



NRCB | Natural Resources
Conservation Board

Cancellation of Registration RA05042 Due to Abandonment

Cancellation Decision RA05042C

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1. Introduction

This document sets out reasons for cancelling Registration RA05042 for the confined feeding operation (CFO) at NE 14-47-23 W4M, under the *Agricultural Operation Practices Act* (AOPA). Registration RA05042 is being cancelled due to the operation being abandoned.

Registration RA05042 is cancelled under section 29(1)(b) of AOPA, under section 12 of the Administrative Procedures Regulation of AOPA, and in accordance with NRCB Operational Policy 2016-3: Permit Cancellations under AOPA Section 29. I have been delegated by the NRCB Board to exercise powers and duties under section 29 of AOPA.

2. Background

On November 7, 2005, the NRCB issued Registration RA05042 to Keith and Earl Rasmuson, and Agco Agricultural Consulting Ltd. (operating as Gwynne Vista Farms) (see Document A). Registration RA05042 replaced the deemed (grandfathered) permit. This Registration included a determination of the grandfathered status of a 440 sow – farrow to isowean CFO, plus several hog facilities. Registration RA05042 allowed the construction of a farrowing barn (19.5 m x 9.1 m).

Darcor Holsteins Inc. and Damien Rasmuson (Darcor) purchased the land and operation in April 2022, and are the current co-permit holders. Damien's father, Mr. Darrin Rasmuson, has been the contact for the intended cancellation.

On November 7, 2022, Darcor submitted an application (Part 1) to the NRCB to convert and expand an existing hog operation into a dairy CFO (see Document B). This application was numbered RA22027. As part of the part 1 application, Darcor stated that:

Currently there is 6 hog barns with 5 joined together. Proposed to demolish stand alone barn completely. 2 wings of second barn to be demolished, 2 more converted to shop/storage. Final wing to be renovated for young stock. New barn to be constructed for 120 milking cows. Existing lagoon to be modified as per current NRCB specifications.

A Part 1 application is an applicant's two-page general notice of intent to submit an application (Part 2) to the NRCB within the next six months. Part 1 applications function as a kind of placeholder, as there are frequently significant changes between the Part 1 and Part 2 applications.

On December 16, 2022, Darcor filed an incomplete Part 2 application for RA22027. Over the next week, I communicated with Darcor to identify what information was still required. On December 23, 2022, Darcor submitted the last missing and deficient information of their Part 2 application. The Part 2 application confirmed that none of the existing hog barns would be used or converted for the proposed dairy operation. The completed application indicated plans to demolish three hog barns, use one as a shop, and use two as cold storage (i.e. non-CFO uses).

On January 12, 2023, I deemed application RA22027 complete. A "complete" application only means that all the elements are in place for an approval officer to make a decision. It does not indicate a decision. (see Document C - completed application with some approval officer notes)

On January 31, 2023, as part of the proposed dairy CFO application, I conducted the first site visit. At that time, I also inspected the existing hog facilities. Darrin Rasmuson indicated that the

hog operation has not been in operation for over 10 years (2011). This was the first time I became aware of the physical state of the hog barns, and that they had not been used since 2011. It was apparent to me that the hog CFO facilities had not been maintained and seemed to be in disrepair (see site visit photos, Document D).

On February 6, 2023, I conducted a second site visit of the hog facilities with an NRCB inspector (see site visit photos, Document E). We both concluded that most of the facilities were beyond repair or renovation. At that time, I determined that the existing hog CFO was abandoned, and I had the authority to cancel Registration RA05042.

On March 7, 2023, under section 12(2) of the Administrative Procedures Regulation, I notified Darcor, in writing, that I intended to cancel Registration RA05042 due to abandonment of the hog CFO (see Notice of Intent to cancel permit, Document F). I set out in detail the information and observations that led to a determination of abandonment. I advised that I was not intending to include any terms or conditions with the cancellation. I also advised Darcor that they had the right to object.

