

2001 BILL 28

First Session, 25th Legislature, 50 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 28

AGRICULTURAL OPERATION PRACTICES
AMENDMENT ACT, 2001

MR. KLAPSTEIN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 28
Mr. Klapstein

BILL 28

2001

AGRICULTURAL OPERATION PRACTICES AMENDMENT ACT, 2001

(Assented to _____, 2001)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends SA
1987 cA-7.7

**1 The *Agricultural Operation Practices Act* is amended by
this Act.**

2 Section 1 is amended

**(a) by repealing clause (a) and substituting the
following:**

(a) “affected person” means, in Part 2, a person or
municipality determined in accordance with the
regulations to be an affected person;

(a.1) “agricultural land” means

(i) land the use of which for agriculture is either a
permitted or discretionary use under the land use
by-law of the municipality or Metis settlement
in which the land is situated or is permitted
pursuant to section 643 of the *Municipal
Government Act*, or

(ii) land that is subject to an approval, registration
or authorization;

(b) in clause (b)

**(i) by striking out “and” at the end of subclause
(viii);**

Explanatory Notes

1 Amends chapter A-7.7 of the Statutes of Alberta, 1987.

2 Definitions. Section 1 presently reads:

1 In this Act,

(a) *“agricultural land” means land the use of which for agriculture*

(i) is either a permitted or discretionary use under the land use by-law of the municipality or Metis settlement in which the land is situated, or

(ii) is permitted pursuant to section 643 of the Municipal Government Act

(b) *“agricultural operation” means an agricultural activity conducted on agricultural land for gain or reward or in the hope or expectation of gain or reward, and includes*

(i) the cultivation of land,

(ii) the raising of livestock, including game-production animals within the meaning of the Livestock Industry Diversification Act and poultry,

(iii) the raising of fur-bearing animals, pheasants or fish,

(iv) the production of agricultural field crops,

(ii) in subclause (ix) by striking out “manure,”;

(iii) by adding the following after subclause (ix):

(x) the collection, transportation, storage, application, use, transfer and disposal of manure, and

(xi) the abandonment and reclamation of confined feeding operations and manure storage facilities;

(c) by adding the following after clause (b):

(b.1) “apply manure” means to spread manure on, spread manure on and incorporate manure into, or to inject manure into, agricultural land;

(b.2) “approval” means an approval under Part 2;

(b.3) “approval officer” means a person appointed as an approval officer under Part 2;

(b.4) “authorization” means an authorization under Part 2;

(b.5) “Board” means the Natural Resources Conservation Board;

(b.6) “confined feeding operation” means an activity on land that is fenced or enclosed or within buildings where livestock are confined for the purpose of growing, sustaining, finishing or breeding by means other than grazing, but does not include seasonal feeding and bedding sites;

(b.7) “development permit” means a development permit issued pursuant to Part 17 of the *Municipal Government Act*;

(b.8) “generally accepted agricultural practice” means a practice that is conducted in a manner consistent with appropriate and accepted customs and standards as established and followed by similar agricultural operations under similar circumstances, and without restricting the generality of the foregoing includes the use of innovative technology used with advanced management practices;

(b.9) “inspector” means a person appointed as an inspector under Part 2;

- (v) *the production of fruit, vegetables, sod, trees, shrubs and other specialty horticultural crops,*
- (vi) *the production of eggs and milk,*
- (vii) *the production of honey,*
- (viii) *the operation of agricultural machinery and equipment, including irrigation pumps, and*
- (ix) *the application of fertilizers, manure, insecticides, pesticides, fungicides and herbicides, including application by ground and aerial spraying, for agricultural purposes;*
- (c) *“land use by-law” means a land use bylaw as defined in Part 17 of the Municipal Government Act or a by-law respecting land use that is in effect in a Metis settlement;*
- (d) *“Minister” means the Member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;*
- (e) *“nuisance” includes an activity which*
 - (i) *arises from unreasonable, unwarranted or unlawful use by a person of the person’s own property which causes obstruction or injury to the right of another person or to the public and produces such material annoyance, inconvenience and discomfort that damage will result,*
 - (ii) *creates smoke, odour, noise or vibration which interferes with the reasonable and comfortable use of a person’s property, or*
 - (iii) *is found to be a nuisance at common law.*

(d) by adding the following after clause (c):

- (c.1) “livestock” means poultry, horses, cattle, sheep, swine, goats, bison, fur-bearing animals raised in captivity and game-production animals within the meaning of the *Livestock Industry Diversification Act*;
- (c.2) “manure” means livestock excreta, associated feed losses, bedding, litter, soil and wash water, but does not include manure to which the *Fertilizers Act* (Canada) applies;
- (c.3) “manure storage facility” means a storage facility for manure;

(e) by adding the following after clause (d):

- (d.1) “ministry” means ministry as defined in the *Government Accountability Act*;
- (d.2) “municipal development plan” means a municipal development plan within the meaning of the *Municipal Government Act*;

(f) by adding the following after clause (e):

