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Subject: RA05042C Darcor Holsteins Board Review - NRCB Field Services outline
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Attachments: [20230914 Darcor Review. FS Presentation Outline.pdf](#)

Good afternoon,

I am legal counsel for NRCB Field Services in this review. We plan to offer two witnesses at the review:

1. Francisco Echegaray, Approval Officer
2. Andy Cumming, Director – Field Services, Applications

I have attached to this e-mail a Presentation Outline for NRCB Field Services. I am distributing this before the September 18 submission deadline so that other parties may benefit from seeing the planned presentation from NRCB Field Services before they file their own submission.

I have copied Wetaskiwin County, Janet Patriquin, and Board Counsel Bill Kennedy on this e-mail. I have blind-copied Damien Rasmuson and Darcor Holsteins Inc., Darrin Rasmuson, Lori Cridland, Lynn & Mark Carwell, and Keith Rasmuson.

Regards,

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In the matter of a Review by
the Natural Resources Conservation Board
under the *Agricultural Operation Practices Act*, RSA 2000, c A-7

to be held orally (virtually) on October 10-11, 2023
of a decision by an Approval Officer set out in
Decision Summary RA05042C

PRESENTATION OUTLINE OF NRCB FIELD SERVICES

On behalf of NRCB Field Services:

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Via e-mail to:

Darcor Holsteins Inc. & Damien
Rasmuson
Darrin Rasmuson (agent for Darcor)
Janet Patriquin, Office of the Farmers'
Advocate
Wetaskiwin County (Jarvis Grant)
Lori Cridland
Lynn & Mike Carwell
Keith Rasmuson

Table of Contents

INTRODUCTION..... 1

PART A – FACTS THAT DO NOT APPEAR TO BE DISPUTED..... 1

PART B – ANTICIPATED POSITION & EVIDENCE ON SIX REVIEW ISSUES 3

APPENDIX “A” 8

INTRODUCTION

1. This Presentation Outline sketches out what NRCB Field Services anticipates presenting at the Review. The intent of the Presentation Outline is to enhance the fairness and efficiency of the hearing by providing advance notice of Field Services' approach to the Review.

2. The Presentation Outline includes:

Part A: A summary of facts that do not appear to be disputed; and

Part B: The anticipated position and evidence (if any) of NRCB Field Services on each of the six issues the Board identified.

3. In keeping with principles of finality and impartiality, NRCB Field Services will take no position on the outcome of the Review – i.e. whether Cancellation Decision RA05042C should be upheld, varied, or overturned.

4. Please note: **Appendix "A"** to this Presentation Outline cross-references the Board Exhibits to documents accompanying Decision Summary ("DS") RA05042C.

PART A – FACTS THAT DO NOT APPEAR TO BE DISPUTED

5. This summary of facts is borrowed largely from the Background section of DS RA05042C, omitting statements that may be in dispute. If a directly affected party disputes any of the following statements, we will remove the statement from being characterized as undisputed.

6. 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 Exhibit #03, Document A). This Registration allowed the construction of a farrowing barn and included a determination of the grandfathered status of a 440 sow – farrow to isowean CFO, with several hog facilities.

7. Darcor Holsteins Inc. and Damien Rasmuson (Darcor) purchased the land and operation in April 2022, and were the co-permit holders of Registration RA05042. Damien's father, Darrin Rasmuson, has been the contact person.
8. 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 Exhibit #04, Document B). This application was numbered RA22027.
9. On December 16, 2022, Darcor filed an incomplete Part 2 application for RA22027.
10. On December 23, 2022, Darcor submitted the last missing and deficient information of their Part 2 application.
11. On January 12, 2023, the Approval Officer deemed application RA22027 complete (see Exhibit #05, Document C).
12. On January 31, 2023, the Approval Officer conducted the first site visit (with another approval officer in training). During that site visit, Darrin Rasmuson indicated to the Approval Officer that the hog operation has not been in operation since 2011. Photos from this site visit are at Exhibit #06 (Document D).
13. On February 6, 2023, the Approval Officer conducted a second site visit (with an NRCB inspector). Photos from this site visit are at Exhibit #07 (Document E).
14. On March 7, 2023, the Approval Officer notified Darcor, in writing, that he intended to cancel Registration RA05042 due to abandonment of the hog CFO (see Notice of Intent to cancel permit, Exhibit #08, Document F).
15. On March 13, 2023, Darrin Rasmuson, on behalf of Darcor Holsteins Inc. and Damien Rasmuson, indicated by e-mail that they intended to object to the potential cancellation of Registration RA05042 (Exhibit #09, Document G). On the same day the Approval Officer replied to indicate they had 30 further days to file a written submission to support their objection to the permit cancellation.

