

I. OVERVIEW

A. Background on Moratorium

Section 16.4 of *The Environment Act's Livestock Manure and Mortalities Management Regulation* ("LMMMR") imposed a temporary restriction on the further growth of pig agricultural operations in Manitoba while the Clean Environment Commission ("CEC") conducts a review of the environmental sustainability of those operations in the province. As a result of this restriction, the Director's authority to issue permits for manure storage facilities has been suspended until the CEC has completed its review and submitted its report to the Minister. The Director's authority to issue permits regarding confined livestock areas capable of handling 10 animal units or more of pigs has also been temporarily suspended until that time.¹

The suspension of permits does not, however, apply if an application for a permit for a manure storage facility or confined livestock area was received before this provision came into effect or if the applicant obtained the required approval of a conditional use permit pursuant to s. 116 of *The Planning Act*.

B. Terms of Reference of the CEC's Review

On November 8, 2006, the Minister of Conservation directed the CEC to conduct a review and produce a report on the environmental sustainability of the hog industry in Manitoba.² As part of this review, the CEC was ordered to hold public meetings prior to providing its advice and recommendations.

Terms of Reference were issued by the Minister to the CEC to guide the review, as follows:

1. The CEC, as part of its investigation, will review the current environmental protection measures now in place

1 According to s. 16.4(3) of the LMMMR, there are exceptions to the suspension of the Director's authority, for example if the manure in a storage facility is subjected to anaerobic digestion in a manner acceptable to the Director or another similar or better environmentally sound treatment acceptable to the Director, or if a permit is required to repair the facility to improve the handling of manure in an environmentally sound manner. According to s. 16.4(4) of the LMMMR, an exception may be made if the permit is required to repair the facility to improve the handling of manure in an environmentally sound manner.

2 The review was ordered pursuant to s. 6(5)(a), (b) and (c) of *The Environment Act*, which states: "The commission shall, upon request of the minister, (a) provide advice and recommendations to the minister; (b) conduct public meetings or hearings and provide advice and recommendations; (c) conduct investigations into specific environmental concerns;"

relating to hog production in Manitoba in order to determine their effectiveness for the purpose of managing hog production in an environmentally sustainable manner.

2. The CEC investigation must include a public component to gain advice and feedback from Manitobans. This public component should be conducted by means of public meetings in the various regions of Manitoba to ensure broad participation from the general public and affected stakeholders.

3. The CEC investigation should include a review of the contents of the report prepared by Manitoba Conservation entitled "An Examination of the Environmental Sustainability of the Hog Industry in Manitoba".

4. The CEC will, as part of this investigation, take into account the efforts underway in other jurisdictions to manage hog production in a sustainable manner.

5. As part of its investigation, and based on public feedback, the commission will consider various options and make recommendations in a report to the Minister on any improvements that may be necessary to provide for the environmental sustainability of hog production in Manitoba.³

The scope of the CEC's investigation is to inquire into the impact of the hog production industry on the sustainability of Manitoba's environment, and to also integrate economic, human health, and social factors into its analysis and recommendations. The CEC advised those wishing to make representations at the public meetings that it is particularly interested in hearing about:

- nutrient management
- manure management
- land use planning and approval
- groundwater quality
- groundwater supply
- surface water quality
- soil quality
- odour
- disease transmission
- climate change

³ The Minister's letter of November 8, 2006, together with the Terms of Reference, are found at Tab A.

- environmental liability
- the approach taken to these issues in other jurisdictions⁴

C. The Public Interest Law Centre's Contribution to the Review

The Public Interest Law Centre (“PILC”) celebrated its 25th anniversary this year and over the course of those 25 years has participated in numerous hearings before regulatory bodies. PILC has represented Manitoba consumers, seniors and First Nations across the province on many occasions before the Public Utilities Board, the Canadian Radio-Television and Telecommunications Commission and the CEC.

When participating in a public process such as a regulatory proceeding, PILC strives not only to zealously advocate on behalf of its clients, but is also driven by a belief that encouraging and promoting public awareness and debate is equally important. PILC also believes in participating in a responsible manner by testing and challenging evidence put forward by the parties to determine its reliability and credibility, and also by bringing forward as much relevant information as possible so that well-informed and well-reasoned decisions may be made.

PILC is mandated under *The Legal Aid Manitoba Act* to take on cases in the public interest and that expressly includes environmental matters. The cases in which PILC has been involved over the past 25 years have also given it deep roots in promoting and protecting democracy, open and transparent decision-making, freedom from arbitrary state action, citizen empowerment and due process.

Unlike PILC's previous involvement in proceedings before regulatory bodies such as the CEC, it is not representing a specific client at this review. This submission is being made solely on behalf of PILC.

To prepare for this review and to appreciate the myriad of opinions regarding the state of the hog industry in Manitoba, we reviewed material provided to us by groups such as Beyond Factory Farming and also the written submission of the Manitoba Pork Council (“MPC”) to get the industry's perspective. That review quickly revealed two fundamental concerns that formed the basis of our submission, namely:

1. The hog industry in Manitoba has drastically changed, as according to the MPC, pig production in the province is 10 times what it was 30 years ago. In

⁴ Guide to Public Participation in the Clean Environment Commission Hog Production Industry Review, at Tab B

the 1950's the largest hog barn housed 50 to 100 sows, whereas today the average intensive livestock operation ("ILO") holds 500. Manitoba Conservation called the pace of change in the province's livestock sector "dramatic as producers respond to new market forces and economic opportunities".⁵ The significant increase in pig production and the shift to more intensive livestock operations led us to question whether the law has caught up with those changes or whether they lag behind and are no longer responsive to the reality of today's agricultural climate.

2. There is likely much we still do not know about the environmental impacts of ILOs and how to address them. The industry acknowledges that we are only at the stage of "promising strategies" to eliminate or mitigate some of the known environmental damage ILOs cause, so it is too soon to tell if what we are doing is effective. Further, the industry also admits that we have no information about certain impacts or mitigation strategies, so there is much yet to discover.⁶

Rapid growth in the hog industry, combined with a lack of knowledge of the long term effects of ILOs and effective solutions, led us to question whether a "full speed ahead, damn the torpedoes" approach may have been taken up until this point. PILC applauds the decision by the Minister to impose the moratorium on new hog barns until the CEC completes its report, as it is prudent to take a step back and take a sober second look before we go past the point of no return and we are left with irreparable harm to our environment.

