

Acts, Regulations AND BY-LAWS

Livestock operators should be aware of all provincial Acts and regulations and local municipal by-laws that could affect the establishment, expansion and/or management of their operations.

Odour from livestock operations and other nuisance issues are addressed under *The Farm Practices Protection Act* as well as municipal by-laws. Livestock manure and mortalities management is regulated under *The Environment Act*. The licencing of custom and large, off-farm manure applicators will be required under *The Pesticides and Fertilizers Control Act*.

Siting and other land use issues are dealt with under *The Planning Act* and its regulations, through which the permitting and planning authorities have been delegated to local municipal governments by the Province.

A permit for water supply may be required by *The Water Rights Act*. *The Water Protection Act* provides the authority to regulate livestock operations through watershed management plans and water quality management zones.

These Acts, regulations and by-laws are subject to change. Please refer to the most recent version.

2.1 *The Farm Practices Protection Act*

The Farm Practices Protection Act (see Appendix A) was proclaimed in January 1994 to protect farmers who carry on normal farm practices from unreasonable court action under the common law of nuisance. It protects neighbours from nuisance caused by unacceptable farm practices. The Act establishes a process for reviewing and mediating nuisance disputes arising from the practices of legally established agricultural operations.

The Act states that a person who carries on an agricultural operation, and who:

- uses normal farm practices and
- does not violate
 - i) a land use control law,
 - ii) *The Environment Act* or the regulations and orders, or
 - iii) *The Public Health Act* or the regulations and orders;

is not liable in nuisance to any person for any odour, noise, dust, smoke or other disturbance resulting from the agricultural operation, and shall not be prevented from carrying on the agricultural operation. If the land use by-law of a municipality is amended, or the ownership changes, the agricultural operation may continue to operate and is protected from nuisance complaints.

A normal farm practice is defined as a practice conducted in a manner consistent with proper, acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances. This includes the use of innovative technology with advanced management practices, and conformity with standards set out in regulation.

The Farm Practices Protection Board considers nuisance complaints against agricultural operations from people directly affected by the disturbance. Complainants may not undertake a nuisance action in court unless they have applied to the Board in writing at least 90 days in advance for a decision on whether the farm practice is normal. The Board will only consider complaints about odour, noise, dust, smoke and other such disturbances. It will not deal with pollution issues, erosion problems, inhumane treatment of animals or other non-nuisance items.

The complaint must be in writing and shall state the nature of the disturbance, name and address of the person making the application, and the name and address of the agricultural operation. There is a nominal application fee, which is refunded if the Board upholds the complaint.

Upon receipt of the complaint, the Board may investigate the disturbance, attempt to mediate the complaint, gather evidence, hold hearings and rule on the acceptability of the farming practices relating to the nuisance complaint. It may also refuse to consider the complaint if, in its opinion, the subject matter is trivial, frivolous, vexatious, or the complainant does not have a sufficient personal interest.

The Board shall dismiss the complaint if the disturbance results from a normal farm practice, or order the agricultural operation to either cease or modify the farm practice

causing the disturbance. The Act makes provision for the Board to file its orders with the courts and have the orders enforced. Failure to comply with a Board order could result in the owner or operator of the agricultural operation being subject to court imposed enforcement and remedies. The Board's orders may also be used as evidence against an owner or operator of an agricultural operation in subsequent court proceedings based on the common law of nuisance.

The Act is intended to provide for a quicker, less expensive and more effective way than lawsuits to resolve complaints about farm practices. It may create an understanding of the nature and circumstances of an agricultural operation, as well as bring about changes to the mutual benefit of all concerned, without the confrontation and the expense of the courts.

2.2 The Environment Act

The Livestock Manure and Mortalities Management Regulation (see Appendix B), under *The Environment Act*, strengthens the protection of the environment, enhances enforcement capabilities and helps ensure livestock production is sustainable.

Winter application of manure – All livestock operations are prohibited from applying livestock manure from November 10 until April 10, unless they are exempted by regulation. Existing livestock operations (defined as those in existence prior to March 30, 2004) with fewer than 300 animal units of any one type of livestock are exempt from the prohibition unless they have been ordered to cease winter application because it is causing an environmental concern. Existing operations with 300 to 399 animal units have until November 10, 2010 to comply with the prohibition. Existing producers with 400 or

more animal units must comply with the prohibition on winter application. All new producers, regardless of size, must comply with the prohibition on winter application as soon as their operations are established.

