



BOARD REVIEW DECISION

2023-05 / RA05042C

Review of Cancellation Decision
RA05042C

Darcor Holsteins Inc. and Damien
Rasmuson

November 21, 2023

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The Board issues this decision under the authority of the Agricultural Operation Practices Act (AOPA or the Act), following the Board’s review of Cancellation Decision RA05042C via a virtual hearing held on October 10, 2023.

1. Filings and Parties to the Review

On June 9, 2023, a Natural Resources Conservation Board (NRCB) Field Services approval officer issued Cancellation Decision RA05042C under authority of s. 29 of AOPA. The decision cancelled AOPA 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.

One request for Board review (RFR) was filed by Darcor Holsteins Inc. and Damien Rasmuson, asking the Board to reverse the Cancellation Decision.

On July 13, 2023, the NRCB released Board Decision RFR 2023-04 / RA05042C, advising that the Board had determined that a review of the Cancellation Decision was warranted. The scope of the review was provided on page 6 of the decision. Eligible parties to the review were listed as Darcor Holsteins Inc. and Damien Rasmuson, County of Wetaskiwin, Lori Cridland, and NRCB Field Services.

A letter providing the hearing details was sent to parties on August 17, 2023. The hearing submission filing deadline was September 18, 2023. One submission was received from NRCB Field Services. The reply submission deadline was October 2, 2023. No reply submissions were received.

Parties to the review and their representatives are identified below:

Parties to the Review	Counsel/Representative
NRCB Field Services <ul style="list-style-type: none">Francisco Echegaray, Approval OfficerAndy Cumming, Director, FS-Applications	Fiona Vance, Counsel
Darcor Holsteins Inc. and Damien Rasmuson	Darrin Rasmuson, Operator
County of Wetaskiwin	Jeff Chipley, Assistant CAO

Bill Kennedy participated in the hearing as counsel for the Board. Additional staff support was provided by Laura Friend, Manager, Board Reviews and Sylvia Kaminski and Carolyn Taylor, document management.

Closing arguments were provided in writing: Darcor Holsteins Inc. and Darrin Rasmuson October 16, 2023, NRCB Field Services October 18, and County of Wetaskiwin October 23.

All filings were submitted within the prescribed deadlines.

2. Background

Darrin Rasmuson, his son Damien Rasmuson, and their family company, Darcor Holsteins Inc. (collectively, Darcor) are in the dairy farming business. For some time prior to February 2022, Darcor was considering the potential for new dairy facilities. In approximately January 2022, Darcor was approached by Keith Rasmuson about buying NE 14-47-23 W4M. Darrin and Keith Rasmuson are cousins. This land was the original land acquired by the Rasmuson family when they immigrated here. Keith Rasmuson offered Darcor an opportunity to buy the land before putting it for sale on the open market. A Darcor purchase would keep the land in the family. It could also be potentially used for the new dairy facilities Darcor had been contemplating.

An AOPA permit¹ (Registration RA05042) for a 440 sow farrow to isowean hog confined feeding operation (CFO) at this site was issued to Keith Rasmuson and co-holders on November 7, 2005 (the Permit). The registration also included a grandfathering determination and recognized a deemed permit for the hog CFO that already existed. The Permit included an annual reporting requirement relative to liquid earthen manure storage (EMS) leakage detection wells. NRCB Field Services (Field Services) subsequently adopted a risk-based approach to EMS monitoring. As a result, the EMS monitoring requirement at this site was suspended in January 2010 at which time Field Services hand-delivered notice of the monitoring suspension.

Hogs ceased being kept at the site in 2011.

Keith Rasmuson and Darcor recognized the need to make inquiries about the current standing of the Permit with Field Services as part of their sale negotiations. They decided that Darcor should make those inquiries as Darcor wanted to receive information first-hand.

¹ Section 1 of the AOPA Administrative Procedures Regulation defines permit as including an approval, registration or authorization issued under AOPA.

Those inquiries occurred in a series of calls between Darcor and Field Services commencing in February 2022². Darcor was advised by an NRCB approval officer that the Permit was valid and that it was attached to the land. The calls discussed Darcor potentially buying the property and the permit process relative to Darcor's plans for a dairy at the site. Darcor indicated that hogs were no longer on site but did not volunteer when operations had ceased. Darcor indicated that some of the CFO structures were in poor shape.³ Neither party raised the issue of permit cancellation under section 29 of AOPA.