- (f) “owner or operator”, when used with reference to an agricultural operation, means
 - (i) the owner and previous owner of an agricultural operation or the land where it is or was situated,
 - (ii) every person who has or has had charge, management or control of an agricultural operation or the land where it is or was situated,
 - (iii) any successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subclause (i) or (ii), and
 - (iv) a person who acts as the principal or agent of a person referred to in subclause (i), (ii) or (iii);
- (g) “practice review committee” means an agricultural practice review committee appointed under Part 1;

- (h) “registration” means a registration under Part 2;
- (i) “seasonal feeding and bedding site” means an over-wintering site where livestock are fed and sheltered;
- (j) “working days” does not include
 - (i) Saturdays,
 - (ii) Sundays,
 - (iii) New Year’s Day, Alberta Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Labour Day, Remembrance Day and Christmas Day,
 - (iv) the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning sovereign,
 - (v) December 26, or when that falls on a Sunday or a Monday, then December 27,
 - (vi) any day appointed by proclamation of the Governor General in Council or by proclamation of the Lieutenant Governor in Council for a public holiday or for a day of fast or thanksgiving or as a day of mourning, and
 - (vii) with reference to any particular part of Alberta, the day in each year that may by proclamation of the Lieutenant Governor in Council be appointed as a public holiday for that part of Alberta for the planting of forest or other trees;

3 The following is added before section 2:

Records

- 1.1(1)** An owner or operator who is required to create, submit or retain records
- (a) by the regulations must do so in accordance with the regulations, or
 - (b) by an approval, registration or authorization must do so in accordance with the approval, registration or authorization.

3 Records. Heading.

4

Explanatory Notes

(2) A person shall not create, submit or retain a record that contains false or misleading information.

PART 1
NUISANCE

4 Section 2 is amended

(a) in subsection (1)

(i) in clause (b) by striking out “made by the Minister under section 3” **and substituting** “or an approval, registration or authorization”;

(ii) in clause (c) by striking out “practices for similar agricultural operations” **and substituting** “agricultural practice”;

(b) by adding the following after subsection (1):

(1.1) If subsection (1)(a) is contravened but the contravention is authorized by an approval, authorization or registration; the approval, authorization or registration prevails over the land use by-law with which it conflicts.

(c) in subsection (3) by striking out “regulation” **and substituting** “regulation, approval, registration, authorization”.

4 Section 2 presently reads:

2(1) A person who carries on an agricultural operation and who, in respect of that operation, does not contravene any of the following:

- (a) the land use by-law of the municipality or Metis settlement in which the agricultural operation is carried on;*
- (b) the regulations made by the Minister under section 3;*
- (c) the generally accepted practices for similar agricultural operations;*

is not liable to any person in an action in nuisance resulting from the agricultural operation and shall not be prevented by injunction or other order of a court from carrying on the agricultural operation because it causes or creates a nuisance.

(2) Subsection (1) continues to apply notwithstanding that 1 or more of the following occur:

- (a) the land use by-law of the municipality or Metis settlement in which the agricultural operation is carried on changes;*
- (b) the ownership of the agricultural land on which the agricultural operation is carried on changes;*
- (c) the agricultural operation is carried on by other persons;*
- (d) the use of land adjacent to the land on which the agricultural operation is carried on changes.*

(3) Where a plaintiff or claimant in a proceeding against a person who carries on an agricultural operation

- (a) claims damages in nuisance resulting from the agricultural operation, or*
- (b) applies for an injunction or other order of a court preventing or restricting the carrying on of the agricultural operation because it causes or creates a nuisance,*

5 Section 3 is repealed and the following is substituted:

Application re
disturbance

3(1) A person who is aggrieved by, or an owner or operator who is aware that a person is aggrieved by, any odour, noise, dust, smoke or other disturbance resulting from an agricultural operation may apply in writing to the Minister to request consideration of whether the disturbance results from a generally accepted agricultural practice.

(2) An application under subsection (1) must be in writing and must contain a statement of the nature of the disturbance, the name and address of the applicant, the location of the agricultural operation, the name and address of the owner or operator, if known, the name and address of the person who is aggrieved and the steps taken by the applicant, if any, to resolve the disturbance.

(3) The parties to an application are the applicant, the owner or operator or the person aggrieved and any other person the Minister considers appropriate.

(4) A person shall not commence an action in nuisance for any odour, noise, dust, smoke or other disturbance resulting from an agricultural operation unless an application has been made under this section with respect to the disturbance at least 90 working days previously.

Referral

4 The parties to a referral under section 39 are the Board and the persons to whom the enforcement order is directed.

Practice
review
committee

5(1) On receipt of an application under section 3 or a referral under section 39 the Minister may

(a) refuse to consider the application or referral if, in the Minister's opinion,

(i) the subject-matter of the application or referral is frivolous or vexatious,

the onus of proving that the defendant contravened the land use by-law, regulation or practice referred to in subsection (1) is on the plaintiff or claimant, as the case may be.

(4) In an action in nuisance against a person who carries on an agricultural operation, a court may

(a) order the party that commenced the action to furnish security for costs in any amount the court considers proper;

(b) award party and party costs and solicitor and client costs or either of them.

5 Section 3 presently reads:

3 The Minister may make regulations respecting standards for the carrying on of agricultural operations.

- (ii) the application or referral is not made in good faith, or
- (iii) the applicant or person aggrieved does not have a sufficient connection to the subject-matter of the application,

or

- (b) appoint 3 persons as an agricultural practice review committee to consider the application or referral, 2 of whom must have experience in the type of farming operation to which the application or referral relates.