On March 13, 2023, Darrin Rasmuson, on behalf of Darcor Holsteins Inc. and Damien Rasmuson, emailed me to indicate that they intended to object to the potential cancellation of Registration RA05042. On the same day I replied to Darrin, indicating they had 30 further days to file a written submission to support their objection to the permit cancellation.

On April 4, 2023, Darrin Rasmuson, on behalf of Darcor, filed their submission objecting to the permit cancellation.

On April 13, 2023, I notified the affected parties within ½ mile of the location of the abandoned hog operation. The notification included the Notice of Intent to Cancel Permit (March 7, 2023), as well as the co-permit holders' submission objecting to the permit cancellation (April 4, 2023).

3. Documents considered

I considered the following documents in coming to my finding that the hog CFO is abandoned, and to my determination that it is fair and reasonable to cancel Registration RA05042:

- A. Registration RA05042 (Nov. 7, 2005)
- B. Application RA22027 – Part 1 (Nov. 7, 2022)
- C. Application RA22027 – Part 2 complete application (Jan. 12, 2023)
- D. Photographs from site visit on January 31, 2023
- E. Photographs from site visit on February 6, 2023
- F. Notice of Intent to Cancel Permit (Mar. 7, 2023)
- G. E-mail from Darcor to NRCB with intent to object (Mar. 13, 2023)
- H. Notification to County, affected parties (April 13, 2023)
- I. Response from Directly Affected Parties
 - a. Darcor's submission objecting the permit cancellation (April 4, 2023)
 - b. County of Wetaskiwin (April 27, 2023)
 - c. Lori Cridland (May 6, 2023)
- J. Operational Policy 2016-3: Permit Cancellations under AOPA Section 29
- K. Technical Guideline Agdex 096-81: Calculator for determining Livestock Capacity of Operations as They Existed on January 1, 2002
- L. Report from NRCB Environmental Specialist (S. Cunningham) dated April 25, 2023 relating to distance to adjacent lands

These documents are available as appendices to this decision, on the **NRCB's website under Registration RA05042C** (<https://www.nrcb.ca/confined-feeding-operations/applications-decisions2/active-and-completed-board-reviews>).

4. Note on Application RA22027

Some evidence from Application RA22027 is relevant to determining whether the hog CFO is abandoned. However, this cancellation decision is otherwise independent from my pending decision on recent Application RA22027 for a dairy CFO (registration) at this location. That application will be dealt with after I have a final result on the cancellation of Registration RA05042.

5. Location

The abandoned hog CFO is located at NE 14-47-23 W4M in the County of Wetaskiwin, approximately 7.2 km north of Gwynne, Alberta, and approximately 300 metres east of Coal Lake. The location of the site is approximately 50 metres above the level of the lake. The topography of the site is undulating, with a western slope towards the lake. Immediately west of the site is a break in the slope. The slopes from this break down to the lake are steep.

6. Notice to affected parties

An affected party, under section 12(4) of the Administrative Procedures Regulation, is a party who would be entitled to notice under section 21(1) of AOPA respecting an application for a new CFO with the same capacity as the abandoned facility (for a registration).

Under section 21(1) of AOPA, a registration application for 440 sow farrow to isowean CFO would require notice to affected municipalities, and to owners or occupants of land within a notification distance set out in the Part 2 Matters Regulation under AOPA (at section 5). In this case, the notification distance is ½ mile (805 m).

On April 13, 2023, I sent a copy of the Notice of Intent to Cancel Registration RA05042, as well as the co-permit holders' submission objecting to the permit cancellation, to the County of Wetaskiwin which is the municipality where the abandoned CFO is located. I also sent the same notice to 12 people identified by the County of Wetaskiwin (in application RA22027) as owning or residing on land within the notification distance.

