



NRCB | Natural Resources
Conservation Board

Grandfathered (Deemed) Permit Determination

under the

Agricultural Operation Practices Act

Baltussen Hog Farm Ltd. (Gerry and Trudy Baltussen)

NE-30-60-04-W5

File # PB24004

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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 swine operation located on NE-30-60-04-W5 (this quarter section will be referred to as “the site”). The site is located in the County of Barrhead, approximately 18 kilometres northwest of the Town of Barrhead. The process of ascertaining livestock capacity and livestock type under a deemed permit is known commonly as a “grandfathering” determination.

On April 28, 2024, Trudy and Gerry Baltussen of Baltussen Hog Farm Ltd. contacted the Natural Resources Conservation Board (NRCB) and requested that the NRCB conduct a grandfathering determination for their swine confined feeding operation (CFO). The CFO operates under the corporate name of Baltussen Hog Farm Ltd. and the land is owned by Baltussen Hog Farm Ltd.

The confined feeding operation (CFO) holds Development Permit #55-95 issued by County of Barrhead on August 9, 1995. Development Permit #55-95 authorized the development of “a 300 sow farrow to finish piggery barn and operation” (Appendix A).

On May 1, 1996 the County of Barrhead authorized the change of the Development Permit #55-95 from the 300 sow farrow to finish operation to a 500 sow farrow to finish of just the gilts operation. The county acknowledged that the change in the operations from the original development application was not significant enough to warrant a new development permit (Appendix B).

Additionally, on October 15, 1997, the County of Barrhead authorized the change of the Development Permit #55-95 from the 300 sow farrow to finish operation to a 1,400 sow farrow to early wean operation. The county indicated that this change in intensity is not significant enough to warrant a new application (Appendix C).

Under section 18.1(1)(b) of AOPA, CFOs that held a municipal development on January 1, 2002, are grandfathered.

NRCB Operational Policy 2023-01: *Grandfathering (Deemed Permit)* at part 7.1 says that, where the livestock capacity, category, and type claimed by the operator is the same as in the pre-2002 municipal development permit, a formal grandfathering report is not needed. Instead, NRCB field services staff may issue a letter to the operator. In the case of the Baltussen Hog Farm Ltd. CFO, the municipal permitting history is complex. This is the primary reason why I have opted to issue a more comprehensive report outlining the grandfathering determination for this CFO. In addition, I needed to interpret “early wean” as a swine type to fit into AOPA types, and I needed to ascertain the footprint and structures as they existed on January 1, 2002.

It is therefore necessary for me to confirm:

1. Was the CFO above the permitting thresholds under AOPA on January 1, 2002?
2. If so, what was the footprint on January 1, 2002?
3. What were the structures on January 1, 2002? How were the structures being used?
4. What, if any, permits or licences did the operation hold?

On May 28, 2024, Gerry and Trudy Baltussen submitted a grandfathering determination request to the NRCB on behalf of Baltussen Hog Farm Ltd.. The grandfathering determination was

requested at NE-30-60-04-W5 and it claimed a 1,400 sow farrow to early wean operation (Appendix D).

For the reasons that follow, I concluded that the under section 18.1 of AOPA, the CFO at NE-30-60-04-W5, currently owned by Baltussen Hog Farm Ltd. has a deemed approval with the capacity for a 1,400 sow farrow to wean operation. The CFO has not been abandoned and the deemed NRCB permit under AOPA is still valid today.

2.0 Context and Process

2.1 Legal Context

Under section 18.1(1)(b) of the *Agricultural Operation Practices Act*, the owner or operator of a “confined feeding operation” that existed on January 1, 2002, with respect to which a development permit was in effect on January 1, 2002, is deemed to have been issued a permit under AOPA. The capacity allowed by the deemed permit is that authorized by the development permit, or if the capacity was not authorized, the capacity of the enclosures to confine livestock on January 1, 2002.

The term “capacity” refers to a CFO’s livestock numbers, not to the scope of the CFO’s facilities. The term “deemed capacity” refers to the maximum number of livestock, or maximum volume or tonnage of manure storage, allowed by a CFO’s deemed permit as determined under section 18.1(2) of AOPA.

“Capacity” in relation to deemed manure storage means volume for liquid manure storage and tonnage for solid manure storage.

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 sow farrow to wean is 50-999 for a registration and ≥ 1000 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 Notice Not Required

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.

I determined that notice of the deemed permit determination in this case was unnecessary. Grandfathering Policy at 5.2.1 states that public notice is not required if an MD permit pre-dates January 1, 2002 and specifies the capacity and livestock type.

3.0 Evidence

3.1 Information at the NRCB

The confined feeding operation (CFO) holds Development Permit #55-95 issued by County of Barrhead on August 9, 1995. Development Permit #55-95 was issued to Gerry Baltussen c/o Sunnyside Realty and it authorized the development of “a 300 sow farrow to finish piggery barn and operation” (Appendix A).

