

# Compliance Directive

## *AGRICULTURAL OPERATION PRACTICES ACT, RSA 2000, c A-7*

**Directive #:** CD 25-03

**Date issued:** April 7, 2025

**Issued by:** Tracey Krenn, Inspector  
Compliance and Enforcement Division  
Natural Resources Conservation Board (NRCB), Red Deer Office

**Issued to:** Gerber, Heinrich (Henry) & Regula and  
Edelweiss Dairy Ltd.  
35140 Rge. Rd. 22  
Red Deer County, AB T4G 0M8

**Attention:** **Henry & Regula Gerber and Edelweiss Dairy Ltd.**

This directive relates to unauthorized construction, modification, and expansion of a potentially “deemed” confined feeding operation (CFO) without a permit when a permit is required. There has been no formal grandfathering yet completed for Edelweiss Dairy Ltd., though the NRCB anticipates completing it soon.

The dairy CFO has constructed additions to structures that potentially had a “deemed” permit. The additions include additional freestalls in the north and south dairy barns, a straw pack area in the south dairy barn, a barn for dry cows and replacements, and expansion of an earthen manure storage (EMS). The CFO has also increased milking numbers from potentially “deemed” 75 milking cows (plus associated dries and replacements) to 126 milking cows (plus associated dries and replacements).

The operation is located at SE10-35-02-W5M (the Dairy), in Red Deer County, in the Province of Alberta approximately 14 km southwest of the town of Innisfail and 11.5 km northwest of the town of Bowden. The land is owned jointly by Henry & Regula Gerber, and the CFO is operated under the corporate name of Edelweiss Dairy Ltd.

Part 2 of the *Agricultural Operation Practices Act* (AOPA) came into effect on January 1, 2002. The CFO did not receive a municipal development permit prior to that date, or a NRCB permit for the unauthorized construction, modification, and expansion since that date.

### **Background and investigation**

On December 2, 2024, the NRCB received a grandfathering determination request from Henry & Regula Gerber and Edelweiss Dairy Ltd. for a dairy CFO located at SE10-35-02-W5M. The grandfathering determination request included a claimed

grandfathered livestock capacity for 130 cattle dairy cows, 130 cattle dairy heifers and 100 head of beef cattle. The claimed grandfathered facilities as of January 1, 2002, included dairy barns (53 m x 25 m + 50 m x 20 m), a heifer barn (40 m x 15 m), a coral (65 m x 120 m), and a hip-roof barn (10 m x 22 m). Included with the grandfathering determination request was an aerial photo that had been labelled by the applicant showing structures existing as on January 1, 2002, and several additions and new structures constructed after January 1, 2002.

Review of aerial imagery ranging from 1999-2003 to 2023 confirmed additions to existing structures and the construction of new structures after January 1, 2002, as indicated by the applicant on the submitted grandfathering determination request form and attached aerial photo. Also visible in aerial imagery after 2002 was what appeared to be an expansion of the EMS. A review of the NRCB database and historical records was conducted and confirmed no previous permits have been issued for a dairy CFO at SE10-35-02-W5M.

On December 3, 2024, I spoke with the applicant who confirmed there had been additions to some of the existing structures and new construction completed after January 1, 2002. I asked the applicant if they had increased animal numbers. The applicant advised they had sold most of the cows and their quota but then had repurchased cows and quota when their grown children decided they may be interested in taking over the dairy. I advised a site inspection would be required to determine which facilities existed prior to January 1, 2002, and which facilities would be considered unauthorized construction, after January 1, 2002.

On December 4, 2024, I sent a follow-up email to the applicant confirming the date and time for the site inspection. I also asked the applicant to provide milking records from 2002.

On December 5, 2024, I received milking records from the applicant that indicated the applicant was milking 75 dairy cows on December 4, 2002.