7. Determination of directly affected parties (DAPs)

Under section 12(5)(a) of the Administrative Procedures Regulation, I have to decide if affected parties that made a submission to the proposed cancellation are directly affected parties (DAP). DAPs are entitled to request an NRCB Board review of the approval officer's decision under section 12(7).

a. Directly affected parties

Under section 21(2) of AOPA, municipalities that are affected parties are "directly affected." the County of Wetaskiwin is an affected party (and directly affected) because the abandoned CFO is located within its boundaries.

Apart from municipalities, an owner or occupant of land within the notification distance may request to be considered "directly affected." The NRCB received three responses from other parties.

Of the three parties who submitted responses, one of them owns or resides on land within the 805 metre (½ mile) notification distance for affected persons.

Lori Cridland
SW 14-47-23 W4M (north parcel, 56.34 acres)

Because of her location within this distance, and because she submitted a response, Ms. Cridland qualifies for directly affected party status (as reference, see NRCB Operational Policy 2016-7: Approvals at part 6.2). This party supported the intended permit cancellation of Registration RA05042 (see Document I. c. and part 9 of this decision).

The co-permit holders are also directly affected by the proposed cancellation. Their objections are discussed below (see Document I. a. and part 8 of this decision).

b. Parties not directly affected

Mike and Lynn Carwell (NW 14-47-23 W4M north parcel, 26.09 acres) also made a submission in support of the permit cancellation. However, they do not own or reside on land within the 805 metre (½ mile) notification distance for affected persons. Their name was not identified by Wetaskiwin County (in application RA22027) among the 12 persons owning or residing within ½ mile of the site.

In its submission, Darcor objected to the Carwells being potentially determined to be directly affected, as their lands stop at the historical high water mark, which leaves them more than 800 m away. At the time of evaluating the distances to neighbours, in the course of application RA22027, I had made a preliminary assessment that the NW 14-47-23 W4M would likely be within 805m.

In the course of processing the permit cancellation, I reviewed my evaluation again. It is true that part of the NW 14-47-23 W4M is within 805m of the boundary of NE 14-47-23 W4M and that is what my preliminary assessment was based on. On April 25, 2023, I received technical assistance from Scott (Sheila) Cunningham, NRCB environmental specialist, in the form of a report named “Darcor distance to adjacent lands” (see Document L). With the benefit of this report, and Land Titles certificates for all parcels in the NW 14-47-23 W4M, it appears to me that the Carwells own a 26.09-acre parcel on the north side of the quarter. That parcel does not touch the lake, as the Crown owns the bed and shores of the lake. Referring back to Ms. Cunningham’s report (see Figure A2), the Carwells’ parcel of land is located more than 805 m away and so the Carwells are not “affected” persons.

Mr. Keith Rasmuson (NE 13-47-23 W4M) does not own or reside on land within the 805 metre (½ mile) notification distance for affected persons. In addition, his submission was in opposition to the permit cancellation. Under section 12(3) of the Administrative Procedures Regulation under AOPA, submissions from affected parties should contain reasons why they support the cancellation. For these reasons, Keith Rasmuson is not an “affected” person.

Under Section 21 of AOPA, Mike and Lynn Carwell, and Keith Rasmuson, are not considered to be affected persons, and cannot be directly affected parties (see in particular section 21(2)-(3) of AOPA).

8. Permit holder's objections to permit cancellation

In their April 4, 2023 submission, Darrin Rasmuson, on behalf of Darcor, included the following information objecting to the permit cancellation, summarized and with headings added:

a. Expectations

Under Operational Policy 2016 -3 (Permit Cancellations under AOPA Section 29) section 2.1.1 bullet 5, states that "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"

