

1995

CHAPTER A-12.1

An Act respecting Agricultural Operations

(Assented to April 28, 1995)

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

PART I

Short Title and Interpretation

Title

1 This Act may be cited as *The Agricultural Operations Act*.

Interpretation

2 In this Act:

- (a) **“agricultural operation”** means an agricultural operation:
- (i) that is carried out on a farm, in the expectation of gain or reward, including:
 - (A) cultivating land;
 - (B) producing agricultural crops, including hay and forage;
 - (C) producing horticultural crops, including vegetables, fruit, mushrooms, sod, trees, shrubs, flowers, greenhouse crops and specialty crops;
 - (D) raising all classes of livestock, horses, poultry, fur-bearing animals, game birds and game animals, bees and fish;
 - (E) carrying on an intensive livestock operation;
 - (F) producing eggs, milk, honey and other animal products;
 - (G) operating agricultural machinery and equipment, including irrigation pumps and noise-scare devices;
 - (H) conducting any process necessary to prepare a farm product for distribution from the farm gate;
 - (I) storing, handling and applying fertilizer, manure, organic wastes, soil amendments and pesticides, including both ground and aerial application;
 - (J) any other prescribed agricultural activity or process; or
 - (ii) that is prescribed as an agricultural operation for the purposes of this Act;
- (b) **“animal unit”** means animal unit as defined in the regulations;
- (c) **“board”** means the Agricultural Operations Review Board established pursuant to section 5;
- (d) **“contaminant”** means a substance capable of changing the quality of water or of causing water pollution;
- (e) **“department”** means the department over which the minister presides;
- (f) **“inspector”** means a person designated by the minister as an inspector for the purposes of this Act;
- (g) **“intensive livestock operation”** means the confining of any of the following animals, where the space per animal unit is less than 370 square metres:
- (i) poultry;
 - (ii) hogs;
 - (iii) sheep;
 - (iv) goats;
 - (v) cattle;
 - (vi) horses;
 - (vii) any other prescribed animals;
- (h) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (i) **“normally accepted agricultural practice”** means an agricultural practice that:
- (i) is conducted in a prudent and proper manner that is consistent with accepted customs and standards followed by similar agricultural operations under similar circumstances, including the use

- of innovative technology or advanced management practices in appropriate circumstances;
- (ii) is conducted in conformity with any standards established pursuant to the regulations; and
- (iii) meets accepted standards for establishment and expansion;
- (j) **"operator"** means a person who operates an agricultural operation;
- (k) **"person"** includes an unincorporated association or partnership;
- (l) **"plan"** means a waste management plan or a waste storage plan;
- (m) **"prescribed"** means prescribed in the regulations;

- (n) **"waste"** means any of the following that result from the operation of an intensive livestock operation:
- (i) manure;
 - (ii) contaminated surface run-off;
 - (iii) dead animals or birds or parts of dead animals or birds;
 - (iv) any other prescribed substance;
- (o) **"waste management plan"** means a document setting out the manner in which the waste from an intensive livestock operation is to be managed;
- (p) **"waste storage plan"** means a document setting out the manner in which the waste from an intensive livestock operation is to be stored;
- (q) **"water pollution"** means the addition to water of any contaminant that:
- (i) will render the water harmful to the public health; or
 - (ii) is unsafe or harmful for domestic, municipal, industrial, agricultural, recreational or other lawful uses of water.

PART II

Agricultural Nuisance Provisions

PROTECTION FROM NUISANCE CLAIMS

Protected

- 3(1) The owner or operator of an agricultural operation is not liable to any person in nuisance with respect to the carrying on of the agricultural operation, and may not be prevented by injunction or other order of any court from carrying on the agricultural operation on the grounds of nuisance where the owner or operator uses normally accepted agricultural practices with respect to the agricultural operation.
- (2) Subsection (1) does not protect a person who fails to comply with a recommendation of the board pursuant to section 17 within the time specified in the recommendation.
- (3) The protection provided by subsection (1) applies notwithstanding the occurrence of one or more of the following:
- (a) a change in the ownership of the land or buildings on or in which the agricultural operation is situated;
 - (b) the transfer of the agricultural operation;
 - (c) a change in the use of land or buildings near to the land or buildings on or in which the agricultural operation is carried on.

Onus

4 The onus of proving that the agricultural operation is causing nuisance arising from practices that are not consistent with normally accepted agricultural practices lies on the plaintiff or claimant where the plaintiff or the claimant in an action or proceeding against an operator claims:

- (a) damages in nuisance with respect to the agricultural operation; or
- (b) an injunction or other order preventing the continuing operation of the agricultural operation on the grounds of nuisance.