On December 10, 2024, Senior Inspector Fraser Grant, Approval Officer Sarah Neff, and I met with Henry and Regula Gerber at the dairy. First, we discussed grandfathering requirements and the approval process. Next, we reviewed in detail, with the applicant, the aerial photo the applicant had submitted with their grandfathering determination application (first page of the appendix to this directive). We discussed what facilities would potentially be considered grandfathered (“deemed”), what would be considered “unauthorized,” and which facilities would potentially benefit from permitting. The facilities that existed on January 1, 2002 (Appendix A) included, and are labeled accordingly:

#1           The north and south dairy barns, a storage shed, a pump house, a heifer barn (for heifers 2 months old – 1 year old), a hay shed, a quonset for storage, and a bunk house. These are all labelled #1 on the aerial photo.

Modifications, expansions, and new construction included:

#2           Two barn extensions were added in 2002 which both included the addition of freestalls (**unauthorized construction**).

- #3 A milk house was built in 2006 on the west end of the north dairy barn.
- #4 An alley way, freestalls, and a straw pack area were added to the west end of the south dairy barn in 2005. The freestalls and straw pack area were occupied with livestock at the time of inspection (**unauthorized construction**).
- #5 Close-up pen (used for calving) was constructed in 2008. The applicant indicated they calve year-round (**unauthorized construction**).
- #6 Old silage pit that was covered in approximately 2008, currently being used for hay/straw storage but previously used for calving. (NOTE: may require permitting in the future if used as a manure storage facility (MSF) or a manure collection area (MCA) as defined in AOPA).
- #7 Barn built in 2004 to house dry cows and replacements (**unauthorized construction**).

The applicant did confirm that in 2002 they had around 75 milking cows (plus associated dries and replacements), then due to the market conditions sold the quota and most of their herd. Around 2016, they repurchased cows and quota to a maximum of 126 milking cows (plus associated dries and replacements).

Sr. Inspector Grant inquired about expansion of the EMS (lagoon). The applicant advised they thought they had completed expansion of the EMS prior to 2002. Visible along the southwest bank of the EMS, you could see where the EMS expansion occurred. After returning to the office, I confirmed by Google Earth Pro Aerial Imagery that the EMS had been expanded after September 8, 2002, but before June 8, 2011 (**unauthorized construction**). The applicant was advised of my findings about the EMS expansion via email on December 11, 2024.

At the east end of the north dairy barn was a solid manure stockpile. The applicant advised they had always used this location to stockpile solid manure (**potentially a “deemed” solid manure storage facility**). Permitting of this location as an MSF was also discussed with the applicant.

We then attended the south dairy barn and addition #4 which had been constructed in 2005 and was currently being used as an alleyway to the south with freestalls and a straw pack area to the north. The freestalls and straw pack area were occupied with livestock at the time of inspection (**unauthorized construction**).

We then attended #7 the barn for dry cows and replacements constructed in **2004 (unauthorized construction)**. The applicant advised that in 2002 the pen located to the south of the #7 barn was used to house dry cows and replacements but is now used to house beef cattle (cow/calf) from mid-November to mid-April. The layout of these pens has not changed since 2002.

From there we looked at #1 the existing heifer barn used for heifers from two months to one-year old (**potentially a “deemed” facility**) and some of the other existing (#1) structures which included the small mixed-used barn and outside corral used for non-CFO livestock.

I went over our findings with the applicant and advised of next steps would include a compliance directive for the unauthorized construction which would potentially include:

- additions to the north and south dairy barns which included additional freestalls and a straw pack area
- expansion of the EMS
- construction of a barn for dry cows and replacements
- increase in animal numbers

As the NRCB has not completed a formal grandfathering determination for this operation, Approval Officer Sarah Neff explained the permitting process for the unauthorized construction, the unauthorized increase in livestock numbers, the grandfathering of existing “deemed” facilities (#1s identified on the aerial imagery – Appendix A), and the “deemed” livestock capacity.

A compliance directive for unauthorized expansion of a CFO needs to assume the deemed livestock capacity, footprint, and structures in 2002, in order to determine what is likely unauthorized.

[NRCB Operational Policy 2023-01 Grandfathering \(Deemed Permit\) Policy](#) at part 4.1 acknowledges the difficulty of addressing overpopulation in a timely way without knowing the deemed capacity of a CFO. In this situation, the policy asks NRCB field services staff to communicate a “preliminary estimate” of livestock capacity to the operator and, if the operator agrees, an inspector can use that preliminary estimate as foundation for compliance action.