As part of their potential purchase consideration, Darcor reviewed the CFO portion of the County of Wetaskiwin's (the County) Municipal Development Plan (MDP) in place at that time (2010 MDP). Darcor concluded that there was no conflict between the 2010 MDP and their plans for a dairy CFO at the site.

Darcor purchased the site in April 2022. Darcor's hearing evidence indicated that the existence of the Permit was a valuable attribute of the property and was accounted for in the purchase price.

In early November 2022, Darcor became aware that the County was contemplating changes to the 2010 MDP that would create an inconsistency with Darcor's plans for a dairy CFO at the site. Section 22(1)(a) of AOPA directs Field Services' approval officers to deny an application if, in the opinion of the approval officer, there is an inconsistency with the MDP.

Given the potential changes to the County's MDP, Darcor saw a need for urgency in proceeding with their dairy conversion application. On November 7, 2022, Darcor submitted a Part 1 General Information and Disclosure Application (notice of intent), to Field Services to convert and expand the existing hog operation into a dairy CFO—Application RA22027. The Part 1 Application included a brief description of proposed demolitions, conversions, and renovations of facilities. This included renovation of one wing of an existing barn for young stock, a new barn to be constructed for 120 milking cows, and modification of the existing EMS. Darcor submitted the Part 2 Technical Requirements Application on December 16, 2022, and a supplemental Part 2 Application on December 23, 2022. The Part 2 Application increased the size of the dairy to 190 milking cows and indicated that no existing barns would be used for

² There is some discrepancy about the number of calls and timing. Field Services' hearing evidence was that there were two or three calls in February 2022. Darcor's hearing evidence was that there were three or four calls and that they extended into March 2022.

³ Darcor's hearing evidence on this point was not contested.

stock. On January 12, 2023, the Field Services approval officer deemed the application complete and notified parties about the application.

Field Services stated that a site visit is typically conducted before deeming an application complete. In this case the first site visit associated with processing Application RA22027 took place on January 31, 2023. This was the first time Field Services had been on site since it delivered the monitoring suspension notification in 2010. The condition of the facilities prompted consideration of abandonment and a second site visit on February 6, 2023.

Field Services issued a “Notice of Intent to Cancel Permit due to Abandonment” on March 7, 2023, following the process required by s. 12 of the AOPA Administrative Procedures Regulation. Responses provided by Darcor, the County, and a directly affected neighbour were considered by the approval officer before the decision under s. 29 (1)(b) of AOPA was made.

On April 11, 2023, the County adopted a new MDP. It excludes new and expanding CFOs within 1.6 km of Coal Lake. Darcor’s CFO site is within 1.6 km of Coal Lake. The new MDP also states that it considers any CFO within that setback zone that has not been in operation for a period of 10 years or more to be without proper authorization to resume operation or expand, and that the County will not support the resumption or expansion of such operations.

Field Services’ June 9, 2023, Cancellation Decision is the NRCB’s first “without consent” complete cancellation of a CFO permit due to abandonment. The Cancellation Decision was informed by guidance contained in NRCB Operational Policy 2016-03: Permit Cancellations under AOPA Section 29, updated April 2018 (the Policy).

After learning about the intent to cancel Permit RA05042, Darcor proceeded to apply to the NRCB for a 195 milking cow dairy CFO at a different location, NW 25-47-23 W4M. The NRCB issued Permit RA23021 for this CFO on August 30, 2023. Darcor stated that their reason for making this application was to give them an alternate location for their dairy.

For reference, a chronology of events associated with this file are listed in Appendix A.

3. Issue

The central issue before the Board is whether the Field Services approval officer appropriately exercised authority under s. 29 of AOPA in the decision to cancel Permit RA05042.

4. Party Positions

4.1 Field Services Position

Field Services took no position on the outcome of this review but provided information to assist the Board in understanding the permit Cancellation Decision RA05042C.