Leaving the scientific evidence and social impacts of the hog industry to the experts, PILC believes it can make a contribution and meaningfully participate in

5 Manitoba Conservation report entitled "An Examination of the Environmental Sustainability of the Hog Industry in Manitoba", 2003, p. 5, at Tab C.

6 In its written submission, the MPC admits there are only "promising strategies" with respect to reducing some environmental impacts or that there is no research at all. The following are quotes from the MPC's submission: (1) Information to adequately mitigate nutrient transfer by runoff and erosion is not yet available for the Manitoba situation. Much research is required to develop mitigation strategies that will prove to be effective in reducing transport of nutrients in various landscapes, soil types, cropping systems, tillage systems and type and source of amendment. (p. 4-3); Research is needed to develop methodology to economically and environmentally sustainably transport manures and/or manure constituents from high livestock density areas to crop land elsewhere. Studies on methods of economically and environmentally transporting nutrients among various agricultural systems warrants much more attention than that received to date. (p. 4-4, 4-40); Diets using amino acids to replace proteins in regular feeds are challenging to formulate and adding particular amino acids to replace regular proteins are not yet cost effective. More research in this area is needed before a scientifically sound and cost effective method of diet manipulation to reduce nitrogen excretion and ammonia volatilization from barns is available to producers. (p. 4-7); Strategies to reduce inputs and increase outputs of nutrients are needed to increase environmental sustainability. (p. 4-38); Further work and research relating to a reliable in-field test for estimating manure phosphorous is needed. (p. 5-11)

this process through a review and analysis of the legislation and regulations that govern it.

D. The Hog Industry in Manitoba

The traditional manner of raising hogs on small family farms has been replaced in no small part with ILOs where hogs are now raised in specialized barns in computer controlled environments.⁷ Some operators raise hogs from birth until they are sent to market, while others choose to concentrate on a specific stage of the process, for instance by just purchasing piglets.

According to the MPC, the mid 1990's to the early 2000's saw a significant growth in the hog industry due to an open market, new slaughter facilities and an increased U.S. demand. In 2003 this growth began to decline and in 2006 there was less than 2% growth. Industry predictions are that the future looks somewhat uncertain, as annual increases in production since 1990 may be curtailed or even reversed by 2007 because of the current moratorium on hog barn expansion and diminished returns due to increased costs, including costs associated with stricter waste treatment regulations. Having said that, the number of pigs in Manitoba is significant and is expected to reach 9.8 million by 2011.⁸

The drastic increase in the number of pigs produced in Manitoba since the 1970's is contrasted with a corresponding decline in the number of pig farms. According to the MPC, in 1971 there were 14,200 pig farms in the province but in 2006 that number dropped to only 1,300. From those statistics, it is evident that the concentration of pigs has intensified significantly and it is our understanding that south-eastern Manitoba has the greatest number of ILOs.

There is no question that the hog industry is a critical part of the province's economy, with Manitoba exporting 60% of the country's pigs. According to the MPC, however, Manitoba has dropped to 4th place in Canada in pork exporting after Quebec, Ontario and Alberta. According to the MPC, lower hog prices, coupled with higher feed and energy costs may make it difficult for some operations to generate a profit in 2007.

7 The written submission of the MPC describes five such specialized barns, namely: (1) gestation barns where pregnant sows are housed; (2) farrowing rooms where sows deliver their piglets; (3) nursery barns where the piglets are raised; (4) feeder barns where the piglets are housed until they reach market weight; and (5) breeding barns that contain anywhere from 3 to 25 gilts in a pen with the boar kept separately.

8 It is recognized that the number of pigs in Manitoba at any given time changes and that the 9.8 million figure represents the number of pigs in the province on an annual basis.

It is against this backdrop of a still profitable and significant part of Manitoba's economy, albeit with elements of uncertainty in its future, that we must consider the environmental impacts of ILOs to determine if the law provides adequate protection.

E. COMPETING INTERESTS

There is no shortage of opinion when it comes to the hog industry in Manitoba and there is often fierce debate among stakeholders at polar opposites of the spectrum. With the industry on one end, those strongly opposed to the existence of ILOs in Manitoba on the other, and others somewhere in between, there are many voices that must be heard and taken into account if we are to have an economically viable and environmentally sustainable agriculture sector in the province.

We understand and appreciate the viewpoints expressed by all interested parties to the debate, and as this submission is made solely on behalf of PILC, we are not advocating one over the other. Rather, we have limited our focus exclusively to the legislative framework and process issues with a view to determining whether the law adequately addresses all concerns and balances competing interests fairly.

We have undertaken our legislative review with the following perspectives in mind:

(a) The industry

Based on our review of the submissions made by the MPC, we recognize its concerns about over-regulation and the fear it will discourage producers from expanding their operations and increase costs to the point it will leave them unable to compete in a global market. Further, we understand the industry believes that since some of the regulations now governing ILOs are fairly new, an adjustment period is required before any thought should be given to even more regulation. We also take note of the industry's position that it has been unfairly targeted based on misperceptions and inaccurate information about its impacts on the environment and the quality of life in rural communities.

(b) The general public

Public consultation undertaken by the CEC identified several issues of concern to Manitobans regarding the hog industry. In its 2003 report, Manitoba Conservation summed them up as follows:

- The cumulative impacts of ILOs, particularly in areas of the province that have high density livestock development;
- The effect of ILOs on ground and surface water quality caused by the leaching of excess nutrients or run off with heavy rainfall, floods and melting snow. Excessive levels of phosphorus and nitrogen in surface and ground water are known to produce algae and aquatic plants that change aquatic life habitat, reduce essential levels of oxygen, clog fishing nets, and affect the quality of drinking water;
- Concerns over livestock manure management and storage relating to odour and the possibility that it will degrade ecosystems if not done properly;
- The location of ILOs and the need to take that into account at the initial planning stage to address issues of siting, setback and odour;
- Managing livestock mortality to ensure it is done in accordance with acceptable disposal methods;
- The risk of disease transmission through the transfer of pathogens either from animals to people or vice versa.⁹
- Concerns regarding the inhumane treatment of pigs and the conditions in which they live. For example, gestation stalls that do not allow pregnant sows room to move, separating pigs instead of allowing them the social interaction they need, inadequate or non-existent access to the outdoors where they may explore and satisfy their curious nature, and not providing straw for comfort and rooting.