(2) One or more practice review committees may exist and consider applications and referrals and mediate at the same time.

(3) The Minister may appoint from among the members of a practice review committee the chair of the practice review committee.

(4) The members of a practice review committee may be paid remuneration for the performance of their duties as members of the practice review committee and travelling and living expenses while absent from their ordinary places of residence in the course of their duties as members of the practice review committee at the rates prescribed by the Minister.

Powers,
immunity

6(1) The members of a practice review committee have the same powers and privileges as a commissioner under the *Public Inquiries Act*.

(2) No action or proceeding may be brought against a member of a practice review committee in respect of any act or thing done in good faith under this Act.

Procedure

7(1) The Minister may determine the practice and procedures of a practice review committee, but a practice review committee must give opportunity to the parties to present information and make representations.

(2) The *Regulations Act* does not apply to the practices and procedures.

(3) On being assigned consideration of an application or referral, a practice review committee must notify the parties

of the assignment and any other matters the practice review committee considers necessary.

Investigation,
mediation

8(1) A practice review committee, when acting as a mediator, may assist the parties in reaching their own mutually acceptable settlement by structuring negotiations, facilitating communication and identifying the issues and interests of the parties.

(2) The practice review committee may inquire into and assist the parties in resolving the dispute and, if the matter is not resolved, may recommend to the Minister what should constitute a generally accepted agricultural practice in respect of that agricultural operation.

Committee
recommend-
ation

9(1) If the parties enter into an agreement to resolve the dispute or if a practice review committee makes recommendations, the practice review committee must provide a written copy of the agreement or of its recommendations to the Minister, to each of the parties and to any other person or organization the Minister directs.

(2) In any proceeding arising out of a matter giving rise to an application under this Part, a certificate purporting to be signed by a person authorized by the Minister to issue such a certificate stating that the document attached to the certificate is a true copy of an agreement entered into by the parties, or of recommendations issued under subsection (1) by a practice review committee, may be admitted into evidence, in the absence of evidence to the contrary, of the agreement or recommendations without proof of the signature or official character of the person signing it, the parties to the agreement or the practice review committee members.

PART 2

LIVESTOCK AND MANURE

Approval
officers

10 The Board may appoint persons as approval officers for the purposes of this Part.

Inspectors

11(1) The Board may appoint persons as inspectors for the purposes of this Part.

(2) While exercising the powers and duties of an inspector under this Part an inspector must, on request, produce identification in accordance with the regulations and provide

information on the powers and duties to inspect under this Part.

Board delegation

12 The Board may delegate any of its powers and duties under this Part or the regulations to approval officers and inspectors except the power to make regulations or to hold a review.

Approval, registration required

13(1) No person shall construct or expand a confined feeding operation for which an approval or registration is required pursuant to the regulations unless that person holds an approval or registration.

(2) A person who holds an approval or registration must comply with and operate in accordance with the terms and conditions of the approval or registration.

Authorization required

14(1) No person shall construct, expand or modify a manure storage facility for which an authorization is required pursuant to the regulations or construct, expand or modify a manure storage facility for manure that is in a predominantly liquid state or manure to which water has been added unless

- (a) the person holds an authorization that authorizes the construction, expansion or modification, or
- (b) the person holds an approval or registration that authorizes the construction, expansion or modification.

(2) A person who holds an authorization must comply with and operate in accordance with the terms and conditions of the authorization.

Manure application

15 A person who applies manure must do so in a manner that does not contravene the regulations unless the person holds an approval, registration or authorization that contains a variance that authorizes that manner of manure application.

Seasonal feeding and bedding site

16 The owner or operator of a seasonal feeding and bedding site must construct, maintain, operate, reclaim and abandon it in accordance with the regulations.

Variance

17(1) A person may apply to an approval officer or the Board for a variance of the requirements in the regulations respecting confined feeding operations, manure storage facilities or the collection, transportation, storage, application, use, transfer or disposal of manure, and an approval officer or the Board may grant a variance if in the

opinion of an approval officer or the Board the variance provides the same or a greater degree of protection and safety as that provided for by the regulations.

(2) An approval officer or the Board may include a variance in an approval or authorization, but only the Board may include a variance in a registration.

(3) The *Regulations Act* does not apply to a variance.

(4) Compliance with a variance is deemed to be compliance with the requirements of the regulations it varies.

Application for approval, registration, authorization and amendments

18(1) An application for an approval, registration or authorization or for an amendment of an approval, registration or authorization must be made to an approval officer in accordance with the regulations.

(2) An approval officer may determine whether an application is complete.

(3) If an application is not completed in accordance with the regulations, the approval officer may deny the application.

Approval notification directly affected parties

19(1) On receipt of an application for an approval or an amendment of an approval, the approval officer may notify or require the applicant to notify the affected persons, and the approval officer may notify or require the applicant to notify persons and organizations who are to be notified under the *Environmental Protection and Enhancement Act* and the *Water Act* with respect to the subject-matter of the application under this section and any other persons or organizations the approval officer considers appropriate.

