002?

The claimed capacity of 1,000 beef finishers is within a reasonable range of the physical capacity of the CFO on January 1, 2002, as calculated above.

#### **5.0 Affected Persons and Directly Affected Parties**

Section 11(5) of the Administrative Procedures Regulation under AOPA requires that an inspector's decision report on a grandfathered (deemed) permit determination include reasons on whether affected persons who made a submission are directly affected parties.

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

Affected persons in this determination were the municipality in which the operation is located (Sturgeon County) and all neighbours who own or occupy land within the 1.0 mile notification distance. By proxy through section 19 of AOPA, these are determined by section 5 of the Part 2 Matters Regulation.

"Directly affected parties" are typically a subset of "affected persons." Under section 19(6) of AOPA, the applicant for an approval and municipalities that are "affected persons" are automatically directly affected parties. As such, 966827 Alberta Ltd., Merrick Campbell, and Sturgeon County are directly affected parties.

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

In this case, no neighbouring landowners within the notification distance submitted a written response, therefore there are no additional 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, municipalities, 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.

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

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

From my observations and from information obtained during my site inspection, I was able to assess the status of the site:

- In 2012, the operation transitioned from a finishing operation to a backgrounding operation.
- The CFO is currently being used to background calves in the summer months until November/December.
- There was no indication of any intent not to operate as a CFO in the future.
- During my site inspection on February 13, 2024, I observed permanent infrastructure consisting of permanent pens constructed which included wind walls, automatic waterers, and fence line feeding panels. I also observed handling and sorting corrals. The infrastructure appeared to be well maintained and in good condition. Most of the pens were empty at the time of inspection with the exception of a couple of pens which housed some weaned calves and bulls.
- Based on my observations of the conditions of the site, the CFO can continue being used without any major upgrades or renovations.

Having considered the evidence and issues that relate to assessing abandonment, I am of the opinion that the CFO at SW-12-55-27-W4 is not 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.

The policy objective behind grandfathering is to protect legitimate expectations and reduce unfairness to operators who did not receive adequate notice of AOPA Part 2 taking effect from being expected to conform to the "new" standards. When AOPA was being developed, the expectation was that, over time, older facilities would adhere to AOPA's requirements as they

were upgraded or replaced. The idea is that, prior to AOPA, operators made their investment decisions on the basis of the rules as they stood at the time, and that it would be unfair to subject those operators to the new rules.

If an operator substantially changes the liner of a grandfathered manure storage facility or collection area, then the policy objective behind grandfathering that liner is erased. In addition, as a general rule, if a deemed facility is changed in a way that constitutes “construction” under AOPA, including the NRCB’s interpretation, then that facility will lose its deemed status. This rule applies even where the “construction” does not alter the existing liner (e.g. but where capacity of manure storage or collection increases). Further explanation of what constitutes “construction” is provided in NRCB Operational Policy 2012-1: *Unauthorized Construction*, and the NRCB’s *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 the CFO at SW-12-55-27-W4, currently owned by 966827 Alberta Ltd. (Merrick Campbell):

1. existed on January 1, 2002
2. was above AOPA permitting thresholds for beef finisher animals on January 1, 2002
3. has the same footprint (for confining cattle) today as it did on January 1, 2002
4. has the same structures (for confining cattle) today as it did on January 1, 2002
5. does not have a development permit issued prior to January 1, 2002 from Sturgeon County
6. was feeding beef finisher animals on January 1, 2002
7. had enclosures with the physical capacity to confine 1,000 beef finisher animals on January 1, 2002
8. claimed capacity of 1,000 beef finisher animals is within a reasonable range of the physical capacity of beef finisher animals on January 1, 2002.

Therefore, under section 18.1 of AOPA, the owner or operator of the CFO has a deemed approval with the capacity for 1,000 beef finishers.

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.

Furthermore, I conclude that the only directly affected parties of this decision are: 966827 Alberta Ltd., Merrick Campbell and Sturgeon County.

July 10, 2024

(Original signed)

Cathryn Thompson  
Inspector – Natural Resources Conservation Board

## 8.0 Appendices

- A. 5-92-08 Certificate of Compliance (Alberta Agriculture), dated December 14, 1992
- B. Grandfathering Determination Request to NRCB (February 2, 2024)
- C. Cattle and feed inventory as of December 31, 1999, dated January 7, 2000 (supplied by Merrick Campbell)
- D. May 12, 2001 Aerial Image of Operation (supplied by Merrick Campbell)
- E. December 31, 2001 Cattle inventory (supplied by Merrick Campbell)
- F. January 3, 2003 Cattle and feed Inventory (supplied by Merrick Campbell)
- G. Fat Cattle Sale Records, dated December 12, 2003, December 22, 2003, February 20, 2004 and April 16, 2004
- H. Response from Sturgeon County (March 15, 2024)
- I. 2020 Google Maps Imagery (labelling done by Cathryn Thompson)
- J. Livestock Capacity Calculations (per Agdex 096-81)