(c) Municipal authorities

The well know controversy over the recently amended *Planning Act*, that some might argue has shown no sign of abating, has left some municipal authorities feeling their hands are tied when it comes to land use planning. Those opposed to the provisions of the Act prohibiting local authorities from imposing conditions beyond those set by the provincial government regarding minimum siting and setback requirements, believe it prevents them from making decisions in the best interests of their communities or against the express wishes of those they represent. Some see ILOs as a threat to the traditional rural way of life in Manitoba that will lead to the extinction of the family farm.

⁹ All of the above issues of concern are from Manitoba Conservation's report entitled "An Examination of the Environmental Sustainability of the Hog Industry in Manitoba", 2003, p. 8, at Tab C.

(d) Government

Our legislative review revealed provincial laws and regulations designed to address specific concerns or balance competing interests. For example, a clear intent to preserve and protect Manitoba's rural communities and the family farm can be seen from legislation such as *The Manitoba Agriculture Services Corporation Act*, *The Agricultural Societies Act*, *The Family Farm Protection Act*, *The Farmlands Ownership Act* and *The Farm Practices Protection Act*.

On the other hand, the amended *Planning Act* and its limits on local government authority reflects the Province's acknowledgment of the importance of the hog industry to Manitoba's economy and that it is not opposed to the expansion of agricultural operations provided certain conditions are met.

Lastly, there is legislation that confirms a genuine commitment on the part of the government to protect the environment and our natural resources. In particular, *The Water Rights Act*, *The Water Protection Act* and *The Water Resources Conservation Act* are intended to protect Manitoba's numerous lakes and water bodies given their critical importance to the viability of other economic sectors, our quality of life both now and in the future, and the impacts of pollution and contamination on the environment in general.

F. SUMMARY OF OUR FINDINGS AND CONCLUSIONS

(a) Approach to the legislative review

PILC conducted an extensive review of existing legislation either directly governing the hog industry in Manitoba, for example by specifically requiring a permit or license, or touching on it in a more peripheral way.

In order to accomplish this task, we asked several questions, in particular:

- What is the current legislative framework governing the hog industry in Manitoba?¹⁰
- Is there sufficient regulation of the hog industry to eliminate or mitigate its impacts on the environment to the greatest extent possible?
- If there is not sufficient regulation, what more can be done to alleviate what we believe are very real apprehensions and fears about the state of the hog industry in Manitoba?

¹⁰ Although there is federal legislation relating to the hog industry, for the purposes of this submission, we have limited our reviewed solely to provincial legislation.

- What can be done so that Manitobans may take comfort and assurance that our environment will be protected?

To answer those questions, we focused on three areas we believe are critical to the CEC's review, namely:

1. Open and transparent decision-making. By that we mean whether the process in place when, for example licenses or permits are issued, is fair, allows for meaningful public input, and results in well-informed and well-reasoned decisions. To that end, we focused on what decisions are made under each piece of legislation or regulation and examined the process to determine if it is consistent with concepts such as procedural fairness, due process and consultation;
2. Monitoring of the industry through such things as ongoing research, studies, investigations and gathering of statistics to ensure the most accurate, objective and current scientific evidence is available. We also consider accessibility by the public to this information as a key element of the monitoring process. In our analysis we considered how information obtained through monitoring would assist government departments in fulfilling their statutory obligations and to meet the express objectives and purposes of the law;
3. Enforcement of the law so there is public confidence that violators who deliberately fail to comply with their legal obligations and cause environmental damage and harm will be prosecuted.

(b) Summary of Findings and Conclusions

The following government departments have jurisdiction in one form or another and to varying degrees over the hog industry:

Manitoba Agriculture, Food & Rural Initiatives
Manitoba Conservation
Manitoba Water Stewardship
Manitoba Health
Manitoba Intergovernmental Affairs

We found overlap between departments in the sense that regulations that would be relevant to the hog industry are allowed under more than one piece of legislation. We have no knowledge as to the degree of coordination that takes place among the various departments when decisions are made or when regulations are established. Our only comment and recommendation is that we

urge as much coordination and consultation among departments as possible so as to avoid conflicting regulations and to ensure there are no gaps pertaining to areas of concern.

Our review revealed that currently hog producers in Manitoba are required to obtain the following permits and approvals:

- a manure storage permit under the LMMMR
- a livestock confinement permit under the LMMMR
- a water rights permit under *The Water Rights Act*
- a conditional use permit under *The Planning Act*

In addition to the above, hog producers must comply with a number of laws that pertain to their operations, namely:

The Animal Care Act
The Animal Diseases Act
The Contaminated Sites Remediation Act
The Farmlands Ownership Act
The Farm Practices Protection Act
The Ground Water and Water Well Act
The Planning Act
The Public Health Act
The Water Protection Act
The Water Resources Conservation Act
The Water Rights Act

Based on our review, we have not made any recommendations as to whether there should be any new legislation enacted. In our view there is legislation in place that addresses the concerns of all stakeholders, the question is whether or not it is effectively administered and appropriately applied. There is ample jurisdiction in the current law for government departments to regulate and monitor the hog industry to eliminate or reduce its environmental impacts. What we believe is required, if it is not already being done, is a concerted effort on the part of the various government departments having jurisdiction over the hog industry to coordinate their efforts to the greatest extent possible. This includes ensuring that ongoing research and monitoring of the hog industry is made a priority, that advice and assistance is sought from independent experts prior to decisions being made, and that there be public consultation with all stakeholders at every possible step of the process.

II. CURRENT LEGISLATIVE FRAMEWORK

What follows is a summary of the law as it now stands, and although some of the legislation reviewed may be beyond the scope of the CEC's review, we felt it was worth mentioning for the sake of completeness. In each summary we have identified the government department responsible for its administration, the purpose and intent of the legislation, and its provision in general terms with a view to the three key points noted above. Our specific comments and recommendations are set out in the section that follows.