- The initial phone calls with the approval officer (AO) about the new permit application were about the validity of the existing permit and the possibility of using it to obtain a new permit for a dairy. At that time there was no hint that abandonment could be an issue, despite the AO knowing the barns were empty.
- Darcor Holsteins indicated that during the phone calls they were assured that the permit was valid, attached to the land, and it does not expire. Which is the basis to reasonably expecting that the CFO was permitted under AOPA. Darcor states that they feel they have conducted due diligence with input from the authority that governs this permit before the purchase.
- Believing it was safe to proceed with a new application, Darcor purchased the property and spent money on acquiring a road allowance and contracted an engineering firm for soil testing.
- Darcor estimated they have spent more than \$130,000 acquiring the property
- Operational Policy 2016-3 states that "...approval officers have discretion to modify the policy when its strict application would be clearly unfair, or in other necessary and appropriate circumstances"

b. AOPA guiding principle

The NRCB should follow the guiding principle of ensuring the province's livestock can grow... in an environmentally sustainable manner. "An obscure technicality stands before me."

c. Inaccuracies in the Notice of intent to cancel

Submitted inaccuracies were:

- a. Most of the facilities are beyond repair is overstated
- b. Barns 4, 5 and 6 are in very poor state; however barns 1, 2 and 3 have a good concrete floor, electricity and gas. The fans run, the ballast in the fluorescent light have quit otherwise they work. The underfloor pits have great concrete slats and are connected to a functional EMS. Water lines are mostly plastic and still functional. Batch mixer, feed augers and hoppers are present.
- c. The existing buildings have value as well as animal capacity. Comparing barn 2 (16 m x 9 m), barn 3 (49 m x 11 m) and barn 1 (858.5 m²) with the price of the new dairy barn (at \$55 per square foot), the existing buildings would be valued at over \$500,000.
- d. Changing the use of one of the barns from conversion to storage instead of a calf barn was to simplify the application, as there were time constraints.

Darcor included an April 3 letter from Keith Rasmuson, the former owner of the land, that Darcor wished included in their submission. That letter indicated that the value of \$100,000 was assigned to property in January 2022 as an “operating farm” as opposed to an acreage.

Keith Rasmuson’s letter also described as “functioning infrastructure”: sheds, heated shop, fences, power, natural gas, grain handling, feed processing, and water supply system, as well as a manure lagoon for storage. He wrote that the infrastructure “has value and is a requirement for any CFO and should not be deemed abandoned.”

d. Old building use

Darcor submitted that the approval officer never indicated that buildings from the old permit needed to be used rather than replaced to validate the permit. The demolishing of an open face shed was to build the new barn farther away from the lake.

e. Order of new application, abandonment determination

Darcor submitted that an abandonment process should not start after an application [RA22027] has been deemed complete and after notification of affected parties.

f. Relating to Application RA22027

Darcor submitted that facts are incorrectly assumed with respect to potential alternatives for the dairy CFO, as Darcor Holsteins indicated that they can’t build at the old site as it is surrounded by water.

Other land location available to construct the new CFO is surrounded by four acreages, has a major pipeline corridor and small pipelines; and therefore, there is not an available spot that meets setbacks.

The application for the new dairy will house 100% of the cattle and manure indoors, with no environmental issues identified. The alternative use of the purchased land is to feed young stock outside year-round, below threshold, and therefore, outside strict compliance with a CFO. That’s not protecting the environment.

There were disagreements in the county council regarding approval officers overriding MDP provisions and not considering them. Therefore, approving a new MDP will not affect this process of the final decision of the application for a dairy CFO.

Approval officer’s notes: *These (f) issues are related to the application for a new dairy (RA22027), and not for the cancellation of the hog operation permit (RA05042). I note that operations below AOPA livestock thresholds are under the jurisdiction of municipalities.*

9. Submissions from other directly affected parties

The County of Wetaskiwin is a directly affected party. Mr. Jarvis Grant, a development officer with the County of Wetaskiwin, provided a written response on behalf of the county. Mr. Jarvis stated that the county supports the intended permit cancellation of Registration RA05042. He also noted that revisions to the County’s MDP had been adopted on April 11, 2023, such that no new or expanded CFOs were supported within 1.6 km of Coal Lake.

