



# CHAPTER 12.0

## Legislation

This chapter provides an overview of the legislation that pertains to environmental risks on a farmstead.

A number of provincial and federal government acts relate to potential environmental effects of agricultural practices and provide a foundation to ensure that agriculture is operating in a sound and responsible manner.

Your operation must meet the legal requirements described in the acts and regulations. This manual is aimed at producers who are striving for excellence in farmstead **stewardship**. Therefore, many of the practices described in the previous chapters go beyond the basic legal requirements to help you reach your goals for an environmentally and economically successful operation.

### LEGAL REQUIREMENTS

The information in this chapter is provided for general information only. It is not intended as legal advice. Refer to the acts and regulations, and consult a lawyer for legal advice on specific legal rights and requirements.

More information on the environmental requirements under these acts can be obtained from government departments and agencies, consultants and lawyers.

Copies of Alberta's acts and regulations are available online or in hard copy from the Queen's Printer. For contact information, please refer to For More Information at the end of this chapter.

## 12.1 Federal Legislation

### 12.1.1 Fisheries Act

#### **Deleterious Substance**

The *Fisheries Act* is administered by the Department of Fisheries and Oceans and prohibits anyone from depositing or permitting the deposit of anything into any type of water frequented by fish, which can have a “deleterious” or harmful effect on the fish. Further, the Act prohibits anybody from depositing a “deleterious” or harmful substance in any place under any condition where the substance may enter any water frequented by fish. It defines the phrase “water frequented by fish” very broadly to include all internal waters of Canada. This definition includes any creek, river, stream, lake or slough frequented by fish, including a creek that has minnows in the spring, but dries up later in the summer.

For example, an operator commits an offence under the Act if he or she spreads manure on land near a stream frequented by fish, and the manure enters the stream in sufficient quantities to have a “deleterious effect.” The offence results even if the manure does not actually cause harm to the fish. The mere fact that the manure reached water frequented by fish is an offence and may result in charges under this Act. In addition, even if the manure does not in fact enter the water, but had a reasonable chance of doing so, then the operator risks committing an offence. However, if the operator can prove that at all times, the water is not, has not been and is not likely to be frequented by fish, then the operator has not committed an offence under the Act.

#### **Harmful Alteration, Disruption or Destruction of Fish Habitat**

The *Fisheries Act* prohibits the carrying on of any work or undertaking that results in “harmful alteration, disruption or destruction” of fish habitat, although an authorization can be obtained from the Department of Fisheries and Oceans allowing such an activity. As noted above, fish habitat is defined quite broadly in the Act. These provisions may come into play in situations in which an operator would also require approval under Alberta's *Water Act* for a water management project.



Fish habitat is protected by the *Fisheries Act* — Courtesy of AAFRD

### **Liability of Directors and Officers**

If a corporation violates the Act, any officer, director or agent of the corporation who was involved with the incident, even in a minor way, is liable on conviction to punishment under the Act, whether or not the corporation itself has been charged. This situation is true regardless of whether the officer, director or agent works for a large corporation or a small incorporated family farm. Thus an officer, director, agent or an incorporated farm can be held personally responsible for violations of the Act if the officer or director directed or participated in the violation.

### **Strict Liability Offences**

Offences under the *Fisheries Act* regarding the deposit of deleterious substances or harmful substances into water frequented by fish are strict liability offences. The courts are only concerned with whether the operator committed the offence, not whether he or she intended to commit the offence or the morality of the actions.

**If the operator did commit the "deleterious substance" action, the courts will convict the operator unless the operator can show that:**

- at all times, the water is not, has not been and is not likely to be frequented by fish
- the operator acted with due diligence to prevent the commission of the activity at issue
- the operator reasonably and honestly believed in the existence of the facts that, if true, the operator's conduct would be rendered innocent

### **Fines**

An individual or incorporated farm is liable to a fine not exceeding \$1,000,000 for the operator's first deleterious substance offence and to a fine not exceeding \$1,000,000 or to imprisonment for a term of not exceeding three years or to both for any subsequent deleterious substance offence.

### 12.1.2 Pest Control Products Act

The *Pest Control Products Act* specifies the responsibilities of the Pest Management Regulatory Agency (PMRA) of Health Canada for registration of pesticides for use in Canada.