1. *The Manitoba Agriculture Services Corporation Act*

This legislation is administered by Manitoba Agriculture, Food and Rural Initiatives and establishes the Manitoba Agriculture Services Corporation as an agent of the Crown. The Corporation's primary functions are lending and insurance, however its overall broader mandate is to support and encourage sustainability, development and diversification of agriculture and the rural economy of Manitoba by providing programs and services.

2. *The Agricultural Societies Act*

This legislation is administered by Manitoba Agriculture, Food and Rural Initiatives. It establishes "agricultural societies" whose objectives are to encourage improvement in agriculture, food production and rural living, and also to provide leadership in sustaining the social structure of rural communities. Agricultural societies have the status of a corporation and may have their own funds and assets.

3. *The Department of Agriculture, Food & Rural Initiatives Act*

This is the enabling legislation of the Department of Agriculture, Food & Rural Initiatives. It expressly gives the Department the authority to collect information and statistics relating to agriculture, food and rural life. The Act also gives the Minister the authority to carry out programs regarding agriculture, food and rural life. Agreements may be entered into with the federal government to share the cost of projects regarding the development, utilization and conservation of natural resources or regarding research and investigation. The Act also permits joint programs with the federal government, other provinces, agencies, persons or associations.

4. *The Agri-Food & Rural Development Council Act*

This legislation is administered by Manitoba Agriculture, Food and Rural Initiatives and is fairly new law, having been assented to on June 13, 2006. It establishes the Agri-Food & Rural Development Council, an advisory body to the Minister, whose responsibilities are:

- to provide the Minister with innovative ideas and options to help the Department develop long term strategies for capturing opportunities, taking advantage of Manitoba's competitive advantage in agriculture and food sectors and to work towards vibrant rural communities;
- to examine agriculture/rural economies and explore new ideas for economic growth and partnership;
- to inform the Department's long term strategic planning process; and
- at the Minister's request, to provide advice and recommendations on matters referred to it.

5. *The Animal Care Act*

This legislation is administered by Manitoba Agriculture, Food and Rural Initiatives. It sets out the obligations imposed on owners of animals, including commercial animals such as swine, so as not to impact their health or well-being. Those obligations are:

- to provide an adequate source of food and water;
- to provide adequate medical attention when an animal is ill or wounded;
- to ensure there is reasonable protection from injurious heat or cold;
- not to confine an animal to an enclosure or area:
 - with inadequate space;
 - in unsanitary conditions;
 - with inadequate ventilation; or
 - without opportunity for exercise.

Animal owners are exempt from the above legal obligations if the treatment:

- is consistent with a standard, code of conduct, criteria, practice or procedure specified in the regulations as acceptable;

- is consistent with generally accepted practices or procedures for such activity;
or
- is otherwise reasonable in the circumstances.

The Act also prohibits all persons from inflicting acute suffering, serious injury or harm, or extreme anxiety or distress that significantly impairs the health or well-being of an animal. An animal is considered to be in "distress" if it is:

- subjected to conditions that unless immediately alleviated will cause death or serious harm;
- subjected to conditions to cause acute pain;
- not provided with sufficient food or water;
- not provided with appropriate medical care;
- unduly exposed to heat or cold;
- subjected to conditions that over time will significantly impair the health or well-being, including confinement in an area:
 - of insufficient space;
 - in unsanitary conditions;
 - without adequate ventilation;
 - with inadequate opportunity for exercise;
 - where conditions cause extreme anxiety or distress.

As is the case with the obligations imposed on animal owners, there are exemptions under this provision, namely if the treatment occurs in the course of an "accepted activity", which expressly includes agricultural uses of animals, animal slaughter and euthanasia of animals. An activity is considered to be accepted if it:

- is consistent with a standard, code of conduct, criteria, practice or procedure specified in the regulations;
- is consistent with generally accepted practices or procedures for such activity and does not cause needless suffering;
- is otherwise reasonable in the circumstances but does not cause needless suffering; or

- is not prohibited by the regulations. According to *Animal Care Regulation 126/98*, prohibited practices include:
 - keeping or confining an animal in a facility that contains items or debris that constitute, or is in a state of disrepair that constitutes, a hazard likely to injure the animal;
 - confining animals together where there is a high risk of injury to or distress on the part of any of the animals either:
 - by, or due to the presence of, any of the other animals;
 - by or due to the means of confinement; or
 - by or due to the physical characteristics of the place of confinement.

Animal Care Regulation 126/98 incorporates by reference and specifies as an accepted activity the Recommended Code of Practice for the Care and Handling of Farm Animals: Pigs, published by Agriculture and Agri-Food Canada. For ease of reference, we have attached this Code at Tab D.

Animal protection officers appointed under the Act may inspect any place where there are reasonable grounds to believe a commercial animal is in distress. An animal may be seized and provided care to relieve its distress, or destroyed if it is inhumane to allow it to live. In such a case, the animal owner is liable for the associated costs of care.

Contravention of the Act by a person or corporation is an offence and both are liable upon conviction to fines and/or imprisonment. In addition, if a person is found guilty of an offence, a judge may prohibit that person from owning or having possession or control of animals, or of a number or type of animal, for a period of 5 years for a first offence and up to 10 years for a subsequent offence. In addition, a judge may also direct that any other animals owned by that person become the property of the Crown.

The Act allows the Minister to appoint an advisory committee to provide advice and recommendations about matters concerning its administration. Further, the Minister is given authority to make regulations regarding such things as:

- designating an activity as acceptable;
- specifying standards, codes of conduct, criteria, practices or procedures as acceptable;
- specifying prohibited practices;

- inspections by veterinarians; and
- any other matter necessary or advisable to carry out the provisions of the Act.

6. The Animal Diseases Act

This legislation is administered by the Manitoba Agriculture, Food and Rural Initiatives. The Act makes it mandatory for anyone having custody of an animal, including a "commercial animal" (which includes swine) who suspects or notices it is suffering from a disease to contact the nearest veterinarian or inspector. According to the *Reportable Diseases Regulation*, a person who suspects an animal is diseased must ensure part of its carcass is protected from deterioration and stored in a manner to preserve it for diagnostic testing.