As explained in part 7 above, Lori Cridland is a directly affected party. Ms. Cridland responded to the notice of intent to cancel Registration RA05042, as well as the co-permit holders' submission objecting the permit cancellation, submitting that:

- She supports the cancellation
- The hog farm has been abandoned for many years and "it is inappropriate to call it existing"

10. Reasons for cancellation

Under section 29(1)(b) of the *Agricultural Operation Practices Act* (AOPA), the NRCB may cancel a registration if the confined feeding operation (CFO) to which the registration relates is abandoned.

Cancelling a permit under AOPA accordingly requires two separate findings:

- A. That the facility or CFO has been abandoned; and
- B. That it is fair and reasonable to cancel the permit.

Section 12 of the Administrative Procedures Regulation under AOPA provides a process by which an approval officer may cancel a permit. The process sets out participation by directly affected parties, including the permit holder, and establishes a process by which a directly affected party can seek an NRCB Board review of the cancellation.

NRCB Operational Policy 2016-3: Permit Cancellations under AOPA Section 29 (Cancellation Policy) guides approval officers for when abandonment should be considered, what factors to consider in determining if a CFO is abandoned, when it is appropriate to cancel a permit for an abandoned CFO, and notice of cancellation decisions.

Under part 2.1.3 of the Cancellation Policy, the approval officer has the overall burden of proof to demonstrate why a permitted facility has been abandoned. On a civil burden of proof, this means it has to be more likely than not that the facility has been abandoned.

A. The CFO has been abandoned

Registration RA05042 included a grandfathering determination and recognized a deemed permit for the hog CFO that existed already. The facilities related to the expanded hog CFO are:

- 1) hog barn #1 (2005 expansion under Registration RA05042);
- 2) hog barn #2;
- 3) hog barn #3;
- 4) hog barn #4;
- 5) hog barn #5;
- 6) hog barn #6 (red barn built early 1900s);
- 7) earthen liquid manure storage;
- 8) open shelter #1; and
- 9) open shelter #2.

As the Cancellation Policy discusses, AOPA does not define "abandonment", and therefore the NRCB uses the term's common meaning, viewed in light of AOPA's general purposes. Common definitions for abandonment have two themes: either ceasing from maintaining or using; or giving up with the intent of never again claiming a right to keep using or maintaining. In my view, the hog facilities have been abandoned under both themes.

The Cancellation Policy at part 2.1.1 lists factors to consider when deciding whether the CFO has been abandoned, such as:

- a. the CFO's current use, if any
- b. the CFO's current condition
- c. what, if any, steps are being taken to keep the CFO's facilities in conditions such that they could resume being used to house livestock without major upgrades or renovations
- d. when the CFO stopped being used for livestock or manure, and the reason for stopping
- e. whether the CFO has changed ownership during the period of disuse, and if so, whether the new owner purchased the CFO reasonably expecting that the CFO was permitted under AOPA
- f. 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
- g. current value of the CFO facilities and cost of reconstructing them, if needed

a., b. Current use, current condition

In the course of processing dairy CFO application RA22027, I made two site visits on January 31, 2023 and February 6, 2023, each time accompanied by another NRCB staff member. On both occasions, it was apparent that most of the hog facilities were in major disrepair and deterioration or had been converted into non-CFO facilities (cold storage, heated shop). We took photographs (see Appendices D and E). Darcor was already decommissioning the old red barn (#6, built in the early 1900s). I could not see evidence that the hog facilities had been maintained after the previous owner ceased to operate in 2011. This was the first time that I considered the possibility that the hog facilities might be abandoned.

The facilities in better conditions or state have already been converted into other non-CFO use.

There is a barn area that could be upgraded and used to house livestock. This barn area is an addition (19.5 m x 9.1 m) to the east side of the hog barn located on the north of the site. The addition was built in 2005 as part of NRCB Registration RA05042 (barn #1).