(2) A notification under subsection (1) must be carried out in accordance with the regulations within the time period required by the regulations.

(3) An approval officer must make the application available for viewing during regular business hours by any member of the public for 15 working days after the date the application was determined to be complete.

(4) An affected person and any other person or organization that is notified under subsection (1) may apply, with written reasons, within 10 working days of being notified to an approval officer, and any member of the public who has viewed the application under subsection (3) may apply, with written reasons, within 20 working days after the date the

application was determined to be complete, for a determination whether the affected person, other person or organization or member of the public is a directly affected party.

(5) An applicant under subsection (4) must provide, on the request of an approval officer, further information relevant to the application.

(6) Despite subsection (4), the applicant for an approval or amendment and the municipalities that are affected persons are directly affected parties.

(7) The approval officer must notify the affected person, organization or member of the public that applies under subsection (4) in writing of the approval officer's determination whether the applicant is a directly affected party.

Considerations
on approvals

20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan and if, in the opinion of the approval officer,

- (a) the requirements are not met or there is an inconsistency with the municipal development plan, the approval officer must deny the application, or
- (b) there is no inconsistency with the municipal development plan and the requirements are met or a variance may be granted under section 17 and compliance with the variance meets the requirements of the regulations, the approval officer
 - (i) must consider matters that would normally be considered if a development permit were being issued,
 - (ii) may make, or require the applicant to make, inquiries and investigations and prepare studies and reports,
 - (iii) must give directly affected parties a reasonable opportunity to review the information relevant to the application that is submitted to the approval officer and a reasonable opportunity to furnish

evidence and written submissions relevant to the application,

- (iv) may hold meetings and other proceedings with respect to the applications,
- (v) may provide or facilitate mediation among directly affected parties,
- (vi) must consider the effects the proposed approval or amended approval may have on natural resources administered by ministries,
- (vii) must consider the following if available when the application for approval is considered: any applicable statement of concern submitted under section 70 of the *Environmental Protection and Enhancement Act* or under section 109 of the *Water Act* and any written decision of the Environmental Appeal Board or the Director under the *Water Act* in respect of the subject-matter of the approval,
- (viii) may consider any evidence that was before the Environmental Appeal Board or the Director under the *Water Act* in relation to the written decision referred to in subclause (vii), and
- (ix) must consider the effects on the environment, the economy and the community and the appropriate use of land.

(2) A Director under the *Environmental Protection and Enhancement Act* and the Director under the *Water Act* may disclose the statements of concern referred to in subsection (1)(b)(vii) to an approval officer and the approval officer may use the information in the statements of concern for the purposes of this Part.

(3) The approval officer may, under subsection (1)(b),

- (a) deny the application, or
- (b) grant an approval or an amendment of an approval and impose terms and conditions on the approval or amendment including the terms and conditions that a municipality could impose if the municipality were issuing a development permit.

(4) The approval officer must provide a written copy of the decision under subsection (1)(a) or (3) to the directly affected parties and the persons and organizations who were determined, under section 19, not to be directly affected parties.

(5) A directly affected party may, within 10 working days of receipt of the decision under subsection (4), apply to the Board in accordance with the regulations for a review of the decision.

(6) A person or organization that was determined under section 19 not to be a directly affected party may, with written reasons,

(a) within 10 working days of receipt of the decision under subsection (4), apply to the Board, with written reasons, for a review of whether the person or organization is a directly affected party, and

(b) apply to the Board, in accordance with the regulations, for a review of the decision under subsection (4).

(7) An applicant under subsection (6)(a) must provide, on the request of the Board, further information relevant to the application.

(8) The Board must notify the applicant under subsection (6)(a) in writing of the Board's determination whether the applicant is a directly affected party.

(9) If a person is determined under subsection (8) to be a directly affected party, the Board must consider the person's application, if any, for a review of the decision under subsection (5).

Registration,
authorization
notification,
directly
affected
parties

21(1) On receipt of an application for a registration, an amendment of a registration, an authorization or an amendment of an authorization, the approval officer must notify municipalities that are affected persons in accordance with the regulations within the time period required by the regulations.

(2) The only directly affected parties of an application under subsection (1) are the applicant and the municipalities that are affected persons.

Considerations
on regis-
trations,
authorizations

22(1) In considering an application for a registration or an amendment of a registration, the approval officer must determine whether the applicant meets the requirements of this Part and the regulations and whether the application is inconsistent with the municipal development plan and if, in the opinion of the approval officer,

- (a) the requirements are not met or there is an inconsistency with the municipal development plan, the approval officer must deny the application, or
- (b) the requirements are met and there is no inconsistency with the municipal development plan, the approval officer may grant a registration or an amendment of a registration and may impose terms and conditions on the registration or amendment, including the terms and conditions that a municipality could impose if the municipality were issuing a development permit.

(2) In considering an application for an authorization or an amendment of an authorization, the approval officer must determine whether there is an inconsistency with the municipal development plan and determine whether the applicant meets the requirements of this Part and the regulations and if, in the opinion of the approval officer,

- (a) there is an inconsistency or the requirements are not met, the approval officer must deny the application, or
- (b) there is no inconsistency with the municipal development plan and the requirements are met, or a variance may be granted under section 17 and compliance with the variance meets the requirements of the regulations, the approval officer may grant an authorization or an amendment of an authorization, may include a variance and may impose terms and conditions on the authorization or amendment including the terms and conditions that a municipality could impose if the municipality were issuing a development permit.

