



Decision Report PB25002 for
Grandfathered (Deemed) Permit Determination
under the
Agricultural Operation Practices Act
Rottier Farms Ltd.
SW 14-62-1 W5M

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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 dairy operation located on SW 14-62-1 W5M (this will be referred to as “the site”). The site is located in Westlock County, approximately 5 kilometres Jarvie, AB. The process of ascertaining livestock capacity and livestock type under a deemed permit is known commonly as a “grandfathering” determination.

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

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

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

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

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

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

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

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

2.0 Context and process

2.1 Legal context

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

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

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

To be grandfathered, a CFO must have been at or above AOPA threshold numbers on January 1, 2002. The Part 2 Matters Regulation under AOPA identifies the threshold to require a permit for dairy (milking cows plus associated dries and replacements) is 50 for a registration and 200 for an approval.

The Administrative Procedures Regulation under AOPA includes section 11 governing deemed permit investigations. Section 11(1) of the Regulation states that:

11(1) At the request of an owner or operator for a determination related to a deemed permit under section 18.1 of the Act, or in response to a complaint where a determination of the terms or conditions or existence of a deemed permit is required, an inspector shall conduct an investigation to determine the capacity of a confined feeding operation or manure storage facility

- (a) that was in place on January 1, 2002, or*
- (b) that was constructed pursuant to a development permit issued before January 1, 2002.*

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

2.2 Standard of proof

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

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

2.3 Flexible approach to grandfathering date

Section 18.1 of AOPA focuses on facts as they existed on the precise grandfathering date of January 1, 2002. However, I generally sought evidence as to the type of livestock and the livestock capacity at the operation between 2000 and 2004 (See Grandfathering Policy, part 6.0). Considering the operation for at least two years before and two years past the January 1, 2002, grandfathering date seemed useful because witnesses might not remember what occurred on the exact date of January 1, 2002 and documents may not have the exact date. Also, considering how an operation functioned over a range of dates might shed additional light on how the operation functioned on a given day within that range.

In addition, the NRCB generally uses a pragmatic and flexible approach toward applying the January 1, 2002 grandfathering date. This approach is reasonable because a more rigid or stricter application of the January 1, 2002 grandfathering date could lead to unfair results if, for example, an operation happened to have emptied its enclosures on January 1, 2002, or was half-way through rebuilding or constructing the enclosures on that date, or had shut down temporarily due to a short-term market crises. Thus, the 2000 to 2004 range was meant to generate sufficient evidence to apply this pragmatic and flexible approach.

2.4 Notice waived for indoor operation

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

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

(see also Grandfathering Policy, part 5.2.2)

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

3.0 Evidence

3.1 Information from Rottier Farms

During multiple site visits and interviews with Rottier Farms I inspected the facilities and concluded they existed prior to 2002 as dairy facilities and had physical capacity for the claimed the numbers with no changes since that date.

3.2 Other evidence

I found that the livestock type and capacity of the structures could reliably be determined by viewing historical aerial photos. I was able to locate historical imagery from 1999-2003. This image provides a clear view of the operation, and the facilities all existed at that time and are still present in other later images matching the existing facilities listed in the application (see Appendix A).

4.0 Analysis and findings

4.1 CFO footprint and structures

The evidence set out above and attached as appendices shows that Rottier Farms operated an above threshold CFO prior to 2002. Based on my February 5 and April 23, 2025 site inspections, I conclude that the footprint of the CFO today is the same footprint that existed on January 1, 2002.

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

Facility	Dimensions (m)
Dairy barn	78 m x 13.5 m
Pens 1-5	30 m x 27 m
Pen 6	27 m x 9 m
Pen	59 m x 59 m
Calf pen	59 m x 30 m
Pen 8	13 m x 13 m
EMS	44.5 m x 10.5 m x 5 m

4.2 Livestock type

As to livestock type, the supporting materials show the CFO operated a dairy (milking cows plus associated dries and replacements).

4.3 CFO livestock capacity

The *Grandfathering (Deemed Permit)* Policy at 6.3.3 provides that, if there is no MD permit, then field services staff determine the capacity of the enclosures to confine livestock (“physical capacity”) under section 18.1(2)(a) of AOPA.

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

To determine the capacity of the CFO, I used “Technical Guideline Agdex 096-81 Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002”. Using this calculator, the existing dairy barn has a stall count of 84 stalls which, using the calculator of freestall at 1.2 cows per stall, equates to a capacity of 100 milking cows.

There are also several pens with shelters present to house dries and replacements.

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

The AOPA threshold for a registration is 50 milking cows (plus associated dries and replacements). Given the analysis above, I find that this CFO had capacity for 100 milking cows (plus associated dries and replacements). Accordingly, the CFO was above threshold on January 1, 2002 and has a deemed permit.

5.0 Affected person and directly affected parties

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

In this case, as notice was waived, the only affected party in this determination is the municipality in which the operation is located (Westlock County). The applicant (Rottier Farms) and the municipality (Westlock County) are directed 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 2025? This assessment may be useful to provide certainty to prospective buyers, sellers or lenders; regulators (such as the NRCB); and the owner and operator of the CFO.

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

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

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

Under Operational Policy 2023-1: Grandfathering (Deemed Permit), part 9.1, I considered whether the CFO has been abandoned since January 1, 2002. I considered factors relevant to abandonment, as identified in Operational Policy 2016-3: Permit Cancellations under AOPA Section 29. The CFO has been an active operating dairy since it started in the 1970's therefore, I conclude this CFO has not been abandoned.

6.2 Disturbed liner

The *Grandfathering (Deemed Permit)* Policy states that facilities that are deemed to have an AOPA permit retain that deemed status only as long as the essential conditions of those facilities remain as they were on January 1, 2002.

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

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

7.0 Conclusion

Having reviewed all the evidence listed above, I have determined that on January 1, 2002, the Rottier Farms CFO at SW 14-62-1 W5M, had the capacity to operate a 100 milking cow (plus associated dries and replacements) CFO. Therefore, under section 18.1 of AOPA, the owner or operator of the CFO has a deemed registration with the capacity for 100 milking cows (plus associated dries and replacements).

I have determined that the CFO has not been abandoned, has not had any of its liners disturbed, and the deemed NRCB permit under AOPA is still valid today. Please see Deemed (Grandfathered) Registration PB25002.

Furthermore, I conclude that the only directly affected parties of this decision are: Karl and Matthew Rottier, Rottier Farms Ltd., and Westlock County.

June 3, 2025

(original signed)

Nathan Shirley
Approval Officer

8.0 Appendices

A. 1999-2003 Valtus Imagery

Appendix A. 1999-2003 Valtus Imagery