In making his decision, the approval officer relied on Operational Policy 2016-3, Permit Cancellations Under AOPA Section 29 (the Policy). This Policy outlines seven key factors for approval officers to consider in deciding whether a CFO has been abandoned. The Policy also provides the context in which an approval officer should consider these factors when deciding whether to cancel the permit of an abandoned CFO.

The rationale for the abandonment and permit cancellation decisions based on this Policy is set out in the approval officer Cancellation Decision.

The approval officer recognized that Darcor had a clear expectation that the Permit for the existing CFO was valid based on his confirmation during telephone calls in February 2022 that the 2005 NRCB issued Permit would “run with the land”. The approval officer noted that this expectation was made less reasonable by the full set of facts, including the condition of the facilities and the long period of inactivity at the CFO, none of which was shared with the NRCB at the time of Darcor’s pre-purchase inquiries. Although there was clear intent by Darcor to operate a CFO at this site, the converted and expanded CFO would not utilize any of the existing facilities. The abandonment decision was further supported by the County of Wetaskiwin’s (the County) response to the notice of Application RA22027 in which it indicated that it considered the existing CFO to be abandoned. There also was a response to the Application from a directly affected party who stated that they believed the CFO was abandoned.

As part of the consideration of the decision that the existing CFO is abandoned, the approval officer assessed the capacity of the one part of the facilities he deemed in suitable condition for housing animals. The approval officer determined that the capacity of this barn was below the threshold level of animal numbers that would require a registration permit according to the

AOPA Matters Regulation. The approval officer viewed this as further evidence that the existing CFO was abandoned.

In response to cross-examination questioning by Darcor at the hearing, the approval officer acknowledged that there are some parts of the existing facilities that are in relatively good condition and could be made ready to house animals without too much effort or expense. In response to questioning by the Board, the approval officer stated that a CFO, where the existing facilities do not have capacity to house a threshold level number of animals, would not necessarily have a permit cancelled if there was an intent to construct additional facilities to bring the capacity above threshold levels.

With respect to the determination that cancellation of the permit was fair and reasonable, the Cancellation Decision indicated that cancellation is not to be done lightly or arbitrarily. Specific fairness points referenced are the existing CFO had not been in operation since 2011, a conclusion that the hog facilities had not been maintained, an absence of intent to use the existing hog facilities for CFO purposes, and the land-use planning of the County. At the hearing, the approval officer stated that consideration of municipal and neighbour views was a significant part of the Cancellation Decision.⁴

4.2 Darcor Position

Darcor asserted that the abandonment and cancellation decision, coming a year after the approval officer told Darcor that the 2005 NRCB issued Permit ran with the land, is inherently unfair to Darcor and unreasonable for Darcor's business.

When Darcor began consideration of purchasing the site, it was aware that there was an existing hog CFO on the site with a permit under AOPA. Darcor exercised due diligence by contacting Field Services to determine the status of the permit for this existing CFO. Through a series of telephone calls, Darcor was informed that the Permit for the existing CFO was valid, the permit for facilities built within construction deadlines would not expire, and the permit would be transferred with the land to a new owner. Darcor asserted that during these telephone calls with the approval officer it indicated that the facilities were not occupied and that some of the facilities were old and not in good condition.

⁴ Hearing transcript, pp. 86-88

Darcor indicated that their intention to convert and expand the existing CFO to accommodate a dairy operation was clear.

Darcor stated that a CFO permit has value for a landowner, particularly in a situation where a new owner intends to convert and expand an existing CFO in a location where the MDP does not allow a new CFO.⁵ Darcor asserted that a premium was paid on the purchase of this property based on the presence of a valid CFO permit. Abandonment was never raised as an issue by the approval officer until after the purchase and after Application RA22027 was deemed complete.

It is Darcor's position that the most important factor in the abandonment and cancellation decision, indeed the overarching theme, in Darcor's words, is a new owner purchasing a CFO on the basis of reasonably expecting that the CFO is permitted under AOPA.⁶ In this case, Darcor's basis for this expectation was the telephone calls with the approval officer that indicated the Permit was valid and would remain with the land. Darcor believed that this expectation and the intent to convert and expand a CFO at the site should take precedence over other considerations such as the current use and condition of the CFO facilities.