(3) The approval officer must provide a written copy of a decision under subsection (1) or (2) to the directly affected parties.

(4) A directly affected party may, within 10 working days of receipt under subsection (3), of a copy of a decision,

apply to the Board, in accordance with the regulations, for a review of the decision.

Approval
officer
amendments

23(1) Despite section 18, an approval officer may, on the approval officer's own motion on notifying the holder, amend an approval, registration or authorization.

(2) Section 20(1) and (3) apply to the amendment of an approval and section 22(1) and (2) apply to an amendment of a registration or authorization under this section.

(3) The approval officer must provide a written copy of the decision to the directly affected parties, and a directly affected party may apply to the Board for a review of the amendment in accordance with section 20(5) or section 22(4).

Board,
approval
officers,
powers

24 An approval officer and the Board have all the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*.

Review

25(1) The Board must, within 10 working days of receiving an application under section 20(5), 22(4) or 23(3) and within 10 working days of the Board's determination under section 20(8) that a person or organization is a directly affected party,

- (a) dismiss the application for review, if in the opinion of the Board, the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit, or
- (b) schedule a review.

(2) Before conducting a review under subsection (1)(b) the Board may, in accordance with the regulations, determine which matters included in the application for review will be included in the review, and in making that determination the Board may consider

- (a) whether the matter is the subject of a public hearing or review under the *Environmental Protection and Enhancement Act* or the *Water Act* based on statements of concern filed under either of those Acts,
- (b) whether the applicant for the review under this Act received notice of and participated in or had the opportunity to participate in that hearing or review,

- (c) whether other persons or organizations who are entitled to receive notice and be heard at a hearing under the *Environmental Protection and Enhancement Act* or the *Water Act* should receive notice and have the opportunity to participate in the Board's review,
 - (d) any applicable and available written decision of the Director under the *Water Act* or the Environmental Appeal Board in respect of the subject-matter of the approval, registration or authorization, and
 - (e) any applicable and available statement of concern or evidence submitted to the Director under the *Water Act* or under section 70 of the *Environmental Protection and Enhancement Act*.
- (3) A Director under the *Environmental Protection and Enhancement Act* and the Director under the *Water Act* may disclose the statements of concern referred to in subsection (2) to the Board, and the Board may use the information in the statements for the purposes of this Part.
- (4) In conducting a review the Board
- (a) may arrange a mediation among the applicant and the directly affected parties,
 - (b) must give the directly affected parties a reasonable opportunity to review information relevant to the review,
 - (c) must give the directly affected parties a reasonable opportunity to furnish evidence and written submissions relevant to the review,
 - (d) may hold meetings and other proceedings with respect to the review,
 - (e) in the case of an approval or an amendment of an approval, may hold hearings,
 - (f) may make, or require the applicant to make, inquiries and investigations and prepare studies and reports,
 - (g) must have regard to, but is not bound by, the municipal development plan,

- (h) must consider matters that would normally be considered if a development permit were being issued,
- (i) must consider how the proposed application would affect natural resources administered by ministries,
- (j) must consider any applicable written decision of the Environmental Appeal Board or the Director under the *Water Act* in respect of the subject-matter of the approval or registration and may consider any evidence that was before the Environmental Appeal Board or the Director under the *Water Act* in relation to that written decision, and
- (k) must consider the effects on the environment, the economy and the community and the appropriate use of land.

(5) If a Board member participates in a mediation process under subsection (4)(a), that member may not participate in the review of the application.

(6) On applying for a review, the applicant and any directly affected party may request that the decision referred to in the application be suspended until the application is heard, and the Board may suspend the decision on the terms and conditions it prescribes or may refuse the request.

(7) On holding a review the Board may

- (a) grant an approval, registration or authorization or an amendment of an approval, registration or authorization on any terms and conditions that the Board considers appropriate, including the terms and conditions that a municipality could impose if the municipality were issuing a development permit,
- (b) refuse to grant an approval, registration or authorization or an amendment of an approval, registration or authorization, or
- (c) make any other disposition of the application that the Board considers to be appropriate.

(8) The Board must provide a written copy of the decision under subsection (1)(a) or (7) to the directly affected parties and the persons and organizations who were determined, under section 20(8), not to be directly affected parties.

Co-operative reviews

26 If the Board holds a review and the Board is of the opinion that it would be expedient or in the public interest to do so, the Board may participate in other proceedings in respect of matters relating to the purposes of this Part jointly or in conjunction with another board, commission or other body constituted in Alberta.

Appeal

27(1) Subject to subsection (2), an appeal lies from a decision of the Board under section 25 to the Court of Appeal only on a question of jurisdiction or on a question of law.

(2) Leave to appeal must be obtained from a judge of the Court of Appeal on application made within one month after the making of the decision sought to be appealed from, or within a further time that the judge allows under special circumstances.

(3) Notice of an appeal must be given to the directly affected parties and to the Board.