According to the Regulation, anyone who has care and control of an animal that displays signs of a "reportable disease"¹¹ must have the animal examined by a veterinarian without delay. If upon examination the animal has a reportable disease, the veterinarian or inspector must notify the Director as soon as possible. The Director may disclose that information for the purposes of disease control, management or prevention, or protection of animal and human health and it may be shared with the federal government, other provinces and municipalities or foreign governments and to bodies whose duties/interests include:

- protecting public health;
- monitoring or reporting on safety of agriculture inputs, food, livestock or livestock products;
- monitoring or reporting on the biological, chemical and physical integrity of agriculture inputs, food, livestock or livestock products;
- marketing boards;
- persons who may be exposed to the disease; and
- any other person if the Director considers it to be in the public interest.

¹¹ A "reportable disease" is one expressly designated as such in *Reportable Disease Regulation 59/2007*. In addition to designating specific diseases, the Regulation also incorporates those listed under the federal *Health of Animals Act*. Reportable diseases relating to swine include, for instance, classical swine fever and swine vesicular disease.

For the public interest, animals suspected to be diseased may be seized for examination, treatment or quarantine.¹² Also for the public interest, if there are reasonable and probable grounds to suspect a place has or continues to contain a diseased animal, that place, or a larger area surrounding that particular place, may be quarantined. To prevent disease or prevent an outbreak or spread of a disease, the Director may take other action, including prohibiting or restricting the movement of animals from location to location within Manitoba or into/out of the province.

The Act imposes a condition on an owner or person having custody of an animal to thoroughly clean and disinfect the place in which the animal is kept, including a vehicle for transportation.

The Director may destroy or dispose of a diseased animal or exhume one for examination and investigation. The Director may destroy an animal even if it is not diseased if there are reasonable and probably grounds to believe that market conditions or other factors make it an undue hardship for the owner to comply with the obligations imposed by *The Animal Care Act*.

In accordance with the regulations, the Director may designate the health status of an area or livestock production operation. Inspectors appointed under the Act may declare a place where an animal has or is suspected to have a disease as an "infected place" and may prescribe its geographical limits. If that is done, no one may remove or bring anything in or out of the infected place. Further, adjoining areas within one mile of the infected place may also be treated as such.

Unless the Director otherwise directs, the disposal of dead livestock must comply with the provisions of *The Clean Environment Act*¹³. The Minister may order the collection of dead animals or animal waste and have them sent to registered disposal plants.

The control of veterinary drugs, medicines and vaccines also falls under the parameters of the Act and prohibits their sale or distribution by anyone other than persons registered under either *The Pharmaceutical Act* or *The Veterinary Medical Act*.

It is an offence to fail to comply with the Act, the regulations or an order issued by the Director or an inspector. Each day the contravention continues is considered

12 This provision also applies to a "vector", which is defined in the Act as meaning an animal by which a disease causing agent may travel from an infected animal or place to an uninfected one; and also to a "fomite", which is defined in the Act as meaning a substance or thing by which a disease causing agent may travel from an infected or affected animal or place to an uninfected or unaffected one.

13 Section 11(1) refers to *The Clean Environment Act*, however that legislation was repealed and replaced with the current *Environment Act*.

to be a separate offence and upon conviction, a person or corporation is liable to fine of not more than \$10,000 or imprisonment for up to one year, or both.

The Act provides for the making of regulations regarding a number of things, including:

- authorizing the Director to collect information from any source about farms and commercial places where animals are kept for agriculture purposes, including names and contact information, geographical limits and the kinds of animals kept there;
- the collection and disclosure of information;
- the quarantine, isolation, treatment, housing and destruction of diseased animals;
- how to treat diseased animals;
- the manner in which commercial animals may be transported, delivered, shipped and sold;
- designating certain disease as reportable;
- respecting the collection of live and dead animals; and
- sanitary and disease control standards and inspection procedures.

7. *The Contaminated Sites Remediation Act*

This Act is administered by Manitoba Conservation. Its preamble sets out the principles underlying its intent and reflects the government's acknowledgment of the importance of managing contaminated sites¹⁴ and taking whatever means necessary and possible to prevent, mitigate or minimize damage to human health and the environment¹⁵. The objective of the Act is to establish a process to identify and bring together those responsible for cleaning up contaminated sites and to apportion responsibility for remediation¹⁶. The provisions of the Act apply

¹⁴ The term "site" is defined in the Act as meaning an area of the environment.

¹⁵ The term "environment" is defined in the Act as meaning all or any part or combination of the air, land and water, and includes plant and animal life.

¹⁶ The term "remediation" is defined in the Act as meaning the management of a contaminated site in order to prevent, minimize or mitigate damage to human health or the environment or to restore all or part of the site to a useful purpose, and includes any act referred to in clause 17(2)(b) (contents of a remediation order).

regardless of whether a site became contaminated before or after it came into effect.

The principal purpose of this legislation is to provide for the remediation of contaminated sites in accordance with the principles of sustainable development¹⁷, in order to reduce or mitigate the risks of further damage to human health or the environment and, where practicable, to restore contaminated sites to useful purposes. To that end, its objectives are to:

- provide for remediation of contaminated sites in accordance with the principles of sustainable development to reduce or mitigate the risks of further damage to human health or the environment and, where practicable, to restore such sites to useful purposes;
- provide a system for identifying and registering contaminated sites in Manitoba;
- establish a system for determining appropriate remedial measures and identifying persons responsible;
- establish a fair and efficient process for apportioning responsibility for the remediation of contaminated sites that:
 - applies the "polluter pays principle"¹⁸;
 - encourages persons¹⁹ responsible for remediation to negotiate the

17 The principles of sustainable development are set out in *The Sustainable Development Act* at Tab 32. For the purposes of this Act, the principles of sustainable development also include the following: (a) that government, industry and persons handling or having control of environmentally hazardous substances or products acknowledge their stewardship for the environment and human health and safety; (b) that sustaining a healthy and sound economy requires all persons engaged in economic activity in Manitoba take responsibility for the impact of their activity on the environment, the economy and the health of Manitobans; (c) that all Manitobans have a role in enhancing the long term productive capability, quality and capacity of our natural ecosystems; (d) that policies, programs and decisions relating to the management of contaminated sites take into account the need to rehabilitate and manage sites that are causing or may cause damage or injury to human health or the environment; (e) that policies, programs and decisions relating to the management of contaminants take into account the need to anticipate, prevent or mitigate adverse environmental and economic impacts; and (f) that the ecological interdependence of the provinces and territories of Canada and the nations of the world be recognized.