On January 15, 2025, the Gerbers submitted a Part 1 application (RA25005) to the NRCB requesting grandfathering of the existing dairy CFO for 90 milking cows, permitting of the dairy CFO expansions/additions completed after January 1, 2002, expansion of the EMS, and for an increase in livestock numbers from 90 to 130 milking cows.

To address inconsistency with milking numbers provided to the inspector for 75 milking cows (milking record) and 90 milking cows as indicated on the Part 1 application, and to address the preliminary estimate for deemed livestock capacity, the NRCB will need to conduct a formal grandfathering determination during the permit application process. Therefore, I am issuing the compliance directive only for the unauthorized construction of the dairy barn additions and the dry cow and replacement barn, and for unauthorized expansion of the EMS. Compliance action for overpopulation beyond the deemed capacity of the operation is still possible in the future.

### **Unauthorized construction**

AOPA’s permit requirements are intended to reduce the potential for groundwater contamination and surface water runoff, and to lessen the nuisance impacts of CFOs on neighbours. Without a permit, the regulatory objectives in AOPA may be compromised.

Under section 3 (Registration required) of the Part 2 Matters Regulation, a registration is required for an owner or operator to commence construction or expansion of a CFO for the containment of the number of animals set out in column 2 of Schedule 2 for the type of livestock to be present at the confined feeding operation. For a dairy CFO, the threshold is 50 milking cows for a registration, and 200 milking cows for an approval. Based on the

numbers provided by the operator, a registration is required.

The *Agricultural Operation Practices Act* (“AOPA”) at section 13(1) prohibits a person from constructing or expanding a CFO for which an approval or registration is required unless they hold that permit.

“Confined feeding operation” is defined in AOPA as:

fenced or enclosed land or buildings where livestock are confined for the purpose of growing, sustaining, finishing, or breeding by means other than grazing and any other building or structure directly related to that purpose but does not include residences, livestock seasonal feeding and bedding sites, equestrian stables, auction markets, race tracks or exhibition grounds;

Based on my discussions with the applicant, submissions by the applicant, review of aerial imagery from 1999-2023, and my site inspection December 10, 2024, I conclude that Heinrich & Regula Gerber and Edelweiss Dairy Ltd. have contravened section 13(1) of AOPA for the reasons that they have expanded a CFO, after January 1, 2002, without a permit, when a permit was required.

Under section 39(1) of AOPA, the NRCB may issue an enforcement order to a person if, in the NRCB's opinion, the person is, among other things, contravening the act or its regulations. However, as this is the first enforcement action at this site and following the [NRCB Compliance and Enforcement Policy](#), and the applicant is cooperative, a compliance directive is being issued rather than an enforcement order.

### **DIRECTIVE:**

To mitigate any possible risks to the environment and potential nuisances to any affected neighbours, Heinrich (Henry) & Regula Gerber and Edelweiss Dairy Ltd. shall take all necessary and appropriate measures to comply with AOPA and its regulations. In particular, Heinrich & Regula Gerber and Edelweiss Dairy Ltd. shall:

1. By August 31, 2025, depopulate, remove all manure, and stop using the following areas (identified in Appendix A) as manure collection areas, unless an NRCB permit for the use of these areas as manure collection areas has been obtained:
  - a. #2 freestall areas constructed in 2002
  - b. #4 south dairy barn extension including freestalls and straw pack area constructed in 2005
  - c. #5 close-up pen used for year-round calving constructed in 2008
  - d. #7 barn to house dry cows and replacements constructed in 2004
2. By August 31, 2025, stop using the earthen manure storage (EMS) unless an NRCB permit for the use of the EMS has been obtained.

**Any of the deadline dates contained above may be extended in writing, but only by the NRCB, at the sole discretion of the NRCB.**

All actions required above shall be in compliance with AOPA and its implementing regulations and shall not violate any other law. These requirements, including any deadlines, remain in effect until otherwise directed by the NRCB in writing.

The NRCB may access the land and structures for the purpose of assessing compliance with this directive.

Given the seriousness of unauthorized construction of a CFO, the NRCB posts compliance directives for unauthorized construction on the NRCB's public website.