Darcor strongly disagreed with the characterization of the condition of the existing facilities in the Cancellation Decision and questioned the approval officer on this point during the hearing. Beyond the portion of the existing facilities that the approval officer considered in the capacity calculations, Darcor believed there are significant additional parts of the existing facilities that are in relatively good condition and could be prepared for housing animals with little expense or effort. Furthermore, Darcor questioned why the capacity calculations were even done when, as Darcor asserts, a valid permit existed for the CFO.

Darcor stated that it was aware that the County of Wetaskiwin Municipal Development Plan (MDP) of 2010 stated that no new CFOs could be located within 1.6 km of Coal Lake, but the MDP appeared to allow expansion of existing CFOs within this setback area. Darcor proceeded with the purchase of the site with a reasonable expectation that the existing CFO was permitted under AOPA and the belief that the application for conversion and expansion of the CFO would be consistent with the County of Wetaskiwin MDP.

⁵ Hearing transcript, p. 166

⁶ 20231016 Closing Argument – Darcor, p. 1

It is Darcor's position that Application RA22027 could have been approved before the adoption of the updated MDP if the approval officer had pursued a decision on the application rather than choosing to apply s. 29 of AOPA through an abandonment and cancellation decision.⁷ Darcor stated that the delay in approving Application RA22027 and the resulting inconsistency with the new MDP makes the future of the proposed conversion and expansion uncertain and will add significant costs to the development even if the Cancellation Decision is overturned and the application can proceed.

Darcor's position is that the process for abandonment and cancellation decisions under s. 29 of AOPA is flawed. Darcor noted the difficulty in finding information about s. 29, especially when producers are most concerned about finding information about the permitting process and are not even aware that abandonment may be an issue. Darcor stated that the potential for a facility to be deemed abandoned needs to be dealt with early, transparently, and at the first and slightest suggestion that it could be a factor. Darcor also stated that Field Services should make a site visit before any permit for an existing CFO is transferred to a new landowner.

4.3 County of Wetaskiwin Position

The County of Wetaskiwin (the County) position was expressed in the response to the notice of Application RA22027 and the submission responding to the Notice of Intent to Cancel Permit RA05042. The evidence provided by the County at the hearing was related to the process followed by the County Council and County administration in preparing these responses. The County also provided information about the process used in updating the Municipal Development Plan (MDP). The updated MDP was adopted on April 11, 2023, during the time between the Notice of Intent to Cancel Permit RA05042 and the issuance of Cancellation Decision RA05042C.

The County was operating with an MDP that had been adopted in 2010 and began the formal process of updating the MDP in early 2021. In the spring of 2022, the County circulated a newsletter to county residents with information about the MDP update and a survey. The County held a series of information sessions on the MDP during the spring and summer of 2022, with a draft updated MDP released during the summer. In the fall of 2022, a second newsletter was circulated and a series of open houses dealing with the draft MDP was held. With information received from the open houses, the County Council directed the County

⁷ 20231016 Closing Argument – Darcor, p. 2

Planning and Development Committee to conduct a final review of the draft MDP which then proceeded through three readings and a public hearing in the first months of 2023.⁸

At the hearing, the County of Wetaskiwin noted that Application RA22027 was a matter of significant interest to the residents that generated a great deal of concern and discussion. When the County received notice of Application RA22027, there was a Notice of Motion brought to Council which led to a resolution directing administration to advise the approval officer that the County considered this application to be for a new CFO and therefore subject to the provision of the 2010 MDP that did not allow new CFOs within 1.6 km of Coal Lake. The County has noted that there was no reference to abandonment of the existing CFO in this direction, but there was a comment in the Notice of Motion that the CFO had not been operated for over 12 years. The County submission responding to the Notice of Intent to Cancel Registration RA05042 was submitted after the adoption of the updated MDP. This submission supported the Cancellation Decision based on the provisions in the updated MDP regarding CFOs within 1.6 km of Coal Lake.⁹

5. Board Deliberations

At the outset the Board acknowledges the foresight by Field Services to develop Operational Policy 2016-3: Permit Cancellations Under AOPA Section 29 (the Policy) seven years ago to assist staff when making permit cancellation decisions. The Board also recognizes the challenge presented by the fact that this is the first application of the Policy in a situation where the owner does not consent to the cancellation.