On May 1, 1996 the County of Barrhead authorized the change of the Development Permit #55-95 from the 300 sow farrow to finish operation to a 500 sow farrow to finish of just the gilts operation. Additionally, on October 15, 1997, the County of Barrhead authorized the change of the Development Permit #55-95 from the 300 sow farrow to finish operation to a 1,400 sow farrow to early wean operation. For both of these changes, the county acknowledged that the change in the operation from the original development application was not significant enough to warrant a new development permit (Appendices B and C).

3.2 Information from Gerry and Trudy Baltussen

Gerry and Trudy Baltussen provided two documents that supported the claimed grandfathered capacity of a 1,400 sow farrow to wean operation.

The first document dated October 19, 1999 is a letter from Cotswold Canada (a swine genetics company) (Appendix E). The letter discusses the average number of pigs that the Baltussen operation weaned in an eight week period. This letter also mentions that the Baltussen’s average inventory is 1,400 sows.

The second document is a weekly farm report for Baltussen Hog Farm Ltd. which includes a weekly report from February 29, 2004 to January 2, 2005 (Appendix F). This document includes

weekly production information about the operation including sow breeding information, farrowing information and weaning information.

The following records were also submitted, however they were not relevant and/or considered in the grandfathering determination as they did not provide any information on the claimed animal numbers or type:

- photos of the operation including a photo of the barn from the outside and a photo of the barn from the inside (no date on photos)
- photo of Western Hog Exchange card (no date), Alberta Pork Producer card (issued 2011), and Canadian Quality Assurance for Hog Producer's card (expired 2006)
- Alberta Premises Identification (no date)
- 2005 Canadian Quality Assurance Program renewal letter from Alberta Quality Pork
- February 13, 2006 Canadian Quality Assurance Program Validation Report
- 2006 Canadian Quality Assurance Program renewal letter from Alberta Quality Pork
- 2007 Alberta Environmental Farm Plan Certificate
- 2008 aerial image of operation

On May 28, 2024, myself and NRCB Approval Officer Nathan Shirley met with Gerry and Trudy Baltussen. At this time, we also inspected all of the operation's facilities. Gerry and Trudy Baltussen provided the following information about their operation:

- This swine operation had always been operational since 2002 (and since it was originally built) up until three to four years ago when sows were sold due to the market conditions.
- The operation was a swine farrow to early wean operation. In 2012, Baltussen's started finishing some pigs as a revenue source.
- The barn on site is the same barn that has always been on site and used in this operation.
- The lagoon on site is the same lagoon that has always been at this site and the dimensions have not changed since 2002. The operators believe that the lagoon holds 5000 cubic metres.
- In the last couple of years, the farrowing crates were removed out of the barn. Gerry Baltussen told us that there were 220 farrowing crates.
- Piglets were weaned at 18 days old.
- Gerry and Trudy's children have expressed interest in wanting to operate this CFO in the future.

3.3 Information from Municipality

Under the Part 2 Matters Regulation under AOPA, the municipality where the CFO is located is an affected party (see section 5 of the Regulation). As such, the County of Barrhead is an affected party and is also a directly affected party in this deemed permit determination, as they would be if this were an application for an approval today.

On May 30, 2024 I received correspondence from the County of Barrhead in regards to this operation. The County of Barrhead provided me with the following records: Development Permit #55-95 records from 1995 (Appendix G), Development Permit #55-95 records from 1996 (Appendix H), and Development Permit #55-95 records from 1997 (Appendix I). The County of Barrhead also provided aerial photos of the operation from 2000, 2007, 2014 and 2021 (Appendix J).

3.4 Other Evidence

Historical aerial imagery (Valtus 1999-2003, Appendix K and the County of Barrhead imagery from 2000, Appendix J) show the footprint and facilities of the CFO that likely existed on or around January 1, 2002. These facilities include the hog barn as well as the earthen manure storage. In these aerial images, the barn and the earthen manure storage are in the same location and appear to have the same dimensions as they do today (Appendices K and J).

4.0 Analysis and Findings

4.1 Was the CFO Above AOPA Threshold on January 1, 2002?

The development permit #55-95 authorizes a 1,400 sow farrow to early wean operation. Accordingly, the CFO was above threshold on January 1, 2002 and has a deemed permit.

4.2 CFO Footprint and Structures

The evidence set out above shows that the footprint of the CFO has not changed since 2001. My May 28, 2024 site inspection also confirmed that the CFO footprint has not changed. 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 collection areas (MCAs) and manure storage facilities (MSFs).

- 1) Barn (226 ft x 185 ft)
- 2) Earthen Liquid Manure Storage Facility (138 ft x 282 ft x 4.5 ft). This is an approximate measurement, as the width and length measurements were taken on Google Earth 2012 aerial imagery (Appendix L). I calculated the approximate depth (4.5 ft) using the total volume of the facility that the operators provided me on May 28, 2024.

