



## **BOARD REQUEST FOR REVIEW DECISION**

**RFR 2023-04/ RA05042C**

In Consideration of a Request for Board  
Review filed under the *Agricultural  
Operation Practices Act*

Darcor Holsteins Inc. and Damien  
Rasmuson

July 13, 2023

**The Board issues this decision under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for the Board's review (RFR) of Cancellation Decision RA05042C.**

## **Background**

On June 9, 2023, a Natural Resources Conservation Board (NRCB) approval officer issued Cancellation Decision RA05042C (the Decision). The Decision cancelled Registration RA05042 for a 440 sow farrow to isowean confined feeding operation (CFO) located at NE 14-47-23 W4M in the County of Wetaskiwin due to the operation being abandoned. Under section 29(1)(b) of AOPA, the Board may cancel a registration if the confined feeding operation or manure storage facility to which the registration relates is abandoned.

Section 1 of the AOPA Administrative Procedures Regulation defines permit as including an approval, registration or authorization issued under AOPA. Under section 12(1)(b) of the Regulation, cancellation of a permit requires notice to the permit holder. Guidance on decisions regarding abandonment and cancellation of permits is provided by NRCB Operational Policy 2016-03: Permit Cancellations under AOPA Section 29, updated April 2018 (the Operations Policy 2016-03).

Darcor Holsteins Inc. and Damien Rasmuson (Darcor) purchased the land and operation in April 2022 and became the co-permit holders for the CFO at this site. Darcor indicated that prior to purchasing the operation, it contacted the NRCB and was told that Registration RA05042 had been issued for this location and that the registration had not expired. On November 7, 2022, Darcor submitted an application (Part 1, notice of intent) to the NRCB to convert and expand the existing hog operation into a dairy CFO, Application RA22027. Part 2 of the application (technical details) was filed on December 16, 2022. On January 12, 2023, the approval officer deemed the application complete.

The approval officer conducted two site visits to the operation on January 31, 2023 and February 6, 2023. During these site visits, the approval officer became aware that the CFO facilities had not housed livestock since 2011. The approval officer concluded that most of the facilities were beyond repair or renovation and that the hog CFO was abandoned.

On March 7, 2023, under the authority of section 12(1)(b) of the AOPA Administrative Procedures Regulation, the approval officer notified Darcor, in writing, of the intention to cancel Registration RA05042 due to abandonment of the hog CFO. Darrin Rasmuson, on behalf of Darcor Holsteins Inc. and Damien Rasmuson, informed the approval officer of an intention to object to the cancellation of the registration and on April 4, 2023, filed a submission objecting to the cancellation. On April 13, 2023, the approval officer notified the County of Wetaskiwin and affected parties within ½ mile of the hog CFO, providing them with the Notice of Intent to Cancel Permit (March 7, 2023) and the co-permit holder's submission objecting to the permit cancellation.

The approval officer received a response from the County of Wetaskiwin, which is considered a directly affected party under section 21(2) of AOPA. Three responses were received from parties who own or occupy land near the hog operation, but only one of these parties was deemed to be directly affected. The approval officer considered the submission from the co-

permit holders and the responses from the directly affected parties before issuing Cancellation Decision RA05042C on June 9, 2023. Notice of that decision was given in accordance with section 12(6) of the AOPA Administrative Procedures Regulation.

Following the issuance of the Decision, the Board received one request for review (RFR) of the Decision from Darrin Rasmuson, agent for Darcor Holsteins Inc. and Damien Rasmuson (Darcor). The RFR met the filing deadline of June 30, 2023. On July 4, 2023, the NRCB sent a Notice of Filed Request for Board Review and Rebuttal Opportunity to the directly affected neighbour as well as the County of Wetaskiwin. The Board's notice was also sent to Janet Patriquin of the Farmers' Advocate Office as requested by Darrin Rasmuson. The rebuttal opportunity gives parties that may have an adverse interest to the matters raised in the RFR a chance to submit their views. No rebuttals were received by the filing deadline of July 10, 2023.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (panel) consisting of Peter Woloshyn (chair), Sandi Roberts, Rich Smith, and Darin Stepaniuk was established to consider the RFR and decide whether a review is warranted.

As used here, a "review" is a quasi-judicial hearing or written review in which the parties can submit expert and witness testimony and other evidence, when relevant, to the issues selected by the Board to be considered at the hearing or written review.<sup>1</sup> References to the "Board" in this document are to findings of the panel of Board Members established specifically for this file.