5.1 Is the Policy Appropriate?

The Board finds that Field Service's Policy substantively identifies the factors that should be considered when faced with an abandonment decision. The Policy rightly incorporates a two-step analysis framework in applying s. 29(1)(b) of AOPA. The Board notes that a permit cancellation first requires a determination whether the CFO is abandoned based on seven criteria set out in the Policy. If the facility is determined to be abandoned, a further determination is required whether to exercise discretion to cancel the permit. The Board agrees with the direction in the Policy that discretion to cancel a permit should only be exercised when it is fair and reasonable to do so.

⁸ Hearing transcript, pp. 191-194

⁹ Exhibit I (b), County of Wetaskiwin letter dated April 27, 2023, p. 2

5.2 Is the CFO Abandoned?

Board findings and observations about the specific abandonment criteria in the Policy are set out below.

Factor 1. The CFO's current use, if any.

It is uncontested that the CFO is not currently being used for the purposes of confining livestock.

Factor 2. The CFO's current condition.

There was general agreement between Darcor and the approval officer regarding the state of disrepair and condition of several of the CFO facilities. This included the inability of Barns #4, #5, and #6 to be economically upgraded to house animals. They agreed that Barn #1 was in suitable condition for housing animals and in fact the approval officer based his threshold calculations on the capacity of this barn.

There was disagreement regarding the condition of Barns #2 and #3, and the potential for use of these barns and the EMS in a CFO. Darcor outlined that these facilities remain in good condition structurally and have power, water, and heat services available. The approval officer stated that these barns were less of a concern to his analysis since they were currently being used for non-CFO purposes (storage).

The approval officer conceded that he did not enter or take pictures of these facilities and acknowledged that they could be modified to house livestock. The approval officer stated that the condition of the EMS was not assessed during the site visits as it was snow covered. Darcor commented that the EMS is usable and there is piping to it from the barns.

The approval officer considered CFO capacity based on his assessment of the state of the repair of the existing facilities (excluding those facilities currently being used for storage) to determine whether these facilities were capable of housing above AOPA threshold animal numbers. The Board comments on the use of threshold in abandonment decisions in the next section.

Factor 3. What, if any, steps are being taken to keep the CFO facilities in a condition such that they could resume being used for livestock management or manure storage without major upgrades or renovations.

On this factor, there were similar areas of agreement and disagreement as were identified for factor #2. The approval officer considered that only Barn #1 had been kept in condition suitable for use in housing livestock, while Darcor asserted that Barns #2 and #3 had also been maintained well and could be made ready for livestock use without major upgrades or renovations.

The approval officer was questioned about the absence of facility closure conditions in light of NRCB's Agdex 096-90 Technical Guideline: Closure of Manure Storage Facilities and Manure Collection Areas. The approval officer indicated that the permit cancellation was not subject to closure requirements since, in his opinion, some of the facilities including the EMS may be used to confine below threshold animal numbers in the future. While the Board finds that this position is inconsistent with a decision that the CFO is abandoned, the approval officer placed less emphasis on this fact largely on the basis that by his calculations these facilities were not capable of housing above threshold animal numbers. The Board respectfully disagrees with this analysis. The site is permitted as a CFO under AOPA, and whether the current facilities which are in suitable condition to confine livestock can accommodate above threshold animal numbers is not an appropriate consideration in the context of this abandonment decision.

Factor 4. When the CFO stopped being used to manage livestock or store livestock manure, and the owner's reason for that stoppage.

The CFO has not been in use since 2011, a significant amount of time. This point is uncontested. The length of time during which the CFO has not been used was an important factor for the approval officer in the decision that the operation is abandoned and the Permit should be cancelled.

Factor 5. *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.*

Darcor considered this to be the most important factor supporting their position that the Cancellation Decision is unfair. Darcor had exercised due diligence in contacting the NRCB regarding the status of the Permit and had purchased the site with the reasonable expectation that the Permit is valid. The Cancellation Decision was made after Darcor had purchased the site and acquired the Permit in good faith with the intent to develop a converted and expanded CFO. The approval officer recognized that Darcor had this expectation based on his telephone conversations with Darcor where he confirmed that the 2005 Permit would transfer with the land in a sale. However, he noted that this expectation was made less reasonable by the fact that the length of the period of inactivity at the site and the poor condition of most of the facilities were not disclosed during these calls.