(4) A decision of the Board takes effect at the time prescribed by the decision, and its operation is not suspended by any appeal to the Court of Appeal, or by any further appeal, but the Board may, if it thinks fit, suspend the operation of a decision that is appealed from, until the decision of the Court of Appeal is rendered or the time for appeal to the Supreme Court of Canada has expired or any appeal is abandoned.

(5) Within 25 working days after leave to appeal has been obtained, the Board must forward to the Registrar of the Court the record of the review, its findings and reasons for the decision.

(6) On receipt of the record, findings and reasons from the Board, the Registrar of the Court must set the appeal down for hearing at the next sittings that will commence at least 2 weeks after the appeal is set down, and after the appeal has been set down, the appellant must give to the directly affected parties and to the Board notice in writing that the appeal has been set down for hearing, and the appeal is to be heard by the Court of Appeal as speedily as practicable.

(7) On the hearing of an appeal, no evidence other than the evidence that was submitted to the Board on the making of the decision appealed from may be admitted, and the Court may proceed either to confirm, vary or quash the decision

appealed from, and if the decision is quashed the Court must refer the matter back to the Board for further consideration and redetermination.

(8) On hearing an appeal, the Court may draw all inferences that are not inconsistent with the facts expressly found by the Board and that are necessary for determining the question of jurisdiction or of law and must certify its opinion to the Board.

(9) The Board is entitled to be heard by counsel or otherwise on the argument of an appeal.

(10) Neither the Board nor any member of the Board is in any case liable for costs by reason or in respect of an appeal or application.

(11) If a decision is quashed or a variation is directed, the matter must be reconsidered and redetermined by the Board, and the Board must vary or rescind its decision in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada.

Selling, etc.,
approvals,
registration or
authorization

28(1) A person who buys, receives assignment of or otherwise acquires an approval, registration or authorization must notify the Board in accordance with the regulations.

(2) A sale, assignment or other acquisition of an approval, registration or authorization must be an unconditional sale, assignment or other disposition of the entire interest in the approval, registration or authorization.

Cancellation

29(1) The Board may cancel an approval, registration or authorization if

(a) the holder requests or consents to the cancellation,
or

(b) the confined feeding operation or manure storage facility to which the approval, registration or authorization relates is abandoned.

(2) The Board may include terms and conditions in a cancellation.

Access to
premises

30(1) For the purpose of determining whether an approval, registration, authorization, variance, terms and conditions of a cancellation, this Part or the regulations are being complied with, an inspector may at any reasonable hour

enter and inspect any building or land, other than a private dwelling-place that is used as a dwelling, that the inspector believes on reasonable and probable grounds to be, or to be used in connection with, an agricultural operation.

(2) In carrying out an inspection under this section, an inspector may

- (a) require that any equipment used to manage manure be operated, used or set in motion under conditions specified by the inspector,
- (b) take samples of anything connected with an agricultural operation,
- (c) conduct tests or take measurements,
- (d) demand production of, inspect and make copies of or take extracts from any record, approval, registration or authorization and on giving a receipt for it remove it for not more than 48 hours for the purpose of making copies of it,
- (e) record or copy any information by any method,
- (f) take photographs or audio-video records, and
- (g) make reasonable inquiries of any person, orally or in writing.

(3) No person shall resist, obstruct or delay an inspector in the exercise of powers conferred under this section.

Order to allow inspection

31 If any person refuses to allow an inspector to exercise powers conferred by section 30 or hinders or interferes with the exercise of those powers, the inspector may apply to the Court of Queen's Bench for an order directing the person to do or refrain from doing anything the Court of Queen's Bench considers necessary in order to enable the inspector to exercise the powers under section 30.

Additional fine where monetary benefits acquired by offender

32 If a person is convicted of an offence under this Act and the court is satisfied that as a result of the commission of the offence monetary benefits accrued to the offender, the court may order the offender to pay, in addition to a fine under section 34, 35 or 36, a fine in an amount equal to the court's estimation of the amount of those monetary benefits.

Continuing offences	33 Every person who is guilty of an offence under this Act is liable on conviction for each day or part of a day on which the offence occurs or continues.
Offence	34 A person who contravenes section 30(3) is guilty of an offence and liable to a fine of not more than \$10 000.
Offence	35(1) A person who contravenes section 1.1, 13, 14, 15 or 16 is guilty of an offence and liable to a fine of not more than \$5000. (2) A person who knowingly contravenes section 1.1, 13, 14, 15 or 16 is guilty of an offence and liable to a fine of not more than \$10 000.
Offence	36(1) A person who contravenes the regulations is guilty of an offence and liable to a fine of not more than \$5000. (2) A person who knowingly contravenes the regulations is guilty of an offence and liable to a fine of not more than \$10 000.
Defence	37 No person shall be convicted of an offence under section 1.1(1) or 36(1) if that person establishes on a balance of probabilities that the person took all reasonable steps to prevent the commission of the offence.
Limitation period	38 A prosecution for an offence under this Act may not be commenced more than 2 years after the date on which the offence was committed.
Enforcement orders by Board	39(1) If in the opinion of the Board a person is creating a risk to the environment or an inappropriate disturbance, or is contravening or has contravened an approval, registration, authorization, variance, terms or conditions of a cancellation, this Act or the regulations, the Board may, whether or not the person has been charged or convicted in respect of the contravention, issue an enforcement order ordering any of the following: <ul style="list-style-type: none"> (a) referring the matter to the Minister and requesting the Minister to establish a practice review committee to mediate or facilitate mediation of the matter; (b) directing the person to create a plan to ensure compliance with this Act, the regulations and the approval, registration, authorization, variance or cancellation;