On an aerial photo provided as part of Application RA22027, regarding this barn area (barn #1), the applicant stated "To be converted for calves" (see complete Part 2, Document C at pdf p 8). However, there is no details about the conversion in the application. Further, the area could only house hog numbers below the threshold for a registration size CFO. Using Technical Guideline Agdex 096-81, I calculated the likely capacity of this barn area as 96 feeder hogs, or 213 growers hogs or 480 weaner hogs. In the Part 2 Matters Regulation under AOPA, a threshold for a registration size hog operation is 500 feeders, or growers or weaner hogs. In several other components of Application RA22027, this portion of the barn is proposed to be converted into cold storage and shop – non-CFO uses. For these reasons, I would not keep this small barn area, on its own, in Registration RA05042.

The existing open face sheds are not part of the existing permitted CFO facilities, as hogs were housed indoors.

c. Steps required to resume housing livestock

Most of the structures would not be able to house animals in their current conditions. The ceilings are caving, there is no functioning electricity, and the concrete liners and the in-barn manure collection pits are cracked and not in working condition. The fences and cages, water lines and feeding lines would most likely need to be removed and replaced. In broad estimation, the value to upgrade these facilities would likely exceed the value of building them new.

d. When CFO stopped being used for livestock or manure, and why

Darcor indicated that the previous owner, Keith Rasmuson, stopped operating the hog CFO around 2011, due to his brother and co-owner's death (Earl Rasmuson), and due to hog markets not being profitable. The April 3, 2023 letter from Keith Rasmuson, which forms part of Darcor's submission (Document I. a.), did not elaborate on why or when the operation ceased to be used for confined feeding livestock. The letter stated that the farm pastured horses and a small beef herd before the sale to Darcor, with infrastructure (handling facility, heated shop, fences, power, natural gas, grain handling, feed processing, dugout, manure lagoon).

The directly affected individual (Ms. Cridland) indicated that the hog operation has been "abandoned for many years" (Document I. c.).

Buildings do not have to be used constantly to avoid abandonment. The Cancellation Policy at 2.1.2 states:

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.

The information from the co-permit holders explains why the hog CFO stopped operating in 2011, but does not shed much light on what has happened since 2011.

e. Whether the CFO has changed ownership, and reasonable expectations

In November 2005, when the NRCB issued Registration RA05042, the permit holder was Agco Agricultural Consulting Ltd. (operating as Gwynne Vista Farms), run by Keith and Earl Rasmuson. In April 2022, Darcor Holsteins Inc. (1/3 interest) and Damien Rasmuson (2/3 interest) bought the property.

The Cancellation Policy asks whether the new owner purchased the CFO reasonably expecting that the CFO was permitted under AOPA. In this case, Darcor did believe that the CFO was permitted. That belief was reasonable in the sense that they called the NRCB and understood that a 2005 NRCB-issued permit would run with the land. It was less reasonable in light of the full set of facts, i.e. the state of disrepair of the hog facilities, and the 10-year period of inactivity (neither of which was shared with the NRCB at the time of the inquiry in February 2022). At that time, Darcor also did not advise the NRCB of the plan to decommission (use for non-CFO purposes) or demolish the hog facilities.

f. Intent regarding future use

The Cancellation Policy says that where a CFO owner has stopped using the CFO, approval officers will consider the owner's intent regarding future use. The policy distinguishes between an owner's intent to operate a CFO in the future and their intent to simply retain the CFO's permit.

The Cancellation Policy at 2.1.2 suggests that, with section 29(1)(b) of AOPA, the Legislature "intended to give the NRCB authority to cancel permits for unused permitted facilities *even when the facilities' owners do not want to relinquish their permits*" [italics in original].

In April 2022, Darcor intended to convert the hog CFO into a dairy CFO, as part of their long-term succession plan to transition Damien into co-ownership with his parents (Darrin and Lynn Rasmuson).