Factor 6. *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.*

The challenge with applying this factor to the decision is that there are two owners involved in the consideration of the factor. The previous owner, Keith Rasmuson, ceased operations at the permitted CFO, while the current owner, Darcor, fully intends to operate a CFO at this site.

It is clear that the previous owner did not operate the permitted CFO between 2011 and the time he sold the property. The Cancellation Decision contains a statement from Darcor about the previous owner's reasons for ceasing or postponing use of the facility. However, there is little in the evidence that supports any substantive conclusions. The previous owner was not interviewed by the approval officer, and he did not participate in the hearing.

The decision here was made after Darcor had acquired the Permit. This is not a case of a permit holder having an intent to retain a permit for an unused facility solely for the purpose of holding the permit. Darcor's intent has been demonstrated by the submission of an application for the conversion and expansion of the permitted CFO at

this site which was deemed complete by the approval officer. The Board agrees with the point made by Darcor during the hearing¹⁰, that it is Darcor's intent with respect to future use of the CFO that should matter for this factor, especially given the sequencing of events associated with this file.

Factor 7. The value of the CFO facilities (independent of their permitted status) and the cost of reconstructing them if reconstruction is needed.

The value of the existing CFO facilities and the cost of reconstructing them are addressed in the consideration of factors #2 and #3, but Darcor intends to convert the hog CFO into a dairy CFO and expand the operation and EMS. In the Board's view, it would not be practical or economical to convert any significant portion of the existing facilities for a dairy operation. As a result, new facilities would be required for the dairy operation regardless of the condition of the existing facilities. This requirement reduces the importance of assessing the value of these facilities.

5.2.1 Board Conclusion on Abandonment

A decision on whether a CFO is abandoned must be based on careful weighing of these seven factors. Policy factors #1 and #4 as reviewed above support a finding of abandonment. If the abandonment and cancellation decision had occurred while the previous owner still held the Permit, these factors would have strongly supported an abandonment conclusion.

The Board's view is that, in the particular circumstances of this case, Darcor's due diligence in contacting the NRCB to confirm the validity of the Permit and Darcor's clear intent to resume operations outweigh other factors that might support an abandonment finding. Further, the Board finds that Darcor's reliance on the validity of the 2005 Permit was bolstered by the fact that their application for conversion and expansion of the existing CFO was processed and deemed complete prior to any indication that abandonment could be an issue. This is not to say that the state of repair or a long period of disuse is not important in reaching conclusions about abandonment of a CFO. In most cases, these are matters of vital importance.

In this case, the Board finds that the expectations and intentions of Darcor and the timing of the events should have taken precedence over the condition and use of the existing facilities and finds that the existing CFO is not abandoned.

¹⁰ Hearing transcript p. 143

5.3 Is Cancellation Fair and Reasonable?

Even assuming a valid determination that the CFO is abandoned, for the reasons set out below the Board concludes that cancellation is not fair and reasonable in the circumstances that exist here.

The Board notes that the approval officer placed significant weight on the views of the County and the neighbours in making the cancellation decision. The resumption of operations at an abandoned CFO can have significant impacts on the municipality and neighbours if land use planning and development decisions have been made on the basis that the CFO is abandoned. The Board recognizes that these impacts need to be considered in a cancellation decision.

In this case, the County of Wetaskiwin had indicated that it considered the existing CFO to be abandoned and supported the cancellation decision based on its updated MDP. Lori Cridland, a neighbour who is a directly affected party, stated that the CFO had been abandoned for many years and also supported the cancellation decision. However, the Board finds no evidence of any planning or development decisions where resumption of operations at the existing CFO would have significant negative impacts. In the Board's view, the potential impacts on the municipality and neighbours do not justify a decision to cancel the Permit at this time. The Board provides further direction on the matter in the Board Decision section that follows.