18 Section 21(a) of the Act describes the "polluter pays principle" as meaning that the primary responsibility for the remediation of a contaminated site lies with the person or persons who contaminated it and that they should bear the responsibility for the remediation in proportion to their contributions to the contamination.

19 The term "person" is defined in the Act as including a partnership, a club, society, association or organization, whether or not incorporated, a federal, provincial or municipal body, a school board and any agency or ministry of the Crown in right of Manitoba or Canada.

- apportionment of responsibility among themselves; and
- combines in a specialist tribunal the knowledge and skills of persons experienced in environmental contamination²⁰ and remediation.

If the Director believes on reasonable grounds that a site is contaminated, an order may issue to the owner or occupier²¹ to conduct an investigation to determine the existence, nature and extent of the contamination. In such circumstances, the owner or occupier must provide either a report or the results of a previous investigation, and if that is not satisfactory, the Director may order further investigation.

If the Director determines the site to be contaminated at a level which poses or may pose a threat to human health or safety or to the environment, the site shall be designated as such. Notice of the designation must be sent to the registered owner of the site, anyone having a registered interest in the site and also each municipality within whose jurisdiction all or part of the site is located. Further, notice of the designation must also be filed in the registry established by the Act.²²

Persons potentially responsible for remediation of a contaminated site are:

- the owner or occupier of the site;
- a person who was an owner or occupier at the time contamination occurred or at any time thereafter;
- a person who owns or has possession, charge or control of the contaminant²³;

20 The term “contamination” is defined in the Act as meaning the presence in, on or under, or the permeation or infusion of soil, sediment, surface water or ground water of or by a contaminant.

21 The term “owner or occupier” is defined in the Act as meaning (a) an owner of land that includes all or part of the site, or (b) a tenant or other person who is in possession or occupation of, or controls the use of, land that includes all or part of the site.

22 Section 55(1) establishes a registry for the purpose of collecting and making information available to the public respecting the procedures under the Act or regulations affecting sites designated as contaminated or required to be investigated for contamination. All information filed in the registry must be done so on a timely basis. According to *Contaminated Sites Remediation Regulation 105/97*, the following information must be filed in the public registry: a copy of each notice or certificate issued, or order made, under any provision of the Act; a copy of each agreement entered into or approved by the Director under any provision of the Act; a copy of each report, record or plan received by the Director under any provision of the Act; a summary of the nature and extent of contamination at a site when it has been designated as a contaminated site; any other document or record where the Director believes its filing is in accordance with the purposes of the Act.

23 The term “contaminant” is defined in the Act as meaning any product, substance or organism that is foreign to or in excess of the natural constituents of the environment at the site and that (a) has affected, is affecting or may affect the natural, physical, chemical or biological

- an owner who owned or had possession, charge or control of the contaminant immediately before the time of its release²⁴;
- a creditor of the person, if there are reasonable grounds to believe the creditor contaminated²⁵ the site;
- in case of a corporation, the Director or officer at the time of release of the contaminant and by any act, omission, direction or authorization, contaminated the site;
- a person who acted as principal of another who in course of carrying out his/her responsibilities contaminated the site;
- in the case of a corporation, a Director, officer or employee who within the scope of the appointment of employment contaminated the site or directed, required or authorized the act or omission that contaminated the site;
- a partnership;
- a person who contaminated the site or directed, required or authorized another to contaminate it;
- a trustee or receiver or receiver manager of a person described above; and
- any person designated by regulation.

There are exemptions to this general provision, for instance persons are not responsible for remediation if:

- they exercised due diligence;
- a municipality becomes owner of the site as a result of a tax sale;
- a person acquires the land through expropriation;
- the owner or occupier of land that was contaminated by reason only of the migration of a contaminant from other land not owned by him or her and, if the

quality of the environment, or (b) is, or is likely to be, injurious or damaging to the health and safety of a person.

24 The term “release” is defined in the Act as including an introduction, escape, spill or discharge of the contaminant into the environment, whether accidental or intentional, or an abandonment of the contaminant.

25 The term “contaminate” is defined in the Act as meaning by act or omission, to cause contamination or to aggravate existing contamination.

contamination occurred before he or she became owner or occupier, the person was not or could not have reasonably been aware of the contamination;

- the person provided advice or assistance regarding the handling of a contaminant or the remediation of the site and exercised due diligence in giving such advice or assistance.

The legislation also states that if in the Director's opinion a person did not contaminate a site or made an insignificant contribution to the contamination, and that person is a present or former owner or occupier and did not derive an economic benefit from the purchase or sale of the land or the remediation of the site, the Director may refuse to designate that person as being potentially responsible.

Before to the issuance of a remediation order, the Director must designate those persons who are potentially responsible and give appropriate notice. Those persons may then apply to the Director for an exemption or request that additional names be added to the list.

When issuing a remediation order, the Director may order one or more potentially responsible persons prepare and file a remediation plan. The Director shall consult with the proponents of the plan or any other potentially responsible person and may also:

- engage one or more consultants to review the plan and provide advice and recommendations;
- refer the plan to the CEC for its advice and recommendations;
- recommend to the Minister that the CEC hold public hearings before providing its advice and recommendations; and
- file a copy or summary of the plan in the registry and notify the general public or persons likely to be affected by the plan that it is available for inspection and invite their comments.

The Minister may, on the recommendation of the Director or on his or her own initiative, request the CEC hold public hearings regarding the remediation plan and provide its advice and recommendations.

