

13.0 ENVIRONMENTAL LEGISLATION

13.1 Provincial Legislation

- 13.1.1 *Agricultural Operation Practices Act*
- 13.1.2 *Environmental Protection and Enhancement Act*
- 13.1.3 *Livestock Diseases Act*
- 13.1.4 *Soil Conservation Act*
- 13.1.5 *Water Act*

13.2 Federal Legislation

- 13.2.1 *Fisheries Act*

13.3 For More Information

13.0 ENVIRONMENTAL LEGISLATION

The following section provides an overview of the major pieces of environmental legislation that affect cow/calf producers. A complete review of all the environmental legislation and regulations is beyond the scope of this manual. This overview is provided for information purposes only and should not be relied upon

as legal advice. Producers should consult the actual statutes and regulations for a complete understanding of their obligations under each piece of legislation that is summarized below. Producers are also advised to consult a lawyer with respect to the application and interpretation of the statutes and regulations.

13.1 Provincial Legislation

The following provincial environmental legislation affects cow/calf operators:

- *Agricultural Operations Practices Act.*
- *Environmental Protection and Enhancement Act.*
- *Livestock Diseases Act.*
- *Soil Conservation Act.*
- *Water Act.*

13.1.1 Agricultural Operation Practices Act

Cow/calf producers need to be aware of two parts of the *Agricultural Operation Practices Act* (AOPA). The first part deals with nuisance. Nuisance complaints associated with agricultural operations are first investigated by the Natural Resources Conservation Board (NRCB). If it is found that the operation is managed in accordance with AOPA, the Farmers' Advocate of Alberta will then deal with the complaint. The first effort, handled by the NRCB, will attempt to mediate disputes. If the complaint is not resolved, the Farmers' Advocate will establish an Agricultural Practices Review Committee, comprised of industry peers and rural landowners, to determine if the agricultural operation in question is following generally accepted farming practices. This committee will also attempt to further mediate complaints and prepare a report, which can be used by the court system, if complaints are taken forward.

The second part of AOPA that is of concern to cow/calf producers governs livestock and manure. There are two parts to this: all livestock operations must adhere to the rules set forward in the Act, and new or expanding operations above a specified threshold will be required to go through an approval process.

Regulations governing seasonal feeding and bedding sites, nutrient management, and manure storage and handling (including short-term storage of solid manure) are discussed throughout this manual. Cow/calf producers must be aware of legislation in these areas.

The NRCB is responsible for enforcing the legislation and issuing approvals for new and expanding operations.

13.1.2 Environmental Protection and Enhancement Act

The purpose of the *Environmental Protection and Enhancement Act* (EPEA) is to support and promote the protection, enhancement and wise use of the environment. Environment includes: air, land and water; all layers of the atmosphere; all organic and inorganic matter and living organisms; and, the interacting natural systems that include each of the above components. The EPEA is directed at any activity that would have an adverse effect on the environment, human health or safety, or property. The EPEA is wide-ranging and no activity is automatically exempt from its application. It applies to all agricultural operations and not just those governed by AOPA.

The EPEA applies to the release of substances that cause or may cause an adverse effect on the environment, human health or safety, and property. It specifically applies to the drilling or reclamation of a water well or borehole, designated livestock operations and pesticide application.

Agricultural operators have a duty to report any releases that may cause an adverse effect

on the environment to Alberta Environment. Failure to report a release can lead to significant fines. Once an operator has reported a release, the operator must also identify the steps that will be taken to prevent harm to the environment and to prevent the release from happening again.

Depending on the type of release, the fines issued by Alberta Environment can range from \$50,000 to \$1,000,000. This is a strict liability statute, meaning that if the operator knowingly contravened the Act, the fine will be larger. Under certain sections of the Act, a person will not be convicted of an offence if that person establishes that all reasonable steps were taken to prevent its commission.