In Application RA22027, filed with the NRCB in late 2022, the applicant had indicated an intention to, among other things:

- Demolish three existing hog barns;
- Convert an existing hog barn to a heated shop;
- Convert an existing hog barn to cold storage;
- Decommission an existing hog barn; and
- Demolish two existing open shelters.
- Expand the liquid manure storage and synthetically line it

The existing open face sheds are not part of the existing CFO facilities, as hogs were housed indoors.

Darcor does wish to operate a CFO in the future, but not the same type of livestock and not using any of the existing structures. As indicated in the completed application to convert the existing hog operation into a dairy operation, the current co-permit holders did not intend to convert, or use, any of the existing hog facilities into dairy CFO facilities. The facilities in better condition or state have already been converted into other non-CFO use.

The future intended uses of all hog facilities are not for CFO purposes. Not only have the hog facilities been unused for CFO purposes during the last 10 years, but there is no demonstrated intent to use the hog facilities for CFO purposes in the future.

g. Current value of facilities, and cost to reconstruct

In my view, the facilities as they exist have little value as CFO facilities. I believe that the cost to repair and upgrade these hog facilities to be able to house animals would probably exceed the price of building new facilities.

As Darcor's submission (objecting the permit cancellation) observed, some of the existing barns that are in better state (barn # 1, 2 and 3) have concrete floors, electricity and gas that may need attention and repair. The batch mixer, feed augers and hoppers are present. These buildings may have value, especially with the current price to construct new buildings; however, Darcor, has already changed, or is planning to change the use of these buildings to non-CFO uses.

In conclusion, based on my observations of the hog facilities and their states of disrepair, and long period of disuse, and the fact that the current co-permit holders do not intend to convert or use any of the existing hog facilities into dairy CFO facilities, I find that the hog CFO is abandoned.

B. It is fair and reasonable to cancel Registration RA05042

A finding of an abandoned CFO does not mean an approval officer must automatically cancel the permit. Cancelling a permit under section 29(1)(b) of AOPA involves discretion that must be exercised reasonably. The determination whether to cancel is to be made “on a case-by-case basis, and only when it is fair and reasonable to cancel the permit, considering all available tools for achieving AOPA’s objectives” (Cancellation Policy at 2.2).

As part of its submission, Darcor felt that the NRCB should follow the guiding principle to “ensure the province’s livestock can grow... in an environmentally sustainable manner.” This guiding principle is also reproduced in the Cancellation Policy as context for deciding whether a CFO permit should be cancelled. The policy then adds the principles of respect for municipal land use planning; province-wide level of protection for groundwater and surface water; and minimizing nuisance impacts on neighbours.

In its introduction, the Cancellation Policy identifies some of the competing policy considerations implicated in permit cancellations due to abandonment:

Permit cancellations under section 29(1)(b) of the act raise fairness and competing land use issues. For many years after AOPA came into effect in 2002, these issues were not prominent. However, AOPA has now been in effect for more than fifteen years [in 2018]. Because of the passage of time, as well as ongoing attrition, changes of ownership of permitted operations, and increasing development pressures adjacent to many CFOs, the NRCB has begun to be faced with abandonment issues and will likely face them more frequently over time.

The NRCB has not, to date, cancelled a permit for an entire CFO due to abandonment and without the consent of the permit holder. Abandonment is not yet a routine or even common consideration at the NRCB, except in grandfathering determinations. Cancelling a permit is not to be done lightly or arbitrarily.

Darcor is understandably upset at the prospect of losing Registration RA05042, as any application on the NE 14-47-23 W4M will now be for a new CFO rather than an existing, expanding CFO. The fairness issues work both ways, however, when the hog CFO has not operated since 2011, the hog facilities have not been maintained, and there is no intent to use the hog facilities for CFO purposes. The land use planning of the County of Wetaskiwin is also an important factor to consider (see their submission, Document I. b.).

a. Observations on submissions about relying on the NRCB

As summarized in part 8 (a) Expectations above, Darcor submitted that during interactions with the approval officer, there was no hint that abandonment might be an issue. They felt they had conducted due diligence before the purchase, with input from the authority that governs the permit.