## Documents Considered

The Board considered the following information:

- Cancellation Decision RA05042C, dated June 9, 2023
- 14 Documents linked to Cancellation Decision RA05042C, dated June 9, 2023
- RFR filed by Darrin Rasmuson, received June 29, 2023
- NRCB Operation Policy 2016-3: Permit Cancellations under AOPA Section 29, updated April 2018
- County of Wetaskiwin Municipal Development Plan (MDP), Bylaw 2023/05, dated April 11, 2023
- July 10, 2023 email to the Board from legal counsel for the approval officer indicating that the approval officer takes no position on whether the Board should hold a review on the RFR and that Field Services have no further documents to provide to the Board.

## Board Jurisdiction

The authority for requesting a Board review of a decision to cancel a permit is found in section 12(7) of the AOPA Administrative Procedures Regulation which states:

12(7) A directly affected party may, within 10 working days of receipt of the decision under subsection (6), request a Board review in accordance with section 13.

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<sup>1</sup> For more information on Board reviews, see NRCB, *Board Reviews & Court Decisions – Board Review Process*, [online](#).

Consistent with the Board's authority in considering RFR applications under section 25(1) of AOPA and its approach in considering RFR applications regarding enforcement orders under section 41(1), not every RFR application of a permit cancellation decision will be granted. The Board will only grant a RFR if it is satisfied that a review is appropriate or warranted.

## **Board Deliberations**

### **Issues Raised in the RFR**

In the RFR, Darcor provided grounds for requesting the review, identified the prejudice or damage caused by the decision, and requested that the Board reverse the decision, while also providing reasons why the decision should be reversed.

Darcor's grounds for requesting the review are as follows:

- The approval officer did not place sufficient value on the importance of Darcor believing, based on pre-purchase consultation with the NRCB, that the registration would remain valid.
- The approval officer understated the value of the existing facilities and overstated the poor condition of certain parts of the facilities.
- The fact that the existing facilities will not be used for CFO purposes should not adversely affect Darcor's belief that the existing permit is still valid.
- In calculating the capacity of the existing facilities that the approval officer determined were still suitable for use as a CFO, the approval officer did not include the largest barn that would require minimal work before housing livestock again.
- A better and more transparent process for determining abandonment is required and this process should be readily available on the NRCB website.

Darcor asserted that the property was purchased, and a premium was paid, on the reasonable presumption that this site could be used for a dairy CFO. Darcor believed that it exercised due diligence by consulting the NRCB about the validity of the existing CFO permit before the purchase. Additionally, there was no indication from the NRCB that abandonment of the hog CFO would be a permit issue. Darcor estimated that at least \$130,000.00 was invested in the property in excess of the amount that would have been invested if there had not been a valid CFO permit on the property.

Darcor stated that reversal of this decision would support the mission statement of the NRCB and protect Darcor from significant material harm, while allowing the development of a dairy CFO that would present no environmental issues. Darcor further stated that reversal of this decision would be a catalyst for the development of a new protocol to address abandonment issues that the NRCB has identified as becoming an increasingly prevalent occurrence.

### **Board Views**

The Board notes that the approval officer stated that this is the first cancellation of a permit for an entire CFO due to abandonment, without the permit holder's consent. The key elements of the Cancellation Decision that the Board considered in its deliberations on this RFR were the decision of the approval officer that the hog CFO is abandoned and the subsequent decision of the approval officer to exercise the authority to cancel the permit for the hog CFO.

## **1. Abandonment Decision**

Section 2.1 of Operational Policy 2016-03 describes the factors that affect a decision on whether a CFO is abandoned. These factors are grouped in three subsections: 2.1.1 Criteria to consider, 2.1.2 Considerations regarding an owner's intent, and 2.1.3 Burden of proof.

The typical criteria to consider include the CFO's current use, the CFO's current condition, any steps taken to maintain the facilities such that they could be used for livestock management or manure storage without major upgrades or renovations, the timing and reasons for discontinuation of use, and "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 Board is not able to determine whether the seller promised Darcor that the CFO was permitted under AOPA, but Darcor has asserted that the NRCB said, during pre-purchase consultation, that the CFO was permitted under AOPA.

There is disagreement about whether some of the CFO facilities could again be used to confine livestock due to their physical condition. There is uncertainty about the extent to which Darcor was obligated to disclose the current state of the hog CFO facilities and whether the approval officer was obligated to ask about the current use and condition of the existing facilities. It appears that there was no discussion of abandonment during the pre-purchase consultation between Darcor and the approval officer. The Board is concerned about the timing of the abandonment decision, coming long after Darcor had purchased the property with the apparent belief that there was a valid AOPA permit for the existing hog facilities and after the application for Registration RA22027 was deemed complete. Conducting a review will allow the Board to clarify uncertainties about what occurred and potentially make determinations about respective responsibilities during the pre-purchase discussion of the existing registration and facilities.

Operational Policy 2016-03 states that when a CFO owner has stopped using the CFO, an approval officer will consider the owner's intent regarding future use when deciding whether the CFO has been abandoned. The policy further states that an approval officer must distinguish between an owner's intent to operate the CFO in the future and their intent to simply retain the CFO permit. In a decision regarding abandonment, the policy considers an intent to simply retain the CFO permit to be a less important consideration than an intent to operate the CFO in the future.