A remediation order may issue to one or more potentially responsible persons and:

- may restrict or prohibit one or more uses of the site or of a product or substance derived from the site;
- may require a person or persons named in the order to effect such remediation as the Director considers appropriate, which may include one or more of the following:
 - monitoring, measuring, containing, removing, labeling, storing, destroying or otherwise disposing of a contaminant or contaminated materials;
 - carrying out measures to prevent further introduction into the environment of a contaminant, or to control or lessen the rate at which it is introduced into the environment;
 - constructing, installing, modifying, removing or destroying any equipment, facility or thing;
 - preparing and submitting plans, records or reports concerning the contamination of the site, steps undertaken to remediate the site and the effect of those steps;
 - replacing, reconstructing, rehabilitating or doing any other restorative work on contaminated materials or on all or any part of the site;
 - providing a supply of potable water sufficient to meet the needs of residential and commercial users of water within the area affected by the contamination of the site;
- may require a person or persons named in the order to:
 - contribute financially to the costs of remediation of the site incurred or expected to be incurred by the government of Manitoba or another person;
 - contribute materials, equipment or other property for use in the remediation of the site; or
 - provide security in a form and manner acceptable to the Director and subject to any conditions that the Director considers advisable;
- may specify the manner and the schedule according to which the remediation is to be carried out; and/or
- may include or incorporate by reference all or any part of a remediation plan filed with the Director.

If new information is received, the Director may amend the remediation order and cause further investigation, monitoring and testing to be carried out. Further, in the event of an emergency and if prompt attention is required to prevent or limit loss of life or damage or injury to human health or the environment, a remediation order may be issued.

In determining whether to issue a remediation order and the requirements of such an order, the Director shall consider all relevant factors, including:

- the risk to human health or the environment which the site or a contaminant of the site presents or might present;
- the current, the permitted and the planned uses of the site and of nearby properties;
- the proximity of the site to:
 - residential areas and other areas regularly occupied by people; or
 - sensitive or significant areas of the environment, as determined by the Director; and
- the physical characteristics of the site.

The Act provides for agreements between responsible persons to apportion responsibility, but any agreement must first be approved by the Director, a mediator or the CEC. Any apportionment agreement must apply the “polluter pay principle” and must also take into account such things as:

- whether reasonable steps were taken to prevent the contamination;
- whether commonly accepted industry standards were implemented at the time of release of the contaminant;
- the actions taken by the person upon becoming aware of the contamination, for instance taking steps to prevent or limit the contamination and notify the applicable authorities; and
- whether the person complied with all applicable environmental laws, orders, licenses or permits in respect of the site;
- the degree to which the person contributed to the contamination in relation to the contribution made by others; and
- the quantity and toxicity of any contaminant released into the environment.

If no satisfactory apportionment agreement is reached, a potentially responsible person may request the Director refer the matter to the CEC for a hearing.

Any person directly affected by a decision or order made by the Director may appeal to the CEC and the parties at the hearing of the appeal are the persons

directly affected by the decision and any other person added as a party by the CEC. The Director is entitled to be heard on an appeal to the CEC.

On appeal of a decision or order made by the Director, the CEC may:

- carry out any investigation or inspection that it considers necessary or advisable;
- adopt the Director's findings of fact;
- receive evidence in any manner it considers appropriate; and
- consider relevant information in the possession of the Director or that it otherwise obtained. In such circumstances, the CEC must inform the parties as to the nature of the information and give them an opportunity to explain or refute it.

In addition, all parties to an appeal have the right to a reasonable opportunity to examine all material filed with the CEC and the CEC must keep a record of the appeal.

The CEC may, on hearing an appeal, confirm, vary or rescind the decision or substitute the Director's decision with its own.

A person named in a remediation order may appeal that decision to the Minister, but only on the grounds that:

- the level of remediation required is inappropriate;
- the remedial measures are inappropriate; and/or
- the timing or manner of implementing the remedial measures is inappropriate.

On appeal, the Minister may vary, confirm or rescind the order or refer the matter back to the Director for reconsideration. Before taking such action, the Minister may also refer the matter to the CEC for a public hearing to provide its advice and recommendations.

The CEC may, on its own initiative or on the application of a party to an apportionment hearing or an appeal to it, state a case in writing for the opinion of the Court of Appeal on a question of law or jurisdiction. The Court of Appeal must hear and determine the stated case and provide the CEC with its opinion. At the hearing of the case, the Director has the right to be heard.

A decision or order of the CEC may be appealed to the Court of Appeal by either the Director or a party to an appeal, but an appeal in these circumstances may only proceed on a question of law or jurisdiction and with leave. The CEC is entitled to be heard at the application for leave to appeal and at the appeal itself.

Any person, including a corporation, who contravenes or fails to comply with a provision of the Act, the regulations, a decision or order of the Director or the CEC, or hinders, obstructs or interferes with any person acting under the authority of this Act in the performance of their duties is guilty of an offence. The penalty upon conviction of a person is a fine and/or imprisonment and the penalty imposed on a corporation is a fine. A prosecution under the Act must commence within one year after the date on which evidence sufficient to justify the prosecution came to the knowledge of an environment officer or the Director.

From time to time the Director may establish, revise or adopt guidelines that may be used by the Director, the CEC or persons responsible for the investigation or remediation of a site, so long as they are not inconsistent with the provisions of the Act or regulations. Such guidelines may be used to determine:

- the levels and nature of substances that, when present at, on or under a site constitute contamination;
- levels of contamination that require remediation;
- levels or methods of remediation that may be required to restore a site to an acceptable level of contamination;
- methods of investigating sites or of assessing risks to human health or the environment;
- what constitutes an insignificant contribution to the contamination of a site; or
- sensitive or significant areas of the environment.

The Act provides for regulations to be made regarding such things as:

- designating a class or classes of persons who may be held responsible for the remediation of a contaminated site;
- exemptions from the general provisions regarding potentially responsible persons;
- respecting the powers and duties of environment officers; and

- any matter considered to be necessary or advisable to carry out the intent and purpose of the Act.

8. *The Dangerous Goods Handling and Transportation Act*

This Act is administered by Manitoba Conservation. As its name suggests, this legislation prohibits the handling and disposition of dangerous good except in compliance with its provisions.²⁶ Persons handling hazardous wastes²⁷ must obtain a license by the Director for that purpose. Hazardous waste must be disposed of at a licensed hazardous waste facility or in such other manner as approved by the Director or an environment officer.