AGRICULTURAL OPERATIONS REVIEW BOARD**Agricultural Operations Review Board established**

- 5(1) The Agricultural Operations Review Board is established, consisting of not less than three members appointed by the Lieutenant Governor in Council after consultation with any interested organizations that the minister considers appropriate.
- (2) A person appointed pursuant to this section:
- (a) holds office at pleasure for a term not exceeding four years, and notwithstanding the expiry of his or her term, holds office until a successor is appointed; and
 - (b) may be reappointed.
- (3) The Lieutenant Governor in Council may designate one of the members of the board as chairperson and one or more of the other members as vice-chairpersons.
- (4) The chairperson is responsible for the general supervision and direction of the affairs of the board.
- (5) If the chairperson is absent or unable to act, a vice-chairperson chosen from amongst those designated pursuant to subsection (3) by the members of the board may act in place of the chairperson.
- (6) The members of the board may be remunerated for their services and receive reimbursement for expenses at rates fixed by the Lieutenant Governor in Council.

Quorum and decisions

- 6(1) A majority of the members of the board, including the chairperson or a vice-chairperson, constitutes a quorum.
- (2) Decisions of the board are to be made by majority vote, and in case of a tie, the chairperson or presiding vice-chairperson has a casting vote.

Procedure

- 7 The board may make rules governing:
- (a) the practice and procedure of the board; and
 - (b) subject to this Act and the regulations, the business of the board.

Additional powers

8 In addition to the powers conferred on them by this Act, each member of the board, including the chairperson, has all the powers of a commissioner pursuant to *The Public Inquiries Act*.

Provision for supplies and departmental services

9 The minister may provide the board with any supplies and the service of any employees under the minister's administration that the minister considers necessary for the board to carry out its powers and duties pursuant to this Act.

Board may retain services

- 10 The board may, with the approval of the minister:
- (a) engage the services of any legal counsel, consultants or technical advisers that it considers appropriate to assist the board in carrying out its functions; and
 - (b) pay the reasonable fees and expenses of the legal counsel, consultants or technical advisers.

Panels

- 11(1) Where an application is received pursuant to section 13, the chairperson may select three or more members of the board, one of whom is the chairperson or a vice-chairperson, to act as a panel of the board for the purposes of the application.
- (2) A panel of the board may exercise any of the powers or perform any of the duties of the board.
- (3) Two members of a panel, at least one of whom is the chairperson or a vice-chairperson, constitute a quorum.

(4) A decision or action of a panel is a decision or action of the board.

Board to conduct studies

12 The minister may direct the board to study any matter related to agricultural practices, and the board shall conduct the study and report its findings and recommendations to the minister.

COMPLAINTS

Application for determination

13(1) In this section and in sections 14 to 18:

- (a) **"applicant"** means a person who makes an application;
- (b) **"application"** means an application made pursuant to subsection (2).

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- (2) A person who is aggrieved by a disturbance arising from an agricultural operation may apply in writing to the board for a determination as to whether the disturbance arises from a normally accepted agricultural practice, and if not, what action should be taken to achieve compliance with normally accepted agricultural practices.
 - (3) An application is to be in a form acceptable to the board and must contain:
 - (a) the name and address of the person making the application;
 - (b) the name and address of the person carrying on the agricultural operation;
 - (c) a statement of the nature of the complaint; and
 - (d) any other information required by the board.
 - (4) An application is to be accompanied by any prescribed fee.
 - (5) The board may require that an applicant give notice of the application, in a form and manner acceptable to the board, to the operator and any person specified by the board.
 - (6) The parties to an application are:
 - (a) the applicant;
 - (b) the owner or operator of the agricultural operation; and
 - (c) any person added as a party by the board.
 - (7) Where an application is made to the board pursuant to this section, the board may:
 - (a) conduct hearings at any times and any places within Saskatchewan that the board considers appropriate;
 - (b) inspect any agricultural operation that is directly or indirectly involved in the application, or authorize any member of the board or any other person to conduct an inspection; and
 - (c) appoint or direct any person to inquire into and report on the matter that is the subject of the application.

Application to precede nuisance action

- 14(1)** Notwithstanding any other Act or law, a person may not commence an action in court for nuisance arising from an agricultural operation, or apply 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, unless the person has, at least 90 days previously, applied to the board pursuant to section 13.
- (2) The validity of an application to the board pursuant to section 13 is not affected by whether or not an action in nuisance is subsequently commenced.

Investigation and resolution of dispute

- 15(1) On receiving an application, the board may:
- (a) inquire into and endeavour to resolve a dispute between the applicant and the owner or operator of the agricultural operation with respect to which the application is made;
 - (b) determine what constitutes a normally accepted agricultural practice with respect to the agricultural operation; and
 - (c) determine if the agricultural operation was established in an acceptable manner.
- (2) The board shall provide the parties to an application with an opportunity to make representations to the board and to be represented by counsel before the board at their own expense.
- (3) The board may accept any evidence that it considers appropriate and is not bound by any rules of law concerning evidence.