Section 1.1 of the Policy lists circumstances when abandonment may need to be considered. The third circumstance listed is:

An owner is planning to sell their land and requests confirmation from an approval officer that their grandfathered or NRCB-issued AOPA permit is valid, or, a new purchaser seeks to renovate or upgrade and then resume using CFO facilities that have not been used for livestock purposes for many years.

There is no material difference between an owner planning to sell making inquiries and a potential owner planning to purchase making the inquiries. The obvious implication is that Darcor's inquiries commencing in February 2022 should have led to consideration of abandonment at that time. This consideration did not occur.

Page 14 of the Cancellation Decision references gaps in the information provided by Darcor during the discussions that commenced in February 2022. The Board finds that Darcor had no disclosure obligations during the pre-purchase calls with the approval officer. At that point,

Darcor wasn't the regulated party, the original permit holder was. Nothing in AOPA or the permit conditions compelled the permit holder to advise Field Services that operations had ceased.

Darcor was not aware of s. 29 of AOPA in February 2022. Even if it had read this section, it contains no information on when discretion under the section will be exercised. Darcor was unaware of Operations Policy 2016-03 (the Policy), a document that is not featured prominently on NRCB's web page. Notwithstanding the absence of disclosure obligations and Darcor's absence of knowledge about possible cancellation of the Permit, Darcor did disclose that hogs were no longer on the site. Darcor also disclosed that some of the CFO structures were in poor shape. This information, in light of the Policy indicating that a potential sale is a trigger for abandonment consideration, ought to have led the approval officer to raise the possibility of abandonment during the pre-purchase discussions. As between the approval officer and Darcor, the approval officer was best positioned to flag abandonment as a potential issue.

Darcor relied on the information provided by the approval officer about the status of the Permit. Cancellation of the Permit afterwards in the face of that reliance is unfair. At some point after operations at the site had ceased in 2011 and before Darcor purchased the site, there may have been opportunities to cancel the Permit due to abandonment where it would have been fair and reasonable to do so. At the time of the Cancellation Decision, the approval officer was fully aware of Darcor's detailed plans for the site. The Board finds that the late timing of cancellation, namely after the Darcor purchase of the site, and Darcor's permit conversion and expansion application was deemed complete, is unfair.

6. Board Decision

Given the evidence in front of the Board, including the timing and sequencing of events related to this file, the Board finds that cancellation of permit RA05042 should not have occurred. Registration Permit RA05042 stands.

The future of Application RA22027 gives rise to scenarios where there may be a need to protect against Permit RA05042 simply being held with no intent to operate a CFO in the future. The current owner's intent and reliance on the approval officer confirming that the Permit was valid were the leading factors for the Board's decision that cancellation of Permit RA05042 was not appropriate. These considerations would be nullified if the property is sold without resumption

of CFO operations at the site. In response to questioning from the Board during the hearing, Darcor indicated that it would have no difficulty with a permit condition precluding transfer to a third-party.¹¹ The Board recommends the approval officer amend Permit RA05042 to include a condition that the permit will be cancelled if there is no resumption of CFO operations at the site prior to the sale of the property to a new owner.

7. Board Observations

7.1 Decision Implications for Darcor

With reversal of the Cancellation Decision, Darcor is free to proceed with Application RA22027 to convert and expand the existing hog operation into a dairy CFO. The path forward is not without complications. Consideration of that application is subject to s. 22(1)(a) of AOPA which directs approval officers to deny applications if inconsistent with the prevailing MDP. Darcor's closing argument requests that the Cancellation Decision should be overturned, and the unnecessary delay should be accounted for with respect to the new MDP (April 2023). The Board notes that applications must be assessed against the prevailing MDP as of the date the decision is rendered by the approval officer. Section 20(5) of AOPA allows applications for Board reviews of approval officer decisions. If a review is granted, s. 25(4) provides that the Board must have regard to, but is not bound by, an MDP.

The Board expects that Field Services will monitor ongoing activity in relation to Permit RA05042. If Darcor does not resume operation of a CFO at this site, Field Services should revisit permit cancellation under s. 29 of AOPA.

7.2 Need for Communications on S. 29—Abandonment and Permit Cancellation

This is the first s. 29 permit cancellation decision made by Field Services where the permit holder objects since AOPA Part 2 came into force in 2002. Given this, it is not surprising that s. 29 is not commonly known or understood by permit holders. At this time, Field Services staff have had limited experience and direction in fielding calls related to the status of permits including the potential for abandonment.