It is beyond the scope of this manual to provide a complete summary of the EPEA. With respect to environmental concerns, producers should seek the assistance of environmental consultants and lawyers as it is a very specialized and complex area of law.

13.1.3 Livestock Diseases Act

Under the *Livestock Diseases Act*, livestock is defined as wild animals and birds, whether captive or not, and domestic animals and birds. It does not include fish. This Act is aimed at preventing the spread of communicable diseases. To eliminate the possibility of communicable disease, the Act permits the government to appoint inspectors, establish control areas in the event of a disease outbreak, establish quarantine areas, and seize and destroy infected animals. The only disease of cattle that has been included in the regulations is salmonellosis. As with the other legislation, contravention of this Act and regulations is an offence, punishable by a fine of not more than \$10,000, imprisonment of not more than one year, or both.

Under the *Destruction and Disposal of Dead Animal Regulation*, a dead animal is defined as a domestic mammal or bird, or part thereof,

that has died from a cause other than having been slaughtered for human consumption, and also includes inedible offal or condemned material from animals slaughtered for human consumption.

Dead animals must be disposed of within 48 hours of death unless they are stored for not more than one week in an enclosed impervious structure or are completely frozen, whether outside in the winter months or in a freezer. This Regulation governs the natural disposal of dead animals. Natural disposal is not allowed if the animal has been euthanized with drugs or other chemical substances. In these cases, the carcass must be buried on a farm or in a landfill, burned, composted or transported to a licensed rendering plant. This Regulation also governs the feeding of dead animals to other food-producing animals. For more information, see Section 10.



13.1.4 *Soil Conservation Act*

The *Soil Conservation Act* applies to all landholders. A landholder is defined as the occupant of the land or, if there is no occupant, the owner. Under this Act, every landholder is required to take appropriate measures to prevent soil loss or deterioration. If soil loss or deterioration is taking place, the landholder must stop the loss or deterioration from continuing. If a landowner does not voluntarily take remedial measures, provisions of the Act direct that such measures be taken. If a

landholder does not comply with these directions, the local authority can implement the remedial measures and charge the cost to the landholder. Landholders can appeal any direction made under the Act and, as with the other legislation, there are offence provisions for failure to comply with the Act or the regulations. The prescribed penalty is a fine of not more than \$500 for each day or part of a day that the offence continues, to a maximum fine of not more than \$10,000.

13.1.5 *Water Act*

The *Water Act* applies to all water on or underground, whether in liquid or solid state. The purpose of this Act is to support and promote the conservation and management of water, including the wise allocation and use of water.

Part three of the Act deals with the right to divert water and the priority of those rights. If a producer owns or occupies land that adjoins a river, stream, lake, natural watercourse or other natural water body, or land under which groundwater exists, and diverts water from these sources for the purpose of raising animals or applying pesticides to crops, that producer is considered an exempt agricultural user. As part of a farm unit, the producer can divert up to 6,250 cubic metres of water per year without an approval, licence or registration. However, they do not have any priority rights unless an approval or licence has been issued or a registration effected with respect to that diversion.

If a producer owns or occupies land that adjoins a river, stream, lake, natural watercourse or other natural water body or land under which groundwater exists, and diverts water for the sole purpose of household use, that producer is also an exempt agricultural user and does not require an approval or licence. This right can be limited if there is or may be a significant adverse affect on the aquatic environment, on a licensee or another traditional agricultural user.

A traditional agricultural user is a person who owns or occupies land that adjoins a river,

stream, lake, natural watercourse or other natural body of water, or under which groundwater exists and for which there is a registration under the Act. These users have the right to divert up to 6,250 cubic metres of water from the sources authorized in the registration for the purpose of raising animals or applying pesticides to crops, as part of a farm unit, as authorized by the registration.

For more information on the priority of rights to users refer to Division 2, Sections 27 through 31, of the Act.