Emergency situations may warrant exceptions to the prohibition of winter application, but require prior approval by Manitoba Conservation. Livestock operations exempt from the prohibition of winter application must meet minimum setback distances from sensitive areas such as watercourses, wells, sinkholes and springs (Table 10).

Application rate – All manure must be applied as a fertilizer for crop production. The regulation sets enforceable limits on the amount of residual soil nitrate-nitrogen as well as the amount of nitrate-nitrogen that can be present in the soil at any point in time. These soil nitrate-nitrogen limits vary depending on the Agricultural Capability class of the soil. To ensure that the soil nitrate-nitrogen limits are not exceeded, the rate of manure application should not exceed the additional nitrogen that is required to achieve a realistic crop yield. It should consider the residual soil nitrate-nitrogen and the nitrogen content of the manure.

Manure sources of phosphorus application are also regulated on the basis of a series of thresholds for soil test phosphorus levels as determined using the Olsen Procedure. There is increasing concern about elevated phosphorus levels in soils that receive long-term manure application and the risk that they may present to surface water quality. For these reasons, soil phosphorus levels should be monitored and application rates adjusted accordingly (see Section 4).

Manure management plans – Livestock operations with 300 or more animal units that store, handle, dispose of or apply livestock

manure to land must prepare and submit for registration an annual manure management plan. The deadline for submission is February 10 for manure to be applied the following spring; July 10 for manure to be applied the following fall. Alternatively, for a \$100 fee, the operator may submit a manure management plan up to 14 days prior to application of manure.

The manure management plan includes livestock information, manure storage system information, the type, amount and nutrient composition of the manure, and the details of each field application. Details include how, when and where the manure will be applied, soil nutrient levels and the crop to be grown on each parcel of land. The intent of the manure management plan is to ensure that adequate land is available for the manure that is to be applied.

Persons who prepare and certify manure management plans on behalf of livestock producers must have successfully completed a manure management planning course acceptable to the director of Manitoba Conservation and must be a member in good standing of the Manitoba Institute of Agrologists or hold the designation of Certified Crop Advisor under the international Certified Crop Advisor program of the American Society of Agronomy.

Manure storage structures – Livestock manure must be stored appropriately. Construction, modification or expansion of any manure storage structure (regardless of size) requires a permit from Manitoba Conservation. These structures must be certified by an engineer registered with the Association of Professional Engineers and Geoscientists of Manitoba, before their use or operation, as being constructed, modified or expanded according to regulatory requirements and engineering design standards.

Registration of manure storage structures without permits – Earthen manure storage facilities constructed prior to 1994 did not require permits, nor did molehills and concrete or steel tanks erected prior to 1998. Operators with manure storage structures that do not have permits must now apply to register these structures with Manitoba Conservation. After November 10, 2010, livestock operators will not be allowed to store manure in storage structures that have not been registered.

Field storage – Solid manure may be stored temporarily in the field, subject to setbacks from property boundaries and sensitive areas such as watercourses, wells, sinkholes and springs. Manure must be removed from the field storage annually and a crop must be grown on the site to recover nutrients before it can be used again for field storage.

Allowance for innovative practices – Considerable research and development are being done in livestock production and technological advancements are occurring rapidly. The requirements under the regulation may be varied where innovative and environmentally sound practices or procedures are proposed.

Mortalities – The Livestock Manure and Mortalities Management Regulation allows proper disposal of mortalities by rendering, composting, incineration, or burial where environmental conditions are suitable. Mortalities must be stored in a secure manner and kept either refrigerated or frozen if retained more than 48 hours after death. Livestock operations with 300 or more animal units that propose to use burial as a method of mortalities disposal must receive written approval from Manitoba Conservation for this practice.

Manure spills – Persons transporting livestock manure are required to immediately report to Manitoba Conservation the occurrence of manure spills that are 50 litres (L) or 0.25 m³ or more onto a highway or road allowance. Spills of 10,000 L or more of liquid manure from a vehicle or a manure storage facility at any location or where the location or quantities of semi-solid or solid manure may cause an adverse effect on the environment, must also be reported.