- (c) directing the person to stop engaging in anything that is described in the enforcement order, subject to any terms or conditions set out in the order;
- (d) directing the person to undertake any investigation, construction, alteration, repair or other measures specified in the enforcement order, within the time specified in the enforcement order;
- (e) suspending an approval, registration or authorization until a specified time or until specified conditions are met;
- (f) specifying the measures that must be taken in order to effect compliance with the approval, registration, authorization, variance, cancellation, this Act or the regulations.

(2) An enforcement order issued under this section must contain the reasons for making it and must be served on the person to whom it is directed.

(3) If a person to whom an enforcement order is directed under this section complies with the order, no prosecution may be commenced under this Act for the offence with respect to the facts that gave rise to the order.

Amendment of enforcement orders

40(1) The Board may amend an enforcement order by adding to the list of persons to whom the enforcement order is directed.

(2) A copy of an enforcement order amended under this section must be served on

- (a) any person whose name is added to it, and
- (b) the person to whom the original enforcement order was directed.

Review and cancellation of enforcement order

41(1) The Board may, on the request of a person to whom an enforcement order is directed, review and confirm, vary, amend or rescind the enforcement order.

(2) An enforcement order takes effect at the time prescribed in the enforcement order and its operation is not suspended by a request for a review, but the Board may, if it thinks fit, suspend the operation of an enforcement order when a review is requested until a decision on the review is rendered.

(3) A written copy of the Board's decision under subsection (1) must be served on the persons to whom the enforcement order that is being reviewed is directed.

Court order to
comply with
enforcement
order

42(1) If a person to whom an enforcement order is directed fails to comply with the enforcement order, the Board may apply to the Court of Queen's Bench for an order of the Court directing the person to comply with the enforcement order.

(2) This section applies whether or not a conviction has been adjudged against the person to whom the enforcement order is directed for an offence under this Act in respect of the subject-matter that gave rise to the issuing of the enforcement order.

Joint and
several liability

43 If an enforcement order is issued to more than one person, all persons named in the order are jointly responsible for carrying out the terms of the order.

PART 3

REGULATIONS

Regulations

44(1) The Lieutenant Governor in Council may make regulations

- (a) respecting whether the construction or expansion of a confined feeding operation requires an approval or registration;
- (b) respecting whether the construction, expansion or modification of a manure storage facility requires an authorization;
- (c) determining which persons and municipalities are affected persons for the purposes of Part 2.

(2) The Minister may make regulations

- (a) respecting fees;
- (b) requiring the creation, submission and retention of records;
- (c) respecting the design, location, including minimum distance separation requirements, construction, maintenance, operation, reclamation and abandonment of confined feeding operations,

seasonal feeding and bedding sites and manure storage facilities;

- (d) respecting tests and testing procedures related to agricultural operations and directly related activities;
- (e) respecting the carrying on of agricultural operations and the construction, maintenance and abandonment of any building or structure directly related to an agricultural operation.

(3) The Board may make regulations

- (a) respecting the form and manner of notifying the Board of a transfer, sale, assignment or other disposition of an approval, registration and authorization;
- (b) respecting applications for variances and applications for approvals, registrations and authorizations and amendment of approvals, registrations and authorizations;
- (c) respecting notification and time periods for notification not set out in this Act;
- (d) respecting procedures in respect of applications and reviews and service of enforcement orders;
- (e) respecting the identification of inspectors.

(4) A regulation under this Act may adopt or incorporate in whole or in part or with modifications documents that set out standards, codes, objectives, guidelines or other bodies of rules that relate to any matter in respect of which a regulation may be made under this Act if the standards, codes, objectives, guidelines or other bodies of rules have been published and copies are available.

Transitional regulations

45(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the transition to Part 2 of any confined feeding operation, seasonal feeding and bedding site and manure storage facility that exists on January 1, 2002, including the interpretation of any transitional provision in this Act, and

- (b) to remedy any confusion, difficulty, inconsistency or impossibility resulting from the transition.
- (2) A regulation made under subsection (1) may be made retroactive to the extent set out in the regulation.
- (3) A regulation made under subsection (1) is repealed on the earliest of
 - (a) the coming into force of an amendment that adds the subject-matter of the regulation to this Act;
 - (b) the coming into force of a regulation that repeals the regulation made under subsection (1);
 - (c) two years after the regulation comes into force.
- (4) The repeal of a regulation under subsection (3)(b) or (c) does not affect anything done, incurred or acquired under the authority of the regulation before the repeal of the regulation.