If Heinrich & Regula Gerber and Edelweiss Dairy Ltd. fail to comply with this directive, the NRCB may take additional enforcement action.

(Original signed)

Tracey Krenn

Inspector, Compliance and Enforcement Division

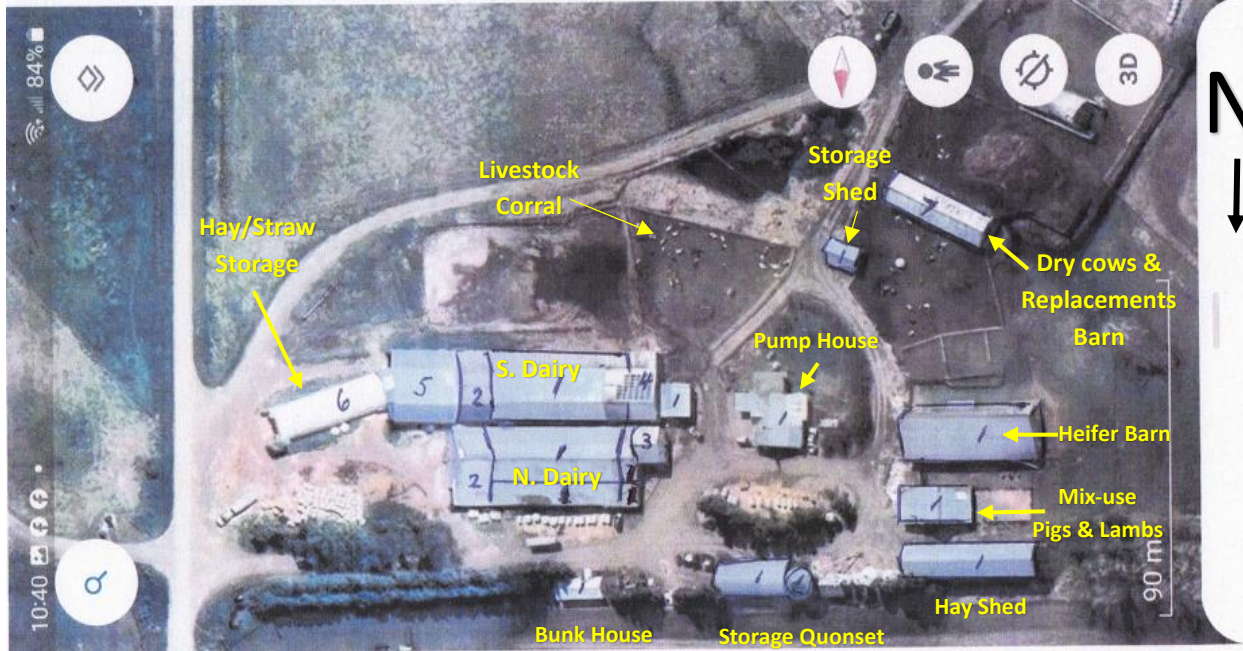
Natural Resources Conservation Board

Cc: Red Deer County

## **Appendix**

- A. Site map provided by the Applicant & Google Earth Pro Aerial Imagery dated September 8, 2002, and June 8, 2011. Labelled by Inspector Tracey Krenn.

**Appendix A - Site map provided by the Applicant & Google Earth Pro Aerial Imagery dated September 8, 2022, and June 8, 2011. Labelled by Inspector Tracey Krenn.**



1 = as on 1.1.2002  
 2 : added on during 2002  
 3 : built in 2006  
 4 : built in 2005  
 5 : built in approx. 2008  
 6 : old silage pit, covered in approx 2008, now used for hay/straw storage  
 7 : built in 2004