Setbacks – Setbacks from water resources are required to protect them from contamination by manure and mortalities. Manure storage structures, field storage areas for manure, composting sites, confined areas and mortalities burial sites must be located at least 100 metres (m) from surface watercourses, sinkholes, springs and wells.

Pollution issues – The regulation also contains general provisions to prohibit the direct contamination of surface and groundwater by livestock manure. Similarly, livestock manure must not escape the property boundaries of land where it is either stored or applied as a fertilizer.

2.3 The Pesticides and Fertilizers Control Act

Changes to *The Pesticides and Fertilizers Control Act* were enacted in 2002. These changes require commercial and large, off-farm manure applicators to be formally trained, certified and licenced when they come into effect. The training requirements will be established by regulation and will cover nutrient management, environmental issues associated with the application of manure, equipment calibration, spills and liability issues.

2.4 *The Planning Act*

The Planning Act provides the legal framework for land use planning in Manitoba. Under the authority of *The Planning Act* local governments are responsible for the adoption, administration and enforcement of local land use by-laws, including the development plan and zoning by-laws.

The new *Planning Act* came into force in January 2006. Some of the significant features of the new Act relating to livestock development are:

- every municipality or planning district is required to have an adopted development plan by January 1, 2008
- a zoning by-law must be adopted within one year of the adoption of development plan or by January 1, 2008
- a development plan must include a livestock operation policy
- a technical review is required for livestock operations involving 300 or more animal units
- livestock operations involving 300 or more animal units must be designated as a conditional use in a zoning by-law.

2.4.1 Provincial land use policies

While *The Planning Act* provides the administrative framework for local planning processes, it also outlines the underlying principles for the development of the Provincial Land Use Policies Regulation. The Provincial Land Use Policies (PLUPs) outline broad public and provincial interests in land use. The PLUPs are to be used by local governments to

create local planning documents, thereby ensuring that those broader interests are reflected in local land use plans.

The PLUPs outline the Province's development objectives in a number of policy areas. The policy areas that most directly address agricultural land uses, including development of livestock operations, are General Development and Agriculture.

Provincial objectives related to General Development are intended to encourage orderly, efficient development that is environmentally sound, economically sustainable and compatible with other land uses. The General Development policies also state that non-resource-related uses shall be directed away from agricultural land and livestock operations.

The Agriculture section of the PLUPs offers policy direction that more specifically outlines the Province's objectives with respect to the agriculture industry. The Province's agriculture-related objectives are to maintain a viable base of agricultural land for agricultural uses and to protect agricultural operations from encroachment by other land uses which could adversely affect the farmer's ability to manage, diversify or expand the operation.

Through the Agriculture Policy area, local governments are directed to develop policies that ensure protection for prime agricultural land, viable lower class land and agricultural operations. Specifically, land use plans are to designate suitable areas where agricultural uses will be protected and facilitated.

2.4.2 Development plan

Under *The Planning Act*, local land use policies are to be enacted through the creation of a municipal or planning district development plan. The development plan must be consistent with provincial land use policies while setting out local plans and policies. The development plan must establish areas where categories of development such as residential, agricultural, commercial or recreational may be considered appropriate.

The Planning Act now also requires all municipalities or planning districts to include a livestock operation policy in their development plans.

2.4.2.1 Livestock operation policy

When creating the required livestock operation policy, municipalities or planning districts must designate areas in the development plan where expansion or development of livestock operations:

- may be allowed
- may be allowed up to a specified maximum size and/or
- will not be allowed.

The livestock operation policy must also set out general standards regarding livestock operation siting and setback requirements. Siting and setback requirements must be based on the minimum standards set out in the Provincial Land Use Policies Regulation. The PLUPs recommend that

these setbacks apply mutually to residential or recreational developments that propose to establish near existing livestock operations (see Section 6 for details).

2.4.3 Zoning by-law

Once a development plan has been approved, a municipality must enact a zoning by-law that is consistent with its development plan. The zoning by-law divides a municipality or planning district into zones such as rural residential, highway-commercial and general agricultural and lists uses which are permitted or conditional uses within each zone. The zoning by-law prescribes development criteria within each zone to which all developments must comply. It must specify livestock operation siting and setback requirements consistent with the livestock operation policy in the development plan.

