

Decision Summary RA20017

This document summarizes my reasons for issuing Authorization RA20017 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20017. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

1. Background

On March 11, 2020, Meilink Dairies Ltd. submitted a Part 1 application to the NRCB to construct a new calf barn (42 m x 22 m) at an existing dairy confined feeding operation (CFO). The Part 2 application was submitted on April 14, 2020. On April 16, 2020, I deemed the application complete.

The purpose of the proposed calf barn is to better accommodate the younger herd at the dairy operation. There is no proposed increase in livestock with this application.

Under AOPA, this type of application requires an authorization. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The existing CFO is located at SE 27-36-28 W4M in Red Deer County, roughly 2.7 km southwest of the Town of Penhold, AB. The terrain is nearly level with the Red Deer River approximately 3 km west of the site.

b. Existing permitted facilities

The CFO was originally permitted by Approval RA10004, which the NRCB issued on June 28, 2010. This permit allows Meilink Dairies Ltd. to construct and operate a dairy CFO with 400 milking cows (plus replacements). The CFO’s existing permitted facilities are listed in Approval RA10004.

2. Notices to affected parties

Under section 21 of AOPA, notice of an authorization application must be provided to municipalities that are “affected” by the application. Section 5 of AOPA’s Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the existing CFO is located. Under section 21(2) of the act, all affected municipalities are automatically also “directly affected” parties. The NRCB interprets section 21(3) as allowing affected municipalities to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Red Deer County is both an affected and directly affected party because the proposed facility is located within its boundaries.

On April 16, 2020, the NRCB emailed referral letters and a copy of the application to Red Deer

County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Agriculture and Forestry (AF), Marksmen Energy Inc., and the Central Alberta Rural Electrification Association Ltd.

3. Responses from the municipality and referral agencies

I received responses from the county, AHS, AF, AEP and EQUUS (formerly Central Alberta Rural Electrification Association Ltd). No response was received from Marksmen Energy.

Ms. Rebecca Schapansky, a planner with Red Deer County, provided a written response on behalf of the County. As noted in section 2, Red Deer County is a directly affected party.

Ms. Schapansky stated that the application is consistent with Red Deer County's municipal development plan (MDP), and the county has no objections to this application. She went on to state that the CFO is not located in an area covered by a structure plan or intermunicipal development plan. The application's consistency with Red Deer County's MDP plan is addressed in Appendix A.

Ms. Schapansky's response also discussed the land use zoning of the area surrounding the CFO, the required setbacks under the Land Use Bylaw (LUB), and that CFOs are a permitted land use under the LUB. She stated that the proposed facility will meet the required setbacks.

Ms. Pamela Kutuadu, an AHS executive officer/public health inspector, has no concerns with this application.

Ms. Laura Partridge, a senior water administration officer with AEP, indicated that additional water licencing, for the replacement herd, is required for this operation. The applicant is reminded that they need to obtain and maintain water license in accordance with the *Water Act* for their operation.

Mr. Al Spink, an inspector with AF, stated that he has no concerns with this application.

Mr. Brian Hennings, general counsel with EQUUS, indicated that the applicant needs to adequately consider safe work and limit the approach around existing electric facilities. The letter received from EQUUS will be forwarded to the applicant. The applicant is reminded that they need to follow safety around electrical facilities and contact the Alberta one-call before starting any excavation.

4. Environmental risk screening of existing and proposed facilities

When reviewing new authorization applications for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool provides for a numeric scoring of risks, within either a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment, unless site changes are identified that require a new assessment, or the assessment was done with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: *Approvals*, part 8.13.

In this case, the risks posed by Meilink Dairies Ltd.'s existing CFO facilities were assessed in

2010. The assessment indicated that the risks to groundwater were low.

Since the 2010 risk assessment, the NRCB has adopted a new version of the ERST tool. For this reason, I re-assessed the risks posed by the CFO's existing facility. My re-assessment found that the earthen liquid manure storage and the dairy barn pose a low risk to groundwater and surface water.

I also assessed the proposed new calf barn, using the NRCB's risk screening tool, and determined that it poses a low potential risk to groundwater and surface water.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.

In addition, the proposed construction is consistent with the land use provisions of Red Deer County's municipal development plan and with its land use bylaw. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed construction:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from water wells, springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities

6. Terms and conditions

Authorization RA20017 permits the construction of the calf barn.