16. On April 4, 2023, Darrin Rasmuson, on behalf of Darcor Holsteins Inc., filed their submission objecting to the permit cancellation (Exhibit #11, Document I.a.).
17. On April 13, 2023, the Approval Officer 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) (Exhibit #10, Document H).
18. The Approval Officer subsequently received submissions from two directly affected parties: the County of Wetaskiwin (Exhibit #12, Document I.b.) and Lori Cridland (Exhibit #13, Document I.c.).
19. On June 9, 2023, the Approval Officer issued Decision RA05042C, finding the hog operation abandoned, and cancelling Registration RA05042 (Exhibit #01).
20. After Darcor Holsteins Inc. and Damien Rasmuson requested a review of Decision RA05042C, the NRCB Board scheduled this Review (Exhibit #17).

PART B – ANTICIPATED POSITION & EVIDENCE ON SIX REVIEW ISSUES

21. In its RFR decision dated July 13, 2023 (Exhibit #17), the Board advised (on page 6) that the scope of the Review would include (but may not be limited to) the following six issues.

Issue 1: The reasonable expectations of the current landowner with respect to the permit for the hog CFO.

22. Field Services has no evidence related to the actual expectations of the current landowner.
23. For ease of reference, DS RA05042C addresses reasonable expectations in the context of changing ownership at part 10.A.e. (bottom of page 11).

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.

24. In our view, Issue 1 should be considered together with Issue 2.

Issue 2: The extent to which the landowner is obligated to disclose the conditions of the existing facilities and the approval officer is obligated to raise the issue of abandonment in pre-purchase consultations.

25. The extent to which an inquirer should disclose information, and the extent to which the NRCB should raise abandonment as an issue, relate to the reasonableness of expectations of the landowner (Issue 1).

26. Issue 2 appears to refer to the February 2022 phone conversation between Darrin Rasmuson and the Approval Officer.

27. On a basic level, the thoroughness of an approval officer's response will be proportional to the information they have. At the time of the phone call, the Approval Officer knew that the NRCB had issued a registration (permit) in 2005, which meant that there were no outstanding grandfathering issues. It wasn't until the two site visits (Jan. 31 and Feb. 6, 2023) that the approval officer considered the possibility that the hog facilities might be abandoned (Decision RA05042C at part 10.A.a.,b., first paragraph, middle of page 10).

28. More than 21 years have passed since Part 2 of AOPA came into being, and even NRCB-issue permits are aging in place. Field Services welcomes guidance from the Board on best practices for approval officers or inspectors engaging in such conversations.

Issue 3: The timing of the abandonment decision with respect to the pre-purchase consultation, the purchase of the property, and the application for Registration RA22027.

29. This issue is largely factual. The facts (see Part A of this Presentation Outline) include that the pre-purchase consultation took place in February 2022, the purchase of the property took place in April 2022, Part 1 of application RA22027 took place in

November 2022, application RA22027 was deemed complete in January 2023, the site visits occurred in late January-early February 2023, and the notification of intent to cancel Registration RA05042 took place in early March 2023.

30. The Cancellation Decision was issued on June 9, 2023. The time between March and June 2023 was driven by the processes set out in section 12 of the *Administrative Procedures Regulation* under AOPA.

31. As background, triggers to consider abandonment in the Cancellation Policy (Exhibit #14, Document J) at part 1.1 (page 2) include:

- a. Field Services observes that a CFO is no longer in use, during a routine permit compliance inspection;
- b. Adjacent landowner or developer inquires, in the context of municipal restrictions flowing from a CFO permit;
- c. CFO owner requests confirmation of permit validity;
- d. CFO purchaser seeks to upgrade CFO facilities and resume use where the facilities have not been used for years; or
- e. A construction deadline in a CFO permit has lapsed without the facility being constructed.

Issue 4: The intent of the past and current owners with respect to future use of the existing CFO.

32. NRCB Field Services has no evidence to offer on this issue, and takes no position on it. This issue relates to a couple of factors set out in the Cancellation Policy, that the Approval Officer considered in his decision. See “When CFO stopped being used for livestock or manure, and why” at part 10.A.d., p 11, and “Intent regarding future use” at part 10.A.f., p 12, of DS RA05042C, Exhibit #01.

33. The Cancellation Policy discusses considerations regarding an owner’s intent at part 2.1.2 (page 4) (Exhibit #14, Document J).

Issue 5: The appropriate weighting of the factors considered in the decision that the CFO is abandoned.

34. The written reasons of the Approval Officer in the Cancellation Decision speak fully to which factors he considered, and how he weighted them, in coming to a finding that the hog CFO was abandoned. The Approval Officer will make himself available to answer clarifying questions.

35. The Director of Field Services – Applications will be available to take questions on weighting of factors generally in the Cancellation Policy. He will not speak to how this Approval Officer weighted the factors in this Cancellation Decision.

36. The Cancellation Policy provides two common definitions of “abandonment,” and lists non-exhaustive factors to consider whether a CFO has been abandoned. The Policy notes that “other factors that may be relevant to the specific CFO may also be considered.”

- a. See part 2.1 (pages 3-4) of the Cancellation Policy, Exhibit #14 (Document J); and
- b. See the top of p 10 of DS RA05042C, Exhibit #01.