Amends SA
1992 cE-13.3

6 The *Environmental Protection and Enhancement Act* is amended

- (a) in section 65(4)(a) and (b) by adding “, the Board, as defined in the *Agricultural Operation Practices Act*, under Part 2 of that Act” **after** “the Energy Resources Conservation Board”;
- (b) in section 87
 - (i) in subsection (2)(a) by adding “under Part 2 of the *Agricultural Operation Practices Act*,” **before** “under the *Natural Resources*”;
 - (ii) in subsection (5)(b)(i) by adding “under Part 2 of the *Agricultural Operation Practices Act*,” **before** “under the *Natural Resources*”;
- (c) in section 105(2) by adding “or in respect of which recommendations under Part 1 of the *Agricultural Operation Practices Act* indicate that the agricultural operation follows a generally accepted agricultural practice” **after** “such an operation”.

6 Consequential.

Amends SA
1999 c9

7 The *Farming Practices Protection Statutes Amendment Act, 1999* is amended

- (a) in section 2(3) in the new clause (f) by striking out “including, but not limited to, the need for written notice to be provided to the owners of land situated adjacent to agricultural operations”;
- (b) by repealing section 2(5).

Amends SA
1994 cM-26.1

8 The *Municipal Government Act* is amended by adding the following after section 618:

Exemption

618.1 This Part and the regulations and bylaws under this Part respecting development permits do not apply to a confined feeding operation or manure storage facility within the meaning of the *Agricultural Operation Practices Act* if the confined feeding operation or manure storage facility is the subject of an approval, registration or authorization under Part 2 of the *Agricultural Operation Practices Act*.

Amends SA
1990 cN-5.5

9 The *Natural Resources Conservation Board Act* is amended

- (a) in section 19 by adding “or under powers or duties conferred or imposed on the Board under another enactment” after “order or direction of the Board”;
- (b) in section 21 by striking out “and” at the end of clause (a), adding “and” at the end of clause (b) and adding the following after clause (b):
 - (c) may do all things that are necessary for or incidental to the exercise or performance of any power or duty conferred or imposed on it by another enactment.

Transitional

10 If an applicant has submitted an application to a municipality for a development permit with respect to a confined feeding operation and a decision has not been made by the municipality on the application before January 1, 2002, the municipality must continue to consider the application and make a decision unless the

7 Consequential.

8 Consequential.

9 Amends chapter N-5.5 of the Statutes of Alberta, 1990. Sections 19 and 21 presently read:

19 No action or proceeding may be brought against the Board or a member of the Board or an officer or employee of the Board in respect of any act or thing done purportedly under this Act, the regulations or an order or direction of the Board.

21 The Board

(a) may, with the approval of the Lieutenant Governor in Council, take any action and make any orders and directions that the Board considers necessary to effect the purpose of this Act that are not otherwise specifically authorized by this Act, and

(b) may do all things that are necessary for or incidental to the exercise or performance of any power or duty conferred or imposed on it by this Act or the regulations.

10 Transitional.

applicant withdraws the application prior to the decision being made.

Transitional **11(1)** If on January 1, 2002 a confined feeding operation or manure storage facility exists with respect to which a municipal development permit was not issued, this Act and the regulations apply to the confined feeding operation and manure storage facility, and the owner or operator must ensure that the confined feeding operation and manure storage facility meet the requirements of this Act and the regulations.

(2) Subsection (1) does not apply to a building or structure that exists on January 1, 2002 and is directly related to the confined feeding operation or manure storage facility referred to in subsection (1), until the building or structure is expanded.

(3) Despite this section, the Board may, if in the opinion of the Board there is a risk to the environment or an inappropriate disturbance, issue an enforcement order with respect to the confined feeding operation or manure storage facility and any building or structure that is directly related to either of them.

Transitional **12(1)** If on January 1, 2002 a confined feeding operation or manure storage facility exists with respect to which a development permit was issued or is constructed pursuant to a development permit that has been issued before January 1, 2002 or issued pursuant to section 10 and the development permit includes terms or conditions for the operation of the confined feeding operation or for the collection, transportation, storage, application, use, transfer or disposal of manure, this Act and the regulations apply to the confined feeding operation, manure storage facility and the collection, transportation, storage, application, use, transfer or disposal of manure but the terms and conditions of the development permit continue to apply and prevail over any provision of this Act or the regulations with which the terms and conditions are inconsistent until

(a) in the opinion of the Board there is a risk to the environment or an inappropriate disturbance and an enforcement order is issued under this Act with respect to the confined feeding operation, manure storage facility or the collection, transportation, storage, application, use, transfer or disposal of manure, or

(b) an approval, registration or authorization is granted under this Act to expand the confined feeding operation or to expand or modify the manure storage facility or with

11 Transitional.

12 Transitional.

respect to the collection, transportation, storage, application, use, transfer or disposal of manure.

(2) If a development permit includes terms or conditions that require the permit holder or owner or operator to undertake tests or evaluations or to submit information to the municipality, the holder, owner or operator must continue to undertake the tests and evaluations but despite subsection (1) must submit the information to the Board.

(3) A municipality must disclose to the Board information about any part of a development permit it possesses that relates to a confined feeding operation or a manure storage facility that exists on or is to be constructed after January 1, 2002.

(4) The Board may use information disclosed under subsection (3) for the purposes of administering Part 2 of this Act and the regulations.

13 This Act comes into force on January 1, 2002.

13 Coming into force.