I verified that the animal numbers stated in Development Permit #55-95 do fit into the barn listed above utilizing Technical Guideline Agdex 096-81 calculator.

See Appendix "L" for a map of the MCAs and MSFs.

4.3 CFO Livestock Type

As to livestock type, the supporting materials show that this CFO was a swine farrowing to wean operation as the records include breeding, farrowing and weaning information (Appendices E and F). AOPA does not distinguish between "early wean" and "wean," so I am interpreting the municipal development permit to authorize "wean" under AOPA.

5.0 Affected Persons 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 (County of Barrhead). The applicant (Baltussen Hog Farm Ltd.) and the municipality (County of Barrhead) 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 2024? This assessment may be useful to provide certainty to prospective buyers, sellers or lenders; regulators (such as the NRCB); and the owner or 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* guides how to assess whether an operation or facility is abandoned. I considered the following:

- when the CFO stopped being used to manage livestock or store livestock manure
- the owner's reason for ceasing or postponing use of the permitted CFO
- whether the CFO has changed ownership during the period of disuse
- the CFO's current use, if any
- the CFO's current condition
- whether the facilities have reached the end of their useful life
- what upgrades or major renovations would be required to resume using the facilities for confining livestock or storing manure
- the owner's intent with respect to future use of the CFO

From my observations and from information obtained during my site inspection, I was able to assess the status of the site:

- the CFO facilities stopped being used to confine livestock and store manure within the last three to four years
- the owner's reason for ceasing or postponing use of the CFO was due to the market conditions of the swine industry
- the CFO has not changed ownership during the period of disuse
- the CFO is not currently being used
- the CFO facilities are in good condition and the facilities have not reached the end of their useful life
- based on my observations of the conditions of the site, the CFO can continue being used without any major upgrades or renovations. To continue being used, the farrowing crates (or an alternative type of sow housing system) would need to be re-installed in the barn
- Gerry and Trudy's children have expressed interest in wanting to operate this CFO in the future, therefore there is intent with respect to future use of the CFO

Having considered the evidence and issues that relate to assessing abandonment, I am of the option that the CFO at NE-30-60-04-W5 is not 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.

The policy objective behind grandfathering is to protect legitimate expectations and reduce unfairness to operators who did not receive adequate notice of AOPA Part 2 taking effect from being expected to conform to the “new” standards. When AOPA was being developed, the expectation was that, over time, older facilities would adhere to AOPA’s requirements as they were upgraded or replaced. The idea is that, prior to AOPA, operators made their investment decisions on the basis of the rules as they stood at the time, and that it would be unfair to subject those operators to the new rules.

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*.

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 the CFO at NE-30-60-04 W5, currently owned by Baltussen Hog Farm Ltd. and operated by Gerry and Trudy Baltussen:

1. was above AOPA permitting thresholds for swine farrow to wean animals on January 1, 2002
2. had the same footprint (for confining livestock) on January 1, 2002 as it does today
3. has the same structures (for confining livestock and for storing manure) today as it did on January 1, 2002
4. has development permit #55-95 issued prior to January 1, 2002 from the County of Barrhead
5. was operating as a sow farrow to wean operation on January 1, 2002

Therefore, under section 18.1 of AOPA, the owner or operator of the CFO has a deemed approval with the capacity for a 1,400 sow farrow to wean operation. AOPA does not include a sow farrow to early wean livestock type. The most relevant livestock type is sow farrow to wean. Therefore the CFO’s deemed approval is for the capacity of 1,400 sow farrow to wean animals.

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) Approval PB24004.

Please note that under section 18.1(4) of AOPA, the terms and conditions of the municipal Development Permit #55-95 continue to apply under the deemed permit.

Furthermore, I conclude that the only directly affected parties of this decision are: Baltussen Hog Farm Ltd. (operated by Gerry and Trudy Baltussen) and the County of Barrhead.

October 3, 2024

(Original signed)

Cathryn Thompson
Inspector

8.0 Appendices

- A. County of Barrhead Development Permit #55-95
- B. 1996 Change to Development Permit #55-95
- C. 1997 Change to Development Permit #55-95
- D. Grandfathering Determination Request to NRCB (May 28, 2024)
- E. October 19, 1999 Cotswold Canada Ltd. letter (supplied by Gerry and Trudy Baltussen)
- F. Baltussen Hog Farm Ltd. February 29, 2004 to January 2, 2005 Weekly Farm Report (supplied by Gerry and Trudy Baltussen)
- G. Development Permit #55-95 records from 1995 (supplied by the County of Barrhead)
- H. Development Permit #55-95 records from 1996 (supplied by the County of Barrhead)
- I. Development Permit #55-95 records from 1997 (supplied by the County of Barrhead)
- J. 2000, 2007, 2014, 2021 Aerial Imagery (supplied by the County of Barrhead)
- K. 1999-2003 Valtus Imagery
- L. 2012 Google Earth Aerial Imagery (labelling done by Cathryn Thompson)