It is important to appreciate that, at the time of the phone call conversation taking place prior to the sale and purchase of the land (in February 2022), the dairy conversion application (eventually RA22027) had not been filed. Darcor Holsteins did not mention to the NRCB that they were not planning to use the existing hog facilities to repurpose for dairy facilities for a possible application. Additionally, they did not mention the state of disrepair of the existing hog facilities, or that they had not been used or maintained for over 10 years.

According to the NRCB database, prior to January 31, 2023, the NRCB had not visited the site since September 2009, which visit related to specifics of the monitoring statement under Registration RA05042. Nothing in the NRCB database indicated that the existing hog facilities were not in good condition, or not recently operating. Raising the question of abandonment is not an ordinary part of approval officer inquiries. In fact, a permit has never been cancelled due to abandonment. NRCB approval officers are decision makers under AOPA, that may assist in completing application by pointing out deficiencies or missing information. However, they cannot provide extension services supporting applicants. For these reasons, I indicated that permits (such as RA05042) are issued to the land location, and that a permit for facilities built within the construction deadline condition would not expire. The phone call in February 2022 included discussion of MDP, MDS, and capacity of the liquid manure storage lagoon.

I also note that in my experience, and 14 years as an NRCB approval officer, I have never guaranteed a permit to an applicant. I am always clear that they need to go through the application process before we can issue a decision, which may result in a permit. The permit, if issued, may include conditions to address issues and concerns. In this case, I did not give any advice to the applicant to buy the property, or that the permit will be guaranteed. I note that the decision on application RA22027 (dairy) has not yet been finalized.

In my view, the facts and reasons set out above support the reasonableness of cancelling Registration RA05042.

b. Observations on timing

On December 23, 2022, after receiving the final information of Darcor's Part 2 application, it became clear that none of the existing hog barns would be used or converted for the proposed dairy operation. The abandonment issue did not crystallize until I conducted the site visits and spoke with Darrin Rasmuson, and after the application was deemed complete.

In the regular process of applications, affected parties can raise issues and bring them up to the attention of approval officers.

Normally, approval officers try and conduct site visits before deeming new applications complete; however, Darcor Holsteins submitted the Part 2 application for RA22027 in December 2022, right around the NRCB winter closure. As a result, I included the public notice in the first available date of the newspaper publication in January 2023. Due to weather, workloads, and other factors, I wasn't able to conduct a site visit before January 31, 2023.

At the time I notified Darcor of the abandonment issue (in February 2023) and sent the Notice of Intent to Cancel (March 7, 2023), the cancellation could have had a significant effect on the dairy CFO Application RA22027. The County of Wetaskiwin's MDP disallowed new CFOs in the area around Coal Lake, but allowed expanding CFOs. Under that MDP, if the hog operation were abandoned and Registration RA05042 were cancelled, the dairy application RA22027

would have been for a new CFO and would likely have been inconsistent with the MDP. If the hog operation were not abandoned and Registration RA05042 remained, then the dairy application RA22027 would have been for an existing, converting and expanding CFO and would likely not have been inconsistent with the MDP.

It was not until April 11, 2023 that the County amended their MDP so that both new and expanding CFOs are prohibited within 1.6 km of Coal Lake.

11. Conclusions

For the reasons set out above, I find that the hog CFO at NE 14-47-23 W4M has been abandoned. I also exercise my discretion, under section 29(1)(b) of AOPA, to cancel Registration RA05042 (including the deemed permit) because the operation to which the permit relates has been abandoned, and because it is fair and reasonable to do so.

12. Conditions of cancellation

I am not imposing conditions on the cancellation of Registration RA05042.

June 9, 2023

(Original signed)
Francisco Echegaray, P.Ag.
Approval Officer