

## Review of Decision RA05042C

Held October 10, 2023

### Closing Arguments of NRCB Field Services

1. NRCB Field Services takes no position on the outcome of the Review. The reasons for the finding of abandonment, and for the approval officer's exercise of discretion to cancel Registration RA05042, are contained in the Decision Summary (Board Exhibit 1). For example,
  - a. reasons for the finding of abandonment are found at part 10.A. (pages 9-13); and
  - b. reasons for the cancellation of the permit are found at part 10.B. (page 13).
2. NRCB Field Services acknowledges the foresight of NRCB operations in 2016, in developing a policy that addresses permit cancellations and abandonment ("Cancellation Policy," Exhibit 14). This policy is necessary given the absence of any legislation to guide application of section 29(1)(b) of the *Agricultural Operation Practices Act*.<sup>1</sup>
3. NRCB Field Services deeply appreciates all the participants in this review process. This review is testing a policy that, until now, has been somewhat theoretical. Regardless of outcome, this process will be useful in weighing any changes to the Cancellation Policy.
4. NRCB Field Services has reviewed the written closing argument of Darcor Holsteins Ltd. and Damien Rasmuson ("Darcor"), authored by Darrin Rasmuson. Darcor's closing arguments invite three clarifications from Field Services.

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<sup>1</sup> Note that section 44(2)(c) of AOPA enables the Minister (of Agriculture) to make regulations respecting abandonment of confined feeding operations. Those regulations do not exist.

5. First, abandonment was never discussed until February 2023 because the approval officer was not aware of

- a. the 11 years of inactivity of the CFO, or
- b. the state of disrepair of at least some of the hog CFO structures,

until January 31, 2023. The Decision RA05042C (Exhibit 1) states at pages 3-4:

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).

6. Second, the site visit photos were incomplete in the sense that the photos did not show the interior of every structure. The incompleteness was not deliberate. As Mr. Echeagaray testified:

- a. For the first site visit on January 31, 2023, taking photos was part of a routine site visit on an application. There was no plan to record the condition of the structures to assess abandonment.
- b. For the second site visit on February 6, 2023, the photos were of only one structure. The battery in the camera Mr. Echeagaray was using ran out.

7. Third, the timing of events in this matter may end up being of significance to the Board. A suggestion that Darcor could have had Registration RA22027 in hand but for the late-day abandonment, however, requires careful thought. Consider:

- a. A decision to cancel a permit for abandonment engages legislated process under section 12 of the *Administrative Procedures Regulation* under AOPA. In this case, that process took over three months (March 7 to June 9, 2023).

- b. Had the hog CFO been found abandoned in, say, November 2022 rather than June 2023, the impact on Application RA22027 and its (in)consistency with the MDP would have been the same. New CFOs were always prohibited in this area. Regardless of when abandonment crystallized, application RA22027 would be for a new CFO. Only a finding before April 11, 2023 that the hog CFO was not abandoned – therefore turning application RA22027 into an expansion of an existing CFO – could have affected the consistency of RA22027 with the County’s MDP land use provisions.
8. Darcor suggests that the process to determine abandonment is flawed in that a possibility of abandonment must be dealt with “early, transparently, and at the first and slightest suggestion that it could be a factor.” Currently, the Cancellation Policy does identify triggers for when NRCB field service staff might consider abandonment (see Cancellation Policy, Exhibit 14 at part 1.1, page 2). We welcome guidance from the Board.
9. Finally, NRCB Field Services reminds the Board that Application RA22027 is still pending and is not before this panel.

RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> DAY OF OCTOBER, 2023

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Natural Resources Conservation Board