The Board views knowledge and understanding of the Act as a shared responsibility of permit holders and Field Services staff. With the passage of time, the potential for an increased

¹¹ Hearing transcript pp.175 and 176

number of abandonment decisions should be expected. The Board encourages Field Services and industry to improve its communication efforts to inform permit holders about s. 29 and the potential for abandonment decisions and permit cancellations. The Board's decision here includes some appreciation for Darcor's lack of knowledge regarding abandonment provisions in the Act. Over time the Board would expect that permit holders gain an understanding of s. 29 of the Act. In addition, it is important that permit holders understand their obligations under s. 28 of the Act that deals with the transfer of permits.

7.3 Potential Refinements to Operational Policy

As noted in this decision, the timing of site investigations related to permit transfers, abandonment, and deeming an application complete are important. The Board encourages Field Services to ensure policies and procedures include:

- guidance to Field Services staff about key messages and questions when handling inquiries related to the status, purchase, or sale of lands with AOPA permits, and
- the importance and timing of site visits in relation to an inquiry related to the status, purchase, or sale of lands with AOPA permits.

DATED at EDMONTON, ALBERTA, this 21st day of November, 2023.

Original signed by:

Peter Woloshyn (chair)

Sandi Roberts

Rich Smith

Darin Stepaniuk

Appendix A

Chronology of events at NE 14-47-23 W4M is derived from information provided in written documents. Note: The chronology is presented for reference purposes only.

<u>Date</u>	<u>Event</u>
November 7, 2005	Permit RA05042 issued to Agco Agricultural Consulting Ltd. (operating as Gwynne Vista Farms) and Keith and Earl Rasmusen for a 440 sow farrow to isoweane CFO
September 9, 2009	NRCB did a risk screening for the site
January 18, 2010	NRCB issued a monitoring statement suspending the monitoring requirements for the EMS
2011	Hogs no longer housed at the site
February 2022	Darcor phoned NRCB about permit status
April 2022	Darcor Holsteins Inc. (1/3 interest) and Damien Rasmusen (2/3 interest) purchased the land
November 7, 2022	Darcor submitted RA22027 part 1 application to convert and expand to 120 cow dairy, use one existing barn for young stock and modify existing EMS
December 16, 2022	Darcor submitted incomplete part 2 application, changed that no existing barns will be used for dairy CFO, increased expansion to 190 cow dairy
December 23, 2022	Darcor filed supplemental part 2 information and confirmed that none of the existing facilities will be used for the dairy CFO
January 12, 2023	AO deemed application complete and public notice issued with deadline for statements of concern of February 9, 2023.
January 31, 2023	AO conducted first site visit and discovered that the hog barns have not been in operation since 2011
February 6, 2023	AO and inspector conducted site visit and determined that hog CFO was mostly beyond repair

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<u>Date</u>	<u>Event</u>
March 7, 2023	AO advised Darcor in writing of “Notice of Intent to Cancel Permit due to Abandonment”
March 13, 2023	Darcor submitted written intent to object to abandonment decision
April 4, 2023	Darcor submitted objection
April 11, 2023	County of Wetaskiwin MDP updated, excludes new and expanding CFOs within 1.6 km of Coal Lake and will not support resumption of expansion of operations within the setbacks that have not been in operation for 10 years of more
April 13, 2023	AO notified DAPs and neighbours within ½ mile of Darcor’s objection to the permit cancellation
April 27, 2023	County of Wetaskiwin responded, and supported permit cancellation due to new MDP provisions
May 6, 2023	Neighbour Lori Cridland responded, supported permit cancellation
June 9, 2023	AO issued cancellation decision RA05042C
June 29, 2023	Darcor filed RFR
July 4, 2023	Notice of Filed Request for Board Review and Rebuttal Opportunity sent
July 10, 2023	Deadline for filing, no submissions received
July 13, 2023	Board issued Decision RFR 2023-04 which determined that a review was warranted
August 30, 2023	NRCB issued Permit RA23021 for CFO located at NW 25-47-23 W4M