**In terms of user responsibility, as stated on the product label, anyone using a pest control product has the responsibility to read the label and follow the directions including the following:**

- before purchasing a pesticide, to determine if the product will control the pest problem and if it can be applied in a safe manner
- before mixing the pesticide with other products or additives, to ensure product compatibility
- before spraying, to determine the required precautions during spraying, and to follow those precautions

### 12.1.3 Transportation of Dangerous Goods Act

#### Transportation of Dangerous Goods Regulations

The Dangerous Goods and Rail Safety Branch of Alberta Transportation administers the federal *Transportation of Dangerous Goods (TDG) Act* for the province.

**The legislation identifies nine classifications of dangerous goods:**

- Class 1 – Explosives (e.g. ammunition, fireworks)
- Class 2 – Gases (e.g. acetylene, anhydrous ammonia, propane)
- Class 3 – Flammable and combustible liquids (e.g. diesel fuel, gasoline)
- Class 4 – Flammable solids (e.g. calcium, sodium)
- Class 5 – Oxidizing substances and organic peroxides (e.g. adhesives, disinfectants, nitrates)
- Class 6 – Poisonous (toxic) and infectious substances (e.g. pesticides, vaccines, wood preservatives)
- Class 7 – Nuclear substances (radioactive materials) (e.g. nuclear moisture gauges)
- Class 8 – Corrosives (e.g. acids, bleach)
- Class 9 – Miscellaneous products, substances or organisms (e.g. asbestos, hazardous wastes)

If a product such as a fertilizer, pesticide or fuel falls under one of these classes, then the TDG Regulations must be followed. The Act specifies that when shipping dangerous goods, proper classification, documentation and labelling are required. Placards must have safety marks designed specifically for each dangerous good and must consist of the class, shipping name and UN number. Before you handle, offer for transport or transport dangerous goods, you must have a valid Dangerous Goods Training Certificate or must be under the supervision of an individual who has undergone training.

*There are exemptions to the TDG Regulations applicable to the agricultural industry in terms of hauling between two properties, personal use and limited quantities. For more information, refer to Alberta Transportation's Dangerous Goods and the Agricultural Industry publication.*

## 12.2 Provincial Legislation

### 12.2.1 Water Act

The *Water Act*, administered by Alberta Environment, applies to all water on or underground, whether in liquid or solid state. The purpose of this Act, which became law in January 1999, is to support and promote the conservation and management of water, including its wise allocation and use.

**Approval from Alberta Environment is required for the undertaking of an activity that may:**

- alter the flow or level of water
- change the location or direction of water flow
- cause siltation of water
- cause erosion of any bed or shore of a water body
- cause an effect on the aquatic environment

The *Water Act* requires you to obtain a license for new wells that are drilled for any purpose other than household use. This Act protects the licensee from other water users who may be competing for the same water. If a new water user (other than a household) has a negative effect on the farmstead's water supply, the farmstead will have priority for the licensed amount. When issuing a license, Alberta Environment will ensure that the water use will not negatively affect other licensed users, household users or the watershed itself.

Any new well must be constructed to Alberta Environment standards. The well may only tap into one aquifer and must have the casing sealed from the top of the aquifer to the surface. To obtain a license, contact Alberta Environment. Part of the licensing process requires proof that water supplies are adequate for the farmstead's needs. New water use must not have a negative effect on neighbouring household wells or wells that have a senior water license.

For assistance with the initial assessment of groundwater potential, contact government agencies, such as Alberta Agriculture, Food and Rural Development (AAFRD) or Agriculture and Agri-Food Canada - Prairie Farm Rehabilitation Administration (AAFC-PFRA), which have access to maps and water well data. Local water well drillers can also provide valuable information. Alberta Environment has a sliding scale of requirements for licensing, depending on the amount of water uses. For more information, refer to the Groundwater Evaluation Guidelines at <http://www3.gov.ab.ca/env/water/Legislation/Guidelines/GroundwaterEvaluation.pdf>.

### 12.2.2 Environmental Protection and Enhancement Act

The purpose of the *Environmental Protection and Enhancement Act* (EPEA), governed by Alberta Environment, is to support and promote the protection, enhancement and wise use of the environment.

**The environment includes:**

- air, land and water
- all layers of the atmosphere
- all organic and inorganic matter
- all living organisms
- the interacting natural systems that include each of the above components

**Prohibited Releases**

The *Environmental Protection and Enhancement Act* (EPEA) prohibits operators from releasing into the environment a substance in an amount, concentration or level or at a rate of release that causes or may cause a significant adverse effect on the environment. While "significant" is not defined in EPEA, "adverse effect" is broadly defined to mean the "impairment of, or damage to, the environment, human health or safety or property." For example, if a farm operator spreads manure on land at a rate that will overload the nutrient levels in the soil, or releases manure on land where the manure will run into a water body, the operator is in violation of EPEA.