Authorization RA20017 also contains terms that the NRCB generally includes in all AOPA authorizations, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Authorization RA20017 includes conditions that:

- Set a deadline of November 30, 2022 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the calf barn to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas"
- Require written confirmation from a qualified third party that the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Meilink Dairies Ltd. from placing manure or livestock in the new calf barn until the facility has been inspected by the NRCB following its construction

For an explanation of the reasons for these conditions, see Appendix B.

7. Conclusion

Authorization RA20017 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA20017.

Authorization RA20017 should be read in conjunction with previously issued Approval RA10004, which remains in effect.

May 25, 2020

(Original Signed)
Francisco Echegaray, P. Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA20017

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may approve an application for an authorization only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, section 22(2.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”)

Meilink Dairies’ CFO is located in Red Deer County and is therefore subject to that county’s MDP. Red Deer County adopted the latest revision to this plan on August 21, 2018, under Bylaw #2012/26. As applicable here:

Section 3.3 of the MDP relates to CFOs; its relevant subsections are discussed below.

Subsection 3.3.1 states that the county “encourages the development of CFOs at appropriate locations, as a means of supporting the local economy and creating employment.” This policy likely isn’t a relevant “land use provision” but it provides a general context for interpreting and applying the other policies in section 3.3.

Subsection 3.3.2 lists six “criteria used [by the county] in responding to applications for new CFOs or expansions to existing CFOs...” This subsection is titled “Criteria for *Input*” (emphasis added). This subsection is intended to be used only by the county to prepare its responses to AOPA applications. Therefore, the criteria are procedural in nature and not a land use provision, therefore they are not directly relevant to my MDP consistency determination.

In addition, the criteria require site-and CFO-specific discretionary considerations rather than providing generic direction for appropriate land uses. As such, the six criteria are not considered by the NRCB to be “land use provisions.” (See Operational Policy 2016-7: *Approvals*, part 8.2.5.) Therefore, they are not relevant to this MDP consistency determination.

Subsection 3.3.3 contains three parts under the heading “Conditions for County Support of CFOs”:

- Part 3.3.3(a) states that the county will provide input to the NRCB regarding CFO applications. As with subsection 3.3.2, discussed above, this subsection focuses on the county’s response and therefore is not a land use provision and is not relevant to my MDP consistency determination.
- 3.3.3(b) is for new CFOs. Therefore, this part is not applicable to this application as this is an existing CFO.
- 3.3.3(c) is for expanding CFOs and states that “applications made to the NRCB... may be supported if they:

- i. are located within an intermunicipal development plan (IDP) and are in accordance with the policies contained within the IDP... and
- ii. are compatible with adjacent land uses.”

Meilink Dairies is not located within an IDP so it does not conflict with this requirement of the MDP. During a visit of the CFO, I observed that most of the land immediately surrounding the CFO appeared to be in uses that agreed with county’s LUB Agricultural District. On this basis, the CFO is “compatible” with adjacent agriculturally zoned land uses.

For these reasons, I conclude that the application is consistent with the land use provisions of Red Deer County’s MDP. As noted above, Red Deer County council, and the county planner, did not raise any objections with this application. Therefore, the county’s response is consistent with my conclusion.

In my view, the text of Red Deer County’s MDP also provides a clear intent to adopt provisions from the LUB, in sections 1, 2, 3, 5 and 10. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered county’s Land Use Bylaw 2006/6. Under that bylaw, the subject land is currently zoned Agriculture District (AG). Confined feeding operations are listed as a permitted land use if they are sited on 32 hectare or larger parcels of land.

Under the NRCB’s *Approvals* policy (See Operational Policy 2016-7, part 8.3) a proposed development is considered to be consistent with the bylaw if it is listed as either a permitted or discretionary use. The CFO is located on a parcel that has an area larger than 32 hectares, so I am of the opinion that the proposed calf barn and the CFO as a whole are consistent with the county’s LUB.

APPENDIX B: Explanation of conditions in Authorization RA20017

Authorization RA20017 includes several conditions, discussed below:

a. Construction Deadline

Meilink Dairies proposes to complete construction of the proposed calf barn by October 1, 2020. In my opinion, a construction schedule that allows three construction seasons is more practical and realistic for the proposed development. Therefore, Authorization RA20017 includes a condition stating a deadline of November 30, 2022.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Authorization RA20017 includes a condition requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the calf barn shall meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.” Meilink Dairies shall provide written confirmation, signed by a qualified third party, that the concrete used for the manure collection and storage area meets the required specifications.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization RA20017 includes a condition stating that Meilink Dairies shall not place livestock or manure in the manure storage portions of the new calf barn until NRCB personnel have inspected the barn and confirmed in writing that it meets the authorization requirements.