**Site Map provided by applicant with additional labelling by Inspector Tracey Krenn**

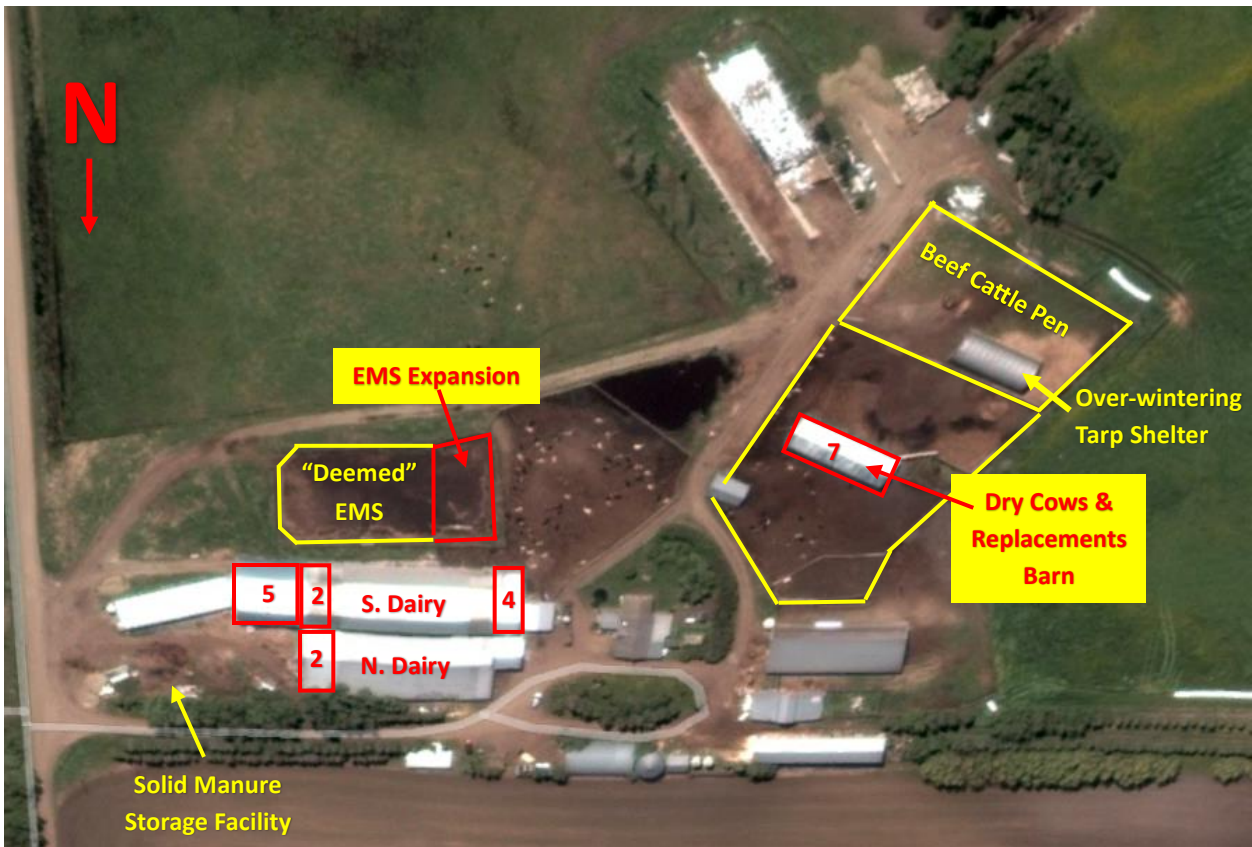
**\*NOTE: For ease of reference and consistency, the direction of the photos is indicated by the North arrow\***

Unauthorized construction in “**bold**”

- #1 Constructed prior to January 1<sup>st</sup> 2002
  - North dairy barn, south dairy barn, storage shed, pump house, heifer barn (2 months to yearlings), hay shed, quonset for storage, and a bunk house.
- #2 **North & South Barn Extensions (x2) constructed in 2002**
  - Include the addition of freestalls in both the north and south barns
- #3 Milk House constructed in 2006
- #4 **South barn extension constructed in 2005 includes free stalls and a straw pack area**
- #5 **Close-up pen constructed around 2008 used for year-round calving**
- #6 Old Silage pit covered in approximately 2008 currently used for hay/straw storage previously used for calving
- #7 **Barn constructed in 2004 to house dry cows and replacements**



Google Earth Pro Aerial Imagery September 8, 2002



Google Earth Aerial Imagery June 8, 2011, as edited by Inspector Tracey Krenn

Unauthorized construction, modifications, expansions, and new construction shown in "red" including the expansion of the EMS, after September 8, 2002.