37. The Cancellation Policy also discusses considerations regarding an owner’s intent (part 2.1.2) and the burden of proof for abandonment (part 2.1.3) (both at page 4).

Issue 6: The factors considered in the decision to cancel the permit and the basis for determining that a cancellation is fair and reasonable.

38. In DS RA05042C, the Approval Officer provided an explanation of why he felt it was fair and reasonable to cancel Registration RA05042. See part 10.B. (page 13) of Exhibit #01.

39. The Cancellation Policy provides guidance at part 2.2 (pp 4-5), including:

To decide whether an abandoned CFO’s permit should be cancelled, approval officers will consider the factors outlined in part [2].1, above, in light of the purpose statement for AOPA:

ensure that the province's livestock industry can grow to meet the opportunities presented by local and world markets in an environmentally sustainable manner.¹


AOPA also respects the land use planning decisions of individual municipalities, while providing a uniform, province-wide level of surface and groundwater protection from manure-related risks and minimum setbacks to minimize nuisance impacts on neighbours. Permit cancellations may serve one or more of these purposes, in certain circumstances.

Approval officers will assess the appropriateness of cancelling a permit 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.

40. As the NRCB has not before cancelled a permit under section 29(1)(b) of AOPA, Field Services had not previously had an opportunity to implement part 2.2 of the Cancellation Policy.

41. Whether or not the Board finds this Cancellation Decision to be fair and reasonable, NRCB Field Services is open to guidance from the Board.

RESPECTFULLY SUBMITTED THIS 14th DAY OF SEPTEMBER, 2023



Fiona N. Vance
Chief Legal Officer – Operations
Natural Resources Conservation Board

¹ The Cancellation Policy includes a footnote at this point, that reads:

“4. This purpose is reflected in the 2006 Memorandum of Understanding between the NRCB and the ministers of Alberta Agriculture and Rural Development and Alberta Sustainable Resource Development. See also part 1 of Operational Policy 2016- 7: Approvals.”

APPENDIX “A”

DECISION SUMMARY DOCUMENTS & BOARD EXHIBITS²

Document per DS RA05042C	Board Exhibit No. & link
A. Registration RA05042 (Nov. 7, 2005)	#03 https://www.nrcb.ca/download_document/1/463/11596/a-registration-ra05042-nov-7-2005
B. Application RA22027 – Part 1 (Nov. 7, 2022)	#04 https://www.nrcb.ca/download_document/1/463/11597/b-ra22027-part-1-nov-7-2022
C. Application RA22027 – Part 2 complete application (Jan. 12, 2023)	#05 https://www.nrcb.ca/download_document/1/463/11598/c-ra22027-part-2-complete-application-jan-12-2023
D. Photographs from site visit on January 31, 2023	#06 https://www.nrcb.ca/download_document/1/463/11599/d-photographs-from-site-visit-on-january-31-2023
E. Photographs from site visit on February 6, 2023	#07 https://www.nrcb.ca/download_document/1/463/11600/e-photographs-from-site-visit-on-february-6-2023
F. Notice of Intent to Cancel Permit (Mar. 7, 2023)	#08 https://www.nrcb.ca/download_document/1/463/11601/f-notice-of-intent-to-cancel-permit-march-7-2023
G. E-mail from Darcor to NRCB with intent to object (Mar. 13, 2023)	#09 https://www.nrcb.ca/download_document/1/463/11602/g-email-from-darcor-to-nrcb-with-intent-to-object-march-13-2023
H. Notification to County, affected parties (April 13, 2023)	#10 https://www.nrcb.ca/download_document/1/463/11603/h-notification-to-county-affected-parites-april-13-2023
I. a. Darcor’s submission objecting the permit cancellation (April 4, 2023)	#11 https://www.nrcb.ca/download_document/1/463/11604/i-a-darcors-submission-objecting-the-permit-cancellation-april-4-2023
I. b. County of Wetaskiwin (April 27, 2023)	#12 https://www.nrcb.ca/download_document/1/463/11605/i-b-county-of-wetaskiwin-april-27-2023
I. c. Lori Cridland (May 6, 2023)	#13 https://www.nrcb.ca/download_document/1/463/11606/i-c-lori-cridland-may-6-2023
J. Operational Policy 2016-3: Permit Cancellations under AOPA Section 29	#14 https://www.nrcb.ca/download_document/1/463/11607/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	#15 https://www.nrcb.ca/download_document/1/463/11608/k-tg-096-81-revised-calculator-for-determining-livestock-capacity
L. Report from NRCB Environmental Specialist (S. Cunningham) dated April 25, 2023 relating to distance to adjacent lands	#16 https://www.nrcb.ca/download_document/1/463/11609/l-report-from-nrcb-environmental-specialist-s-cunnngnam-april-25-202

² From the Board’s Exhibit List posted on the NRCB website as at August 17, 2023.