The Board is not able to determine the intent of the previous owner of this property with respect to future use of the hog CFO. All parties agree that the existing facilities have not been used as a CFO since 2011. However, Darcor has clearly indicated an intent to operate a CFO at this site and asserted that a premium was paid for this property based on the existence of a valid CFO permit. A valid CFO permit has value for a purchaser even if the previous owner had been simply retaining the CFO permit without the intent to operate the CFO. This raises issues that bear on the decision to cancel the permit.

With respect to the burden of proof for permit cancellations under section 29(1)(b) of AOPA, Operational Policy 2016-03 states that the NRCB interprets the Act as placing the overall

burden of proof on an approval officer in finding that a permitted operation has been abandoned. There are some factual areas associated with the approval officer's abandonment determination that could be clarified in a Board review.

## **2. *Permit Cancellation Decision***

As noted, section 29(1)(b) of AOPA and section 12(1)(b) of the AOPA Administrative Procedures Regulation provide an approval officer with authority to cancel a permit for a CFO if the CFO is abandoned. However, an approval officer is not required to cancel the permit based solely on a finding that it is abandoned.

Operational Policy 2016-03 provides guidance on whether to cancel a permit for an abandoned CFO. The approval officer is directed to consider the factors involved in the abandonment decision in the context of the purpose statement of AOPA, respect for the land use planning decisions of municipalities, and the commitment to provide a consistent approach across the province to the protection of water from manure-related risks and minimizing nuisance impacts on neighbours. The policy states that "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." After having reviewed the approval officer's Decision, the Board has identified issues and uncertainties in the determination that cancelling the permit was "fair and reasonable" This also supports the Board conducting a review.

## **3. *Summary of Board Views***

The Board finds that a number of issues raised in the RFR have merit and warrant further consideration. The Board understands that this is the first application of section 29(1)(b) of AOPA to cancel a permit without the permit holder's consent.

The Board has questions about the weighting of the factors in the decision that the CFO is abandoned and the application of Operational Policy 2016-03 to the decision to cancel the permit. There is uncertainty about the expectations of the current landowner with respect to the permit for the hog CFO, the extent to which the landowner is obligated to disclose the condition of the existing facilities, the extent to which the approval officer is obligated to raise the issue of abandonment, the timing of the decision that the hog CFO is abandoned, and consideration of the owner's intent with respect to the CFO permit. The Board finds that a review is warranted to fully explore the sufficiency of the reasons in the Decision that cancelling the permit is fair and reasonable.

For these reasons, the Board finds that a review of Cancellation Decision RA05042C is warranted.

## Board Decision

As a result of the Board's deliberations, the Board has determined that a review of Cancellation Decision RA05042C is warranted to consider whether the Decision should be upheld or rescinded as requested by the RFR.

## Scope of the Review

The issues that the Board will be considering in the review include, but are not limited to, the following:

1. The reasonable expectations of the current landowner with respect to the permit for the hog CFO.
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.
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.
4. The intent of the past and current owners with respect to future use of the existing CFO.
5. The appropriate weighting of the factors considered in the decision that the CFO is abandoned.
6. The factors considered in the decision to cancel the permit and the basis for determining that a cancellation is fair and reasonable.

The Board notes that the County of Wetaskiwin is a directly affected party in this Decision and welcomes the participation of the County in the review. Although the previous landowner is not considered a directly affected party, the current owner may choose to call the previous owner as a witness.

## Form of Review

The Board has determined that an in-person review hearing in Wetaskiwin is warranted. A virtual hearing may be used instead of in-person should scheduling challenges dictate. The Board finds that eligible parties to this proceeding include Darcor Holsteins Inc. and Damien Rasmuson, County of Wetaskiwin, Lori Cridland, and NRCB Field Services.

The Manager of Board Reviews will notify parties of deadlines for written hearing submissions and reply submissions after the the hearing date has been determined.

All submissions are to be directed to the attention of Laura Friend, Manager of Board Reviews, at [laura.friend@nrcb.ca](mailto:laura.friend@nrcb.ca). All filings and correspondence made with respect to this review will be posted on the [project page](#) on the Board's website.

The Board anticipates that a hearing of the issues for review will be completed in a single day, but will schedule two days for the hearing in case it cannot be completed in one day. Board staff will contact the parties to determine an appropriate hearing date. All parties will be notified once the specific hearing arrangements are finalized.

DATED at EDMONTON, ALBERTA, this 13<sup>th</sup> day of July, 2023.

Original signed by:

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Peter Woloshyn (chair)

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Sandi Roberts

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Rich Smith

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Darin Stepaniuk