

June 18, 2020

Sent by email to stantaylor16@outlook.com

Stanley and Dustin Taylor
Stant Enterprises Ltd.
Box 113
Leslieville AB T0M 1H0

Dear Mr. Taylor:

Re: Abandonment Letter for Stant Enterprises Ltd. at NW 18-40-4 W5M

Dear Sir,

By now you will have read the Natural Resources Conservation Board (NRCB), Board Decision RFR 2020-04/PR19005 issued June 2, 2020 (RFR Decision), which related to the Grandfathering Determination I issued on May 1, 2020. In its RFR Decision, the NRCB Board requested the NRCB Field Services to evaluate the question of abandonment (see page 4). The Board appeared to be encouraging the NRCB to look into whether your operation had been abandoned since the legislated grandfathering date of January 1, 2002.

In this letter, I will explain why I do not think your operation has been abandoned. The status and capacity that I found in my grandfathering determination remains valid today and abandonment was not an issue in the grandfathering determination.

Nevertheless, in light of the Board's comments in the RFR decision, I wanted to clarify why abandonment was not an issue. With the goal of regulatory transparency, I am providing courtesy copies of this letter to the County of Clearwater; Clayton Olson; Stan Black and Darlene Bacque; and Mathew James representing Cyndy Berry, Rob McPhee and Clayton Olson. Those were the other parties involved in the RFR process.

Background on Abandonment

Assessing abandonment is not a prescribed process in the Agricultural Operation Practices Act (AOPA). Rather, it is a possible basis for cancelling a permit. Under section 29(1)(b) of AOPA, the Board (or an inspector with delegated authority) "may" cancel a permit if the confined feeding operation, or manure storage facility or collection area, to which the permit relates "is abandoned."

It is only if an approval officer (or inspector)

- (1) holds the opinion that an operation has been abandoned,
and
- (2) wishes to cancel a permit,

that the procedures for cancellation set out in section 12 of the *Administrative Procedures Regulation* are triggered.

For the reasons set out below, I do not hold the opinion that your operation has been abandoned.

Considerations

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 evidence I gathered in the course of the last year does not, in my view, warrant spending more time or resources on the issue of abandonment.

Operational Policy, 2016-3 *Permit Cancellations under AOPA Section 29* (updated April 23, 2018) states that when deciding whether a confined feeding operation (CFO) has been abandoned, the following criteria should be considered:

- **The CFO's current use, if any.**

The feedlot did not have any animals in it during my inspections (July 3, 2019, September 16, 2019 and September 20, 2019), however, the CFO started being used again as a feedlot during the grandfathering determination process and is currently in use as a feedlot. Operational Policy, 2016-3 *Permit Cancellations under AOPA Section 29* (updated April 23, 2018), states that *"The NRCB understands that a CFO owner may stop using a facility for a period of time for a number of reasons. These include commodity market conditions, labour market conditions, feed costs, or the availability of feed. A recent example is a federal government program that subsidized hog producers to stop production for a three year period. These types of production lapses do not reflect an intention to abandon a CFO, and the NRCB does not view these kinds of lapses as grounds to cancel a permit."* In other words, not having animals present at an operation does not necessarily mean that it is abandoned.

- **The CFO's current condition.**

On July 3, 2019, an initial site inspection was conducted with NRCB Inspector Jason Moodie and NRCB Approval Officer Jeff Froese. At that time, abandonment was discussed while touring the site and we came to the consensus that the site was not abandoned. We came to this conclusion based on the fact that, in general, the operation was in good standing condition and would require little effort to get the feedlot up and operational again.

In general, a feedlot requires:

- sufficient infrastructure to contain the animals;
- the ability to provide food to the animals, such as bunks and fence line feeding etc.;
- feed storage;
- a system to deal with sick animals and a method to treat those animals; and,
- infrastructure to allow for the acceptance and shipping of animals.

During my site inspections, this feedlot infrastructure looked to be in good condition, with minimal maintenance required. All of the pens were also well defined and looked the same when compared to aerial photographs from around January 1, 2002.

- **What, if any, steps are being taken to keep the CFO's facilities in a condition such that they could resume being used for livestock management or manure storage without major upgrades or renovations.**

As mentioned above, my site inspections showed that major upgrades or renovations were not needed to start up the feedlot again. Some fence boards for the pens needed fixing, however this is common maintenance for any feedlot and is not considered to be a major upgrade or renovation.

- **When the CFO stopped being used to manage livestock or store livestock manure, and the owner's reason for that stoppage.**

The owner/operator stated that the operation was in full use until bovine spongiform encephalopathy (BSE) hit in 2003. During BSE, there were a lot of feedlots in Alberta that depopulated in order to wait for the markets to rebound. Again, as mentioned in policy Operational Policy, 2016-3 *Permit Cancellations under AOPA Section 29* (updated April 23, 2018), commodity market conditions is not considered to be grounds for the NRCB to cancel a permit. Since 2003, the operation has been used (for the most part), but not to the extent as before BSE due to financial reasons.

- **Whether the CFO has changed ownership during the period of disuse and, if so, whether the new owner purchased the CFO in reliance on the seller's promise, or on some other basis for reasonably expecting, that the CFO was permitted under AOPA.**

This operation has not changed ownership since January 1, 2002. My understanding is that there are discussions to sell the operation now, but it hasn't been sold as of yet.

- **The owner's reason for ceasing or postponing use of the permitted CFO and the owner's intent with respect to future use of the CFO.**

Again, as mentioned above, financial issues led to the operation not being used to its full capacity in the past due to BSE. The operation is currently being used as a feedlot, and my understanding is that the intent is to continue to use this operation as a feedlot.

- **The value of the CFO facilities (independent of their permitted status) and the cost of reconstructing them, if reconstruction is needed.**

A lot of the value of the CFO facilities is still present at the operation since all of the original infrastructure is still there. As mentioned above, during my site inspections it looked as though very little reconstruction was needed to get the feedlot up and running again, therefore it was not considered to be abandoned.

I also consider that the burden to show abandonment would be on my shoulders. In grandfathering, the operator bears the onus to prove claimed capacity. Conversely, in a permit cancellation, an inspector wishing to cancel a permit bears the onus of proof to find the operation was abandoned (*Permit Cancellations under AOPA Section 29* at 2.2). I could not approach that onus with your operation.

Although “abandonment” was not mentioned in my grandfathering determination, I believe it’s important to note that abandonment was discussed during the grandfathering determination process, and I came to the conclusion that the feedlot was not abandoned for reasons mentioned in this letter.

While not applicable here, I also take the opportunity to note that the *Permit Cancellations under AOPA Section 29* Policy says that, even if an operation had been abandoned, there is no positive obligation on the NRCB to cancel the permit.

Conclusion

Having considered the evidence and issues that relate to assessing abandonment, I am of the opinion that the CFO owned and operated by Stant Enterprises Ltd. at NW 18-40-4 W5M has not been abandoned since January 1, 2002. I trust that this letter brings some clarity to the comments from the Board in their RFR Decision.



David Smejkal

Inspector, Compliance and Enforcement Division
Natural Resources Conservation Board

cc. Clearwater County; Clayton Olson; Stan Black and Darlene Bacque; and Mathew James representing Cyndy Berry; Rob McPhee; and Clayton Olson.