Mediation

- 16(1) For the purposes of this Act, the board may appoint a person as mediation officer to assist the parties to resolve a dispute.
- (2) The board may pay any reasonable fees and expenses of a mediation officer.
- (3) On its own volition or on the written request of an applicant or the owner or operator of the agricultural operation with respect to which the application was made, the board may refer a matter in dispute to a mediation officer to assist the parties to resolve their dispute by means of mediation.
- (4) A mediation officer shall, within 45 days of the referral, or within the period mutually agreed to by the parties, report to the board the results of the mediation.
- (5) A matter before the board is adjourned from the time it is referred to the mediation officer until the time that the mediation officer makes his or her report.
- (6) The time mentioned in section 14 does not run during the time the matter is referred to the mediation officer.
- (7) Evidence arising from anything said, evidence of anything said, or evidence of an admission or communication made in the course of mediation is not admissible in any cause or matter or proceeding before a court, except with the written consent of the mediator and all parties to the cause or matter in which the mediator acted.

Decision of the board

- 17(1) If the board is unable to resolve the dispute between an applicant and the owner or operator of an agricultural operation, the board may:
- (a) dismiss the complaint if the board is of the opinion that:
 - (i) the disturbance complained of results from a normally accepted agricultural practice;
 - (ii) the subject-matter of the application is trivial;
 - (iii) the application is frivolous or vexatious, or is not made in good faith;
 - (iv) the subject-matter of the application is not a nuisance; or
 - (v) the applicant does not have a sufficient personal interest in the subject-matter of the application;
 - (b) if the board is of the opinion that the disturbance complained of does not result from a normally accepted agricultural practice, recommend that the owner or operator, by a specified date:
 - (i) cease the practice causing the disturbance; or
 - (ii) modify the practice in the manner set out in the recommendation so as to be consistent with normally accepted agricultural practices.
- (2) The board shall give a copy of its decision to each of the parties, together with written reasons for the decision.
- (3) A court shall consider and shall give primary consideration to a decision of the board respecting an agricultural operation in any subsequent action in nuisance respecting that agricultural operation.
- (4) A document purporting to be a decision of the board and to have been signed by the chairperson or a vice-chairperson of the board is admissible in evidence without proof of the signature or official position of the chairperson or vice-chairperson.

Injunction proceedings in abeyance

- 18 Notwithstanding any other Act or law, when an agricultural operation is the subject of an application, no injunction proceedings may be commenced or continued with respect to the agricultural operation until the board has made a decision pursuant to section 17, and, if the board has made a recommendation, the date for compliance with the recommendation has passed.

Intensive Livestock Provisions**Plan required**

19(1) No person shall store the waste from an intensive livestock operation that belongs to a class prescribed as a class of intensive livestock operation for which a waste storage plan is required, except in accordance with a waste storage plan approved by the minister.

(2) No person shall manage the waste from an intensive livestock operation that belongs to a class prescribed as a class of intensive livestock operation for which a waste management plan is required, except in accordance with a waste management plan approved by the minister.

Application for plan

- 20**(1) A person who requires approval for a plan shall:
- (a) apply to the minister for approval in a form acceptable to the minister;
 - (b) provide the minister with any other information the minister may require; and
 - (c) pay any prescribed fee.
- (2) Before approving an application, the minister may refer the application, the plan and any associated reports and other related information to any departments or agencies of the Government of Saskatchewan, municipalities or other governments, organizations or persons that the minister considers appropriate, for their examination and comment.

Approval of plan

- 21**(1) The minister may approve or refuse to approve a plan.
- (2) The minister shall not approve a plan unless the minister is satisfied that:
- (a) all the requirements of this Act and the regulations have been met;
 - (b) pollution of either ground or surface water will not occur as a result of the intensive livestock operation; and
 - (c) adequate provision has been made for the management of waste.
- (3) A person who acquires an intensive livestock operation for which an approval has been granted is, for the purposes of this Act, deemed to be a person whose plan has been approved.

Terms

- 22**(1) When approving a plan, the minister may impose any terms that the minister considers appropriate.
- (2) Every person whose plan has been approved shall comply with any terms imposed pursuant to subsection (1).

Inspectors

- 23**(1) The minister may designate any employees of the department as inspectors for the purposes of this Part.
- (2) An inspector may inspect any intensive livestock operation for the purpose of enforcing the provisions of this Part.
- (3) An inspector may enter, at any reasonable time and with consideration for generally accepted practices concerning the health and sanitation of livestock, on any land and into any premises, other than a dwelling house, for the purposes of performing his or her responsibilities, and is to be afforded a reasonable opportunity for a thorough inspection.