Conditional Use – *The Planning Act* specifies that, where the livestock operation policy has designated an area where livestock operations may be allowed, operations with 300 or more animal units are a conditional use in the zoning by-law. The zoning by-law may designate livestock operations with fewer than 300 animal units as either a permitted or a conditional use. All operations with 300 or more animal units in size are subject to a Technical Review (see Section 8). The municipality or planning district must hold a public hearing for conditional use applications.

The Planning Act specifies the types of conditions related to management of manure that may be imposed on the approval of conditional use livestock operations, depending on operation size:

- fewer than 300 animal units – conditions may include requiring covers on manure storage facilities and requiring shelter belts and
- 300 or more animal units – conditions may include requiring covers on manure storage facilities, requiring shelter belts, and imposing measures to implement recommendations made by the Technical Review Committee.

In addition, the municipal council or planning district may require the owner of the property to enter into a development agreement concerning timing of construction, control of traffic, and construction or maintenance of roads or landscaping required to service the livestock operation.

The decision of the municipal council or planning district board on a conditional use application is final. There is no appeal process.

2.5 The Water Rights Act

An approval and/or a licence may be required under *The Water Rights Act* to withdraw water from a surface or groundwater source. For agricultural or irrigation purposes, a licence is required when water usage exceeds 25,000 L/day or 5,500 imperial gallons/day (imp. gal/day). At lesser rates of usage, a licence may not be required because it generally falls under the domestic use category.

If a licence or approval is required, an application must be submitted to the Water Licensing Branch of Manitoba Water Stewardship. An initial office review of the application is carried out to determine if the required volume is available from the indicated source. If the proposed source is groundwater and the required volume is expected to be available, a Groundwater Exploration Permit is issued to the proponent that allows the proponent to carry out activities such as test drilling. The permit may also require the proponent to undertake additional testing (for instance a pump test on the well for a specific duration) as part of the process of evaluating water availability and to determine potential impacts on other users of the same aquifer.

A report prepared by a hydrogeologist registered with the Association of Professional Engineers and Geoscientists of Manitoba must be supplied to the Water Licensing Branch. This report will meet the terms of the exploration permit and will be used to determine the licencing decision. If the water supply is available, a licence is issued which will specify both the instantaneous and annual allowable withdrawal rates. Additional conditions may be attached such as a requirement for monitoring water use rates and reporting of information. A similar assessment process is required if surface water is to be used as the water source.

Some of agro-Manitoba's important water sources are at or near full allocation. Therefore, it is important to submit an application for a water rights licence prior to developing your project as it may not be eligible for a water rights licence. Licences are issued in chronological order and rights have precedence based on the date of application: "First in Time, First in Right". Under no circumstances should a project be developed without first obtaining a water rights licence or an approval, where required.

2.6 The Water Protection Act

The Water Protection Act proclaimed in January 2006, provides a new framework for managing water in Manitoba. Social and economic well-being depends upon a sustained supply of high quality water. *The Water Protection Act* provides protection and stewardship of Manitoba's water resources and aquatic ecosystems. Regulations under the act will include water quality standards, objectives or guidelines, water quality management zones, water conservation, invasive species, and other issues. In addition to regulations aimed at providing better protection to water, it establishes a mechanism to develop local watershed management plans, and it identifies the minimum content of these plans. It also provides a funding mechanism through the Water Stewardship Fund to provide focused research as well as incentives and assistance in areas of priority.

The Nutrient Management Regulation will be the first regulation developed under the *Water Protection Act*. A proposed regulation defining Water Quality Management Zones for Nutrients was released for consultation in 2005. Under this proposal, the Manitoba landscape was divided into five zones based upon various characteristics that could lead to runoff of nutrients to adjacent bodies of water or leaching of nutrients to underlying aquifers. Buffer setback areas adjacent to drains, streams, rivers, lakes, and other bodies of water have also been identified. Zone 4 are sensitive and fragile areas of the landscape where it is intended that nutrients not be applied. Zone 5 is intended to apply to urban areas.