The Minister may appoint inspectors and environment officers to carry out the provisions of the Act. The Minister may also appoint an advisory committee for the purposes of advising and assisting in the carrying out of the purposes and provisions of the Act.

The Director may by order:

- direct any person handling or disposing of dangerous goods or contaminants²⁸ to furnish all information specified in the order relating to the dangerous goods or contaminants;
- restrict or place conditions on the handling or disposal of dangerous goods or contaminants in Manitoba;
- prohibit or restrict the sale or distribution of any crop, food, feed, plan, water, produce or other material which is exposed or may have been exposed to dangerous goods or contaminants, and cause any or all of them to be destroyed or decontaminated or otherwise rendered harmless;

26 The term “dangerous good” is defined in the Act as meaning a product, substance or organism that (a) is prescribed, designated or classified as a dangerous good or hazardous waste in the regulations, or (b) by its nature conforms to the classification criteria for one or more classes of dangerous goods or hazardous wastes set out in the regulations.

27 The term “hazardous waste” is defined in the Act as meaning a product, substance or organism that (a) is prescribed, designated or classified as hazardous waste in the regulations, or (b) by its nature conforms to the classification criteria for one or more classes of hazardous waste set out in the regulations.

28 The term “contaminant” is defined in the Act as meaning any solid, liquid, gas, waste, radiation or any combination thereof that is foreign to or in excess of the natural constituents of the environment and (a) that affects the natural, physical, chemical or biological quality of the environment, or (b) that is or is likely to be injurious or damaging to the health or safety of a person.

- require any person handling or disposing of dangerous goods or contaminants to develop and submit a security plan that is acceptable concerning the dangerous goods or contaminants and the person's activities, equipment and facilities;
- require a person who submits a security plan to execute the plan, or any aspect of it, with or without conditions; and
- require any person handling dangerous goods or contaminants to implement any security measures the Director considers appropriate to enhance the security of the dangerous goods or contaminants and the person's activities, equipment and facilities.

The Director may issue a remedial order if dangerous goods or contaminants may cause a significant adverse effect on an area of the environment. Such a remedial order may require the person to do any work or carry out any measures necessary to prevent contamination or secure the affected area and the environment affected by it, including for instance:

- investigate the situation and provide the Director with any information the Director requires;
- monitor, measure, contain, remove, label, store, destroy or otherwise dispose of dangerous goods and contaminants and materials affected, or lessen or prevent further introduction into the environment of the dangerous goods or contaminants;
- construct, install or modify any equipment, facility or thing;
- undertake tests, monitoring and recording and prepare and submit any records, plans and reports the Director requires.

An environment officer or inspector appointed under the Act may enter and inspect any place or premises, other than a dwelling, or any means of transport, in which there is reason to believe there is or has been a dangerous good or contaminant. To determine compliance with the Act, regulations or order, an environment officer or inspector may take certain action, for example, inspect and test any installation, equipment or machinery or process of handling or disposing of a dangerous good or contaminant.

An environment officer or inspector may issue a hold order against a person who is storing, offering for transport, transporting or otherwise handling a dangerous good or contaminant if it may cause a hazardous situation.

In the event of an accident, a person subject to a hold order may take whatever corrective action is necessary to abate the discharge and clean the affected area. In addition, where corrective action is taken, the accident and the action taken shall immediately be reported.

To avert a hazardous situation, an environment officer or inspector may by order require a person to remove dangerous goods from the location, dispose of them in a specified manner, take special precautions and keep records regarding the handling of the dangerous goods.

The Act provides that any person responsible for and having the custody and control of any contaminant involved in an environmental accident²⁹ must immediately after the occurrence report it in accordance with the regulations and follow the instructions of the environment officer. *Environmental Accident Reporting Regulation 439/87* expressly states that the reporting requirements of an environmental accident do not apply to the application of manure onto agriculture land, although presumably it does, however, apply to the transport of manure.

In the event of an environmental accident, an environment officer or inspector may take specific action, for instance:

- enter any land or premises without the consent of the owner;
- control, contain or dispose of or cause to be controlled, contained or disposed of any contaminant or dangerous goods which are or may create a hazard to human life or health, to other living organisms or to the physical environment; and
- take such other emergency measures that are practicable and reasonable to protect persons, property and the environment.

Any person aggrieved by an order of an environment officer or inspector may appeal it to the Director. Any person aggrieved by a decision made by the Director, for instance in refusing to issue a permit, may appeal the matter to the Minister.

²⁹ The term "environmental accident" is defined in the Act as meaning a release, leakage or spillage of a contaminant into the environment otherwise than in accordance with the provisions of this Act, its licenses, orders and regulations or *The Environment Act*, its orders and regulations, or an incident which may or is likely to result in such a release, leakage or spillage which, having regard to the environment in which the release, leakage or spillage takes place or may take place, and to the nature of the contaminant, creates or may create a hazard to human life or health, to other living organisms, or to the physical environment.

Contraventions by a person or corporation of the Act or regulations or failure to comply with an order, decision, instruction or directive from the Minister, Director, environment officer or inspector constitutes an offence. Each day the contravention continues is considered to be a separate offence and any person found guilty is liable to a fine, imprisonment or both. In addition, if the person is unwilling or unable to remedy the situation giving rise to the offence, a judge may suspend or revoke any license or permit that have issued under the Act. In addition, a judge may also require the convicted person to clean or restore the environment from damage caused by the offence, pay damages or make restitution or take such action as may be necessary to refrain from committing any further offences or causing further environmental damage.

Any person may lay an information in respect of any offence, but it must be laid within one year from the time the subject matter of the proceedings arose or within one year from the day on which evidence sufficient to justify a prosecution became known.

The Act permits regulations to be made regarding such things as:

- the designation of products, substances and organisms as dangerous goods;
- the prohibition and restriction of the handling of certain dangerous goods;
- the reporting of environmental accidents and information to be included in the report; and
- training, qualification, certification and licensing of handlers of dangerous goods.

9. *The Employment Standards Code*

This legislation is administered by the Employment Standards Division of Manitoba Labour and Immigration. It sets out in detail the rights and obligations of employers and employees relating to working conditions and such things as overtime, minimum wage and leaves of absence.