Suspension or cancellation of approval

24(1) Subject to subsections (2) to (4), the minister, on the recommendation of an inspector, may suspend or cancel the approval of a plan where, in the opinion of the minister:

- (a) a person whose plan has been approved fails to construct the waste storage facilities for which the plan was approved within three years from the date the plan was approved; or
- (b) a person whose plan has been approved fails to comply with:
 - (i) the plan;
 - (ii) this Act or the regulations; or
 - (iii) any term imposed on the plan by the minister.

(2) The minister shall not suspend or cancel approval of a plan without giving the person subject to the plan an opportunity to be heard.

(3) Notwithstanding subsection (2), where the minister considers that there is an immediate danger of pollution of surface or ground waters, the minister may suspend or cancel approval of a plan without giving the person an opportunity to be heard.

(4) Where the minister suspends or cancels approval of a plan pursuant to subsection (3), the minister shall notify the person subject to the plan as soon as possible that the approval has been suspended or cancelled and give the person an opportunity to be heard within 15 days of the date of the suspension or cancellation.

Power of minister to make orders

25 Where the minister, on the advice of an inspector, is of the opinion that an intensive livestock operation is being conducted in a manner that creates a danger of surface or ground waters being polluted, the minister may make an order requiring the person who operates the intensive livestock operation to correct the situation giving rise to the danger of pollution within a specified time.

Offence and penalties

26(1) Every person who:

- (a) stores the waste from an intensive livestock operation that belongs to a class prescribed as a class of intensive livestock operation for which a waste storage plan is required in a manner that is not in accordance with a waste storage plan approved by the minister;
- (b) manages the waste from an intensive livestock operation that belongs to a class prescribed as a class of intensive livestock operation for which a waste management plan is required in a manner that is not in accordance with a waste management plan approved by the minister;
- (c) contravenes any term imposed on a plan held by that person;
- (d) fails to comply with an order made pursuant to section 25; or
- (e) obstructs or hinders an inspector in the performance of his or her responsibilities;

is guilty of an offence and liable on summary conviction to a fine of not more than \$50,000, and, in the case of a continuing offence, to a further fine of not more than \$1,000 for each day during which the offence continues.

(2) In addition to any penalty imposed with respect to a contravention described in clause (1)(a), (b) or (c), the convicting judge or court shall order a person who is convicted of the offence to comply with any terms that he or she has contravened.

PART IV**General****Immunity from liability**

27(1) No action lies or shall be instituted against:

- (a) the minister;
- (b) the board or any member of the board;
- (c) an officer of, or consultant or technical adviser to, the board;
- (d) a mediation officer;
- (e) any employee or officer of the department; or
- (f) an inspector;

for any loss or damage suffered by any person by reason of anything in good faith done, attempted to be done or omitted to be done, pursuant to or in the exercise or supposed exercise of any power, function or duty conferred by this Act or the regulations.

(2) When acting in good faith pursuant to this Act, the Crown, the minister, the board and any inspector are not liable for any damage caused by a decision relating to a system of inspections, evaluations, examinations or

investigations, including but not limited to a decision relating to their frequency and the manner in which they are carried out.

Regulations

28 The Lieutenant Governor in Council may make regulations:

- (a) prescribing agricultural activities and processes and agricultural operations for the purposes of clause 2(a);
- (b) defining "**animal unit**" and, for that purpose, may prescribe different definitions of animal unit for different classes of animals;
- (c) prescribing animals for the purposes of clause 2(g);
- (d) prescribing classes of intensive livestock operations for the purposes of subsections 19(1) and (2);
- (e) prescribing provisions that are required to be included in plans and the format of plans;
- (f) prescribing fees for the purposes of this Act;
- (g) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (h) respecting standards for normally accepted agricultural practices;
- (i) excluding specific activities from the application of this Act;
- (j) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (k) respecting any other matter that the Lieutenant Governor in Council considers necessary to carry out the purposes of this Act.

PART V

Repeal, Consequential, Transitional and Coming into Force

S.S. 1983-84, c.P-16.1 repealed

29 *The Pollution (By Livestock) Control Act, 1984* is repealed.

S.S. 1986-87-88, c.C-12.1 amended

30 Clause 6(b) of *The Clean Air Act* is repealed.

Transitional

31(1) Notwithstanding the repeal of *The Pollution (By Livestock) Control Act, 1984*, every permit issued pursuant to that Act that is valid immediately before the coming into force of this Act is deemed to be a plan approved pursuant to this Act.

(2) The terms and conditions of a permit to which subsection (1) applies respecting water pollution are deemed to be terms imposed on a plan pursuant to this Act.

(3) The terms and conditions of a permit to which subsection (1) applies respecting nuisance are to be considered by the board in an application pursuant to section 13.

(4) Where the holder of a permit to which subsection (1) applies has not constructed the intensive livestock operation for which the permit is issued within three years of the coming into force of this section, the permit ceases to be valid.

Coming into force

32 This Act comes into force on proclamation.