Part four of the Act deals with approvals, licences, preliminary certificates and registrations. With the exception of the above noted diversions, all other water diversions require an approval, licence, preliminary certificate or registration. The advantage of registration is that it gives the user priority to the water in accordance with the provisions of the Act. Registration also has the advantage of being inseparable from the land and is attached to the land when any dispositions occur.

In addition to complying with the provisions of the *Water Act*, users are also required to comply with the Water (Ministerial) Regulation. Producers should be aware of Sections 35 through 71, which deal with water wells and, in particular, site selection, drilling, construction, covering, reclamation, servicing, monitoring, deepening, operating, completing, equipping, disinfection, reconditioning, testing and maintenance. These activities must be done in accordance with this Regulation.

13.2 Federal Legislation

Cow/calf producers should be aware of the federal *Fisheries Act* and how it may affect their operations.

13.2.1 Fisheries Act

The *Fisheries Act* applies to all internal waters of Canada inhabited by fish or with the potential to support fish. It is intended to preserve fish and fish habitat in Canada.

An obstruction across or in any stream that interferes with the free passage of fish is not in the public interest. If the construction of a fishway or canal is not feasible, money must be paid to construct, operate and maintain a fish hatchery to maintain the annual return of migratory fish.

No person is permitted to carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat (HADD).

Except where authorized, no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish. The deleterious substance cannot be deposited in a place where it would eventually enter water frequented by fish.

A deleterious substance is any substance or water containing a substance that would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water.

The Department of Fisheries and Oceans is responsible for the administration of the Act.

Any person who contravenes the parts of the *Fisheries Act* that deal with fish habitat and pollution prevention can be guilty of an offence punishable on summary conviction or an indictable offence. Depending on which section is breached, whether it is a summary or indictable offence and whether it is the first or subsequent offence, the person can be fined up to a maximum of \$1,000,000 or imprisoned for up to three years, or both. The offender can be

held responsible for all costs and expenses associated with measures taken to prevent the deposit of a deleterious substance or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result from such a deposit, and to commercial fisherman for loss of income.

Liability under the Act for contravention of these sections is absolute and does not depend on proof of fault or negligence. However, there is no liability if the accused can establish that the occurrence giving rise to liability was wholly caused by an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or an act or omission with intent to cause damage by a person other than a person for whose wrongful act or omission the accused person is by law responsible.

If any contravention of this Act is committed on or continues for more than one day, it constitutes a separate offence for each day on which it occurs. Companies, officers, directors, employees and agents can be found liable under the Act; however, there is a statutory due diligence defence under this part.

No person can be convicted of an offence if the person establishes that the person exercised all due diligence to prevent the commission of the offence or reasonably and honestly believed in the existence of facts that, if true, would render the person's conduct innocent. If a person acquires a monetary benefit as a result of contravening the Act, the court can order that the amount of the monetary benefit be paid as an additional fine.

No proceedings may be commenced later than two years after the occurrence to which the proceedings would relate could reasonably be expected to have become known.



13.3 For More Information

The information provided in this manual regarding the legal obligations of cow/calf producers in Alberta is for information purposes only and should not be relied upon as legal advice. Cow/calf producers should consult a lawyer as the facts of each situation may change the producer's legal rights, or the law may change.

Copies of the Acts and Regulations can be obtained online or via mail from the Queen's Printer, 1-780-427-4952 (toll-free, dial 310-0000 first). Web site: www.qp.gov.ab.ca.

Contact the following offices for more information.

Alberta Agriculture, Food and Rural Development (AAFRD)

Agriculture Information Centre 1-866-882-7677
Publications 1-800-292-5697
www.agric.gov.ab.ca

Natural Resources Conservation Board

1-866-383-6722
www.nrcb.gov.ab.ca

Alberta Environment

(780) 944-0313
www.gov.ab.ca/env

Department of Fisheries and Oceans

(204) 983-5000
www.dfo-mpo.gc.ca

Producers can also contact individual consultants and lawyers for more information.