Help protect the environment by adopting BMPs — *Courtesy of Duane McCartney*

Alberta Environment can issue a substance release Environmental Protection Order (EPO) when a substance release into the environment is causing, has caused or may cause an adverse effect. These EPOs can be issued even if an operation is in compliance with legislation, as they are intended to be remedial/preventive in nature rather than punitive. Generally, these EPOs will direct an operator to develop a plan for dealing with the release and to implement the plan once it has been approved by Alberta Environment.

Alberta Environment can also issue an EPO to an individual responsible for the release of an offensive odour, ordering an individual to, among other things, prevent, minimize or remedy the offensive odour or destroy the cause of the odour. This power does not apply to offensive odours from an agricultural operation that is carried on in accordance with “generally accepted practices” for that operation. However, there is no definition of “generally accepted practices.” Whether an operator is following “generally accepted practices” will be decided by the Environmental Appeal Board or by a peer review board appointed by the Minister of Agriculture, Food and Rural Development.

Within these regulations, there are also provisions for impairing visibility on a highway or developed property due to emissions from activities such as burning debris.

### **Duty to Report**

The EPEA requires operators to report any releases that may cause an adverse effect to the environment. A release must be reported immediately once it has been discovered. Failure to report a release can result in significant fines. Calling Alberta Environment’s emergency response line (1-800-222-6514) is usually sufficient to report a release. In some circumstances, an operator will also be required to file a subsequent written report.

Typically, when an operator reports a release, Alberta Environment will require the operator to identify the steps to prevent harm to the environment and to prevent the release from reoccurring.

### **Liability of Directors and Officers**

If a corporation violates the EPEA, any officer, director or agent of the corporation who was involved with the incident, even in a minor way, could face prosecution. This situation applies whether or not the corporation itself is prosecuted for the violation and regardless of whether the officer, director or agent works for a large corporation or simply a small incorporated family farm. Thus an officer, director or agent of an incorporated farm is held personally responsible for EPEA violations, if the officer, director or agent directed or participated in the violation in any way.

### **Intent to Commit**

The vast majority of offences under the EPEA are “strict liability” offences. Unlike criminal offences, with strict liability offences, the courts are only concerned with whether the operator committed the offence and not whether he or she intended to commit the offence or the morality of the operator’s actions. If the operator did cause the impairment, the courts will convict the operator unless the operator can show that the action was in accordance with due diligence in running the operation and in carrying out the activity at issue (see Section 9.3 for more on due diligence). That is, if the operator can show that all reasonable steps were taken to prevent the contravention of the EPEA, the operator may not be found guilty.

For a small proportion of the offences under the EPEA, the intent to commit the offence must also be proven to obtain a conviction. For those offences, the due diligence defence does not apply.

### **Fines**

For strict liability offences, an individual is liable for a fine of not more than \$50,000 for each offence under the EPEA, and a corporation is liable for a fine of not more than \$500,000 for each offence. Each day that a release or impairment occurs is treated as a separate offence. For example, a release from a catch basin occurring over two days would be treated as two offences and expose the corporation to a maximum fine of \$1,000,000.

Those offences that require proof of intent to commit the offence carry higher penalties: a \$100,000 maximum fine for individuals and a \$1,000,000 maximum fine for corporations.

### **Pesticide Sales, Handling, Use and Application Regulation**

The EPEA regulates the sale, use, application, handling, storage, transport and disposal of pesticides.

#### **For example, the regulations of this Act specify:**

- use of pesticides according to the directions specified on the label
- transportation and disposal of pesticides in a way that ensures they will not contaminate food or water
- storage of pesticides in their original containers or in other containers that are clearly marked
- responsibility of the user for cleanup and decontamination in case of accidental spills
- washing of pesticide-contaminated material or sprayers is prohibited within 30 m (98 ft) of an open water body or on a public waterworks system
- pesticide storage is not allowed within 30 m (98 ft) of an open water body
- no person shall use, apply, handle, transport, store or dispose of a pesticide or operate any equipment involving the use, handling, transportation, storage, handling or disposal of pesticides in a manner that is or is likely to cause an adverse effect

**The Act also specifies restrictions on the handling of pesticide application equipment:**

- The operator must be present at all times while filling the sprayer and must maintain an air gap, or have an operating backflow prevention device while filling the sprayer tank from a municipal waterworks system or from an open body of water.
- A Pesticide Applicator Certificate and Service Registration are required for commercial applicators.
- A Special Use Approval permit is required from Alberta Environment to apply or store pesticides or wash equipment used to apply pesticides in, on or within 30 m (98 ft) of an open body of water. This condition does not include sloughs or ponds less than 10 acres in area, provided they are completely surrounded by private land with no drainage off the land.
- Some pesticides have unique hazard characteristics and require the applicator to be knowledgeable to use them. Therefore, producers must become certified to purchase and apply certain hazardous pesticides. This mandatory certification currently applies to: aluminium phosphide (Phostoxin, Gastoxin), picloram (Tordon 22 K) and triclopyr (Garlon).

## Waste Control Regulation

The *Environmental Protection and Enhancement Act* (EPEA) deals with the management and control of waste in various provisions, and provides Alberta Environment with the ability to address hazardous waste matters through regulations. Hazardous recyclables are dealt with through the use of provisions related to the recycling of material as designated by regulation, and the control of waste (formerly litter) is dealt with in regulations as well as through the Act.

The *Waste Control Regulation* identifies hazardous wastes and sets out the requirements relating to handling, storing and disposing of such wastes. It also controls the treatment, storage and recycling of hazardous recyclables as well as defines anti-litter orders (such as controlling waste on publicly-owned land) and environmental protection orders (such as clean-up of unsightly property).

### 12.2.3 Livestock Diseases Act

#### Destruction and Disposal of Dead Animals Regulation

Alberta's *Livestock Diseases Act* governed by Alberta Agriculture, Food and Rural Development (AAFRD) deals with the proper handling of dead animals. For more details on guidelines for handling livestock mortalities, refer to Chapter 8.

### 12.2.4 Safety Codes Act

#### Private Sewage Disposal Systems Regulation

The *Private Sewage Disposal Systems Regulation* (AR 229/97) is governed under the *Safety Codes Act*. This regulation adopts the Alberta Private Sewage Disposal Systems Standard of Practice 1999, which is administered by Safety Services, Municipal Affairs.

The Alberta Private Sewage Systems Standard of Practice 1999 provides the minimum requirements for a new private sewage system. A handbook is available that provides explanations, information and drawings that will help you make decisions about your system. For more details on private sewage disposal system guidelines, refer to Chapter 9.

## 12.2.5 Agricultural Operation Practices Act Standards and Administration Regulation

The *Standards and Administration Regulation*, governed under the *Agricultural Operation Practices Act* (AOPA), is administered by the Natural Resources Conservation Board (NRCB).

As of January 2002, new provincial standards for siting new and expanding confined feeding operations (CFOs) came into effect. Province-wide standards for manure management now apply to all livestock production in Alberta, including CFOs and cow/calf operations, as well as custom manure applicators and others who handle manure.



Surface-applied manure on conventionally cropped land must be incorporated into the soil within 48 hours  
— *Courtesy of AAFRD*

### **Key areas addressed by the *Agricultural Operation Practices Act* (AOPA):**

**Manure Application** – all agricultural operations must follow the manure or compost application and minimum distance separations or setbacks to protect surface water and groundwater resources and reduce nuisance impact on neighbours.

**Permits** – a permit must be obtained prior to construction or expansion of a CFO or manure storage facility.

**Existing CFOs** – operations that existed on January 1, 2002 can continue to operate at their capacity. They are deemed to have a permit (approval, registration, or authorization) under AOPA whether or not they had a licence, permit, or other approval under the *Public Health Act* or a municipal development permit, or was constructed pursuant to a municipal development permit that was issued prior to January 1, 2002, or was issued as described in the *Agricultural Operation Practices Amendment Act* 2001.

**Wintering sites** – seasonal feeding and bedding sites where livestock are fed and sheltered do not require permits, but must be located 30 m (98 ft) or more from a common body of water.

**Manure storage** – the regulations specify proper siting and construction of solid and liquid manure storage facilities and collection areas.

**Record keeping and Soil testing** – CFOs, custom applicators, cow/calf producers and others who apply, transfer or receive more than 500 tonnes of manure or compost per year must keep records. They must also have a soil test that is no older than three years before applying manure on any field. They can apply manure as many times as necessary in the three years after the soil test, as long as the manure application will not result in exceeding nitrogen limits.

**Nuisance** – it is important that producers understand the common law of nuisance as it may affect them. The common law of nuisance is an individual’s unreasonable interference with a neighbour’s use and enjoyment of their land. If a producer participates in such activities that create offensive odours, excessive noise or dust, the courts may force him or her to pay damages to the neighbour as compensation for the nuisance and potentially force the producer to shut down.

To protect producers from nuisance claims, AOPA states that a producer will not be liable in court for any nuisance resulting from the producer’s operation, nor will the producer be prevented from carrying on operations by a court injunction or order. This holds true only if the producer has not contravened the local land-use bylaws and has followed “generally accepted practices for similar agricultural operations.”

**The act defines a “nuisance” to include an activity which:**

- arises from unreasonable, unwarranted or unlawful use by a person or the person’s own property, which causes obstruction or injury to the right of another person or the public and produces such material annoyance, inconvenience and discomfort that damage will result
- creates smoke, odour, noise or vibration, which interferes with the reasonable and comfortable use of a person’s property
- is found to be a nuisance at common law

For more information on the *Agricultural Operation Practices Act* (AOPA), contact Alberta Agriculture, Food and Rural Development (AAFRD) or the Natural Resources Conservation Board (NRCB).

### 12.2.6 Soil Conservation Act

The *Soil Conservation Act* gives municipal councils the authority to protect land from soil loss or deterioration. Under the Act, each landholder has the responsibility to actively prevent soil loss or deterioration from taking place or, if soil loss or deterioration is already taking place, to stop it from continuing. Each municipal council has the duty to ensure that each landholder in its jurisdiction fulfills this responsibility.

When agricultural practices cause or are likely to cause soil degradation, a soil conservation officer, usually an agricultural fieldman acting on behalf of the municipality’s Agricultural Service Board, may serve notice on the landholder advising him or her to take remedial action within a specified time. The landholder may appeal this notice. If the appeal fails, then the landholder must comply with the notice.

If the remedial action is not done within the specified time, the soil conservation officer and/or others under the officer’s direction may enter the property and perform the required work. The cost of this work may be collected by a tax on the property. Any person obstructing the officer or failing to comply with the notice is subject to a fine of up to \$5,000.



Landholders are required to actively prevent soil degradation — *Courtesy of AAFRD*

### 12.2.7 Weed Control Act

The *Weed Control Act*, administered by the municipality, provides the legal authority to enforce weed control. It identifies three categories of weeds: restricted, noxious and nuisance. The Act mandates the eradication of restricted weeds and control of noxious and nuisance weeds.

### 12.2.8 Agricultural Pests Act

#### Pest and Nuisance Control Regulation

The *Pest and Nuisance Control Regulation* is governed under the *Agricultural Pests Act* and enables legal authorities to deal with native and introduced pests, which affect farming operations. Pests vary from Dutch elm disease to the Norway rat, while nuisances vary from coyotes to ground squirrels. The Act gives the municipal local authority the option to enforce control measures, provide a warning or do nothing about pest concerns.

## 12.3 For More Information

**All Alberta government offices may be reached toll-free by dialing the Rite Line: 310-0000**

#### **Alberta Agriculture, Food and Rural Development**

Publications: 1-800-292-5697

Ag-Info Centre: 310-FARM (3276)

Website: [www.agric.gov.ab.ca](http://www.agric.gov.ab.ca)

#### **Alberta Environment**

Publications: 780-427-2700

Emergency Response Line: 1-800-222-6514

Website: [www.environment.gov.ab.ca](http://www.environment.gov.ab.ca)

**Alberta Municipal Affairs**

Phone: 780-427-2732

Safety Services: 1-866-421-6929

Website: [www.municipalaffairs.gov.ab.ca](http://www.municipalaffairs.gov.ab.ca)

**Natural Resources Conservation Board**

Contact your regional office

24 hour response line: 1-866-383-6722

Website: [www.nrcb.gov.ab.ca](http://www.nrcb.gov.ab.ca)

**Queen's Printer**

Phone: 780-427-4952

Website: [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca)

**Department of Fisheries and Oceans**

Prairies Region: 780-495-4220

Website: [www.dfo-mpo.gc.ca](http://www.dfo-mpo.gc.ca)

**Environment Canada**

Prairie and Northern Region: 780-951-8600

Website: [www.ec.gc.ca](http://www.ec.gc.ca)

**Pest Management Regulatory Agency**

Pest Management Information Service: 1-800-267-6315

Website: [www.pmra-arla.gc.ca](http://www.pmra-arla.gc.ca)

**Environmental Law Centre**

Publications: 1-800-661-4238 or 780-424-5099

Website: [www.elc.ab.ca](http://www.elc.ab.ca)