

## Decision Summary RA10004B

This document summarizes my reasons for issuing Approval RA10004B, an amended version of Approval RA10004, under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA10004B. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://www.nrcb.ca) under Confined Feeding Operations (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.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On June 28, 2010, the NRCB issued Approval RA10004 to Roelof & Geke Meilink and Meilink Dairies Ltd. (Meilink Dairies), which allows the construction of a new dairy CFO with 400 milking cows (plus dry cows and associated replacements). The approval permitted, amongst other facilities, the construction of a two-cell earthen liquid manure storage (EMS) measuring 73 m x 55 m x 4.8 m deep each cell. Meilink Dairies has constructed the EMS as a one cell and with different dimensions than permitted by the approval. The EMS was never inspected by the NRCB and Meilink Dairies has been using it.

This modification is considered to be an unauthorized construction, and therefore, the NRCB's compliance division is aware and involved in this as well.

On May 28, 2021, Meilink Dairies applied to amend Approval RA10004B, in order to modify the dimensions of the EMS from two-cell measuring 73 m x 55 m x 4.8 m deep each, to one-cell measuring 80 m x 80 m x 4.8 deep. Meilink Dairies has previously applied for this modification, but that application was withdrawn.

The EMS was constructed using the same proposed compacted clay liner that was previously permitted for the original EMS. No increase in livestock numbers or manure production is proposed.

Under AOPA, this type of application requires an amendment to an approval.

#### a. Location

The existing CFO is located at SE 27-36-28 W4M in the Red Deer County, roughly 1.8 km southwest of the Town of Penhold. The terrain is gently rolling.

### 2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are "affected" by an approval application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

- In the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a person or municipality entitled to divert water from that body

- within 10 miles downstream
- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified distance is 1.0 mile. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Red Deer County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in the Central Alberta Life on June 10, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, 19 letters were sent to people identified by Red Deer County as owning or residing on land within the affected party radius.

### **3. Notice to other persons or organizations**

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS); Alberta Environment and Parks (AEP); and Alberta Agriculture, Forestry and Rural Economic Development (AFRED).

I received responses from AEP and AHS.

Ms. Laura Partridge, a senior water administration officer with AEP, indicated that it appears that additional water licensing and a groundwater evaluation report are required based on the animal numbers indicated under Approval RA10004. The permit holders are reminded that they have to obtain all required licences.

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

### **4. Alberta Land Stewardship Act (ALSA) regional plan**

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

There is no ALSA regional plan for the area where the existing CFO is located.

### **5. Municipal Development Plan (MDP) consistency**

I have determined that the CFO modification is consistent with the land use provisions of Red Deer County’s municipal development plan. (See Appendix A for a more detailed discussion of the county’s planning requirements.)

## **6. AOPA requirements**

With respect to the technical requirements set out in the regulations, the CFO modification:

- 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’s nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

When preparing this decision summary, I received technical assistance from Scott Cunningham, environmental specialist with the Science and Technology division of the NRCB.

## **7. Responses from the municipality and other directly affected parties**

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application, and are entitled to request an NRCB Board review of the approval officer’s decision. Not all affected parties are “directly affected” under AOPA.

Municipalities that are affected parties are identified by the act as “directly affected.” Red Deer County is an affected party (and directly affected) because the CFO modification is located within its boundaries.

Mr. Richard Moje, a planner with Red Deer County provided a written response on behalf of Red Deer County. Mr. Moje stated that the application is consistent with Red Deer County’s land use provisions in the municipal development plan. The application’s consistency with Red Deer County’s municipal development plan is addressed in Appendix A, attached.

No responses were received from any other person, organization, or member of the public.

## **8. Environmental risk of CFO facilities**

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO’s existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB’s environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST 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](http://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 supported 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’ existing CFO facilities were assessed in 2010.

The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2010 risk assessment, the NRCB has adopted a new version of the ERST. For this reason, I reassessed the risks posed by the CFO's existing facilities. My reassessment found that all existing facilities, including the modified EMS pose a low risk to surface water and groundwater.

## **9. Other factors**

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Mr. Moje also listed the setbacks required by Red Deer County's land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the modification of the earthen manure storage may have on natural resources administered by provincial departments, and determined that these are acceptable.

I am not aware of any applicable statement of concern submitted under section 73 of the Environmental Protection and Enhancement Act or under section 109 of the Water Act, or any written decision of the Environmental Appeals Board or Director under the Water Act relating to the CFO site.

Finally, I considered the effects of the modification of the earthen manure storage on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the modification of the earthen manure storage is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted and the application meets the land use requirements and setbacks in the County's MDP and LUB.

## **10. Terms and conditions**

Rather than issuing a separate "amendment" to Approval RA10004, I am issuing a new approval (RA10004B) with the required amendment. Approval RA10004B therefore contains all

of the terms and conditions in RA20040, but with modifications to the dimensions of the permitted EMS.

For clarity, and pursuant to NRCB policy, I consolidated the following permits into Approval RA10004B: Approval RA10004 and Authorization RA20017 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval.

## **11. Conclusion**

Approval RA10004B is issued for the reasons provided above, in decision summaries RA10004 and RA20017, in the attached appendices, and in Technical Document RA10004B.

Approval RA10004 and Authorization RA20017 are therefore superseded, and their content consolidated into this Approval RA10004B, unless Approval RA10004B is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA10004 and Authorization RA20017 will remain in effect.

January 13, 2022

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

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA10004B

## APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 20(1.1) 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.”). “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Meilink Dairies’s 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 #2018/29.

Section 3.3 of the MDP relates to CFOs. The subsections relevant to this application are discussed below:

1. States that the county “encourages the development of Confined Feeding Operations (CFOs) at appropriate locations, as a means of supporting the local economy and creating employment.” This subsection likely isn’t a relevant “land use provision” but it provides a general context for interpreting and applying the other parts of section 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.

3. Contains three parts under the heading “Conditions for County Support of CFOs”:
  - a. States that the county shall provide input to the Natural Resources Conservation Board (NRCB) in responding to applications for new or expanded CFOs. 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.
  - b. Relates to the establishment of new CFOs. This application is for the modification of a facility of an already existing CFO, not the establishment of a new one, and is not

applicable to this application.

- c. Relates to 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 regarding new CFOs and expanding CFOs; and
  - ii. are compatible with adjacent land uses. (Bylaw No. 2014/17)”

This CFO is located near to, but not within the Red Deer County and the Town of Penhold’s IDP. This application does not conflict with this requirement in the MDP.

During a site visit, I observed that all of the land immediately surrounding the CFO appeared to be in uses that appear to be consistent with county’s land use bylaw’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, the response from Red Deer County to this application did not raise any objections with this application. Therefore, the county’s response is supports 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, 3, 5 and 10. Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also considered the 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 greater than 32 hectares, so I am of the opinion that the EMS modification, and the CFO as a whole, are consistent with the county’s LUB.

## **APPENDIX B: Explanation of conditions in Approval RA10004B**

Construction conditions from historical Approval RA10004 and Authorization RA20017 that have been met are identified in the appendix to Approval RA10004B. No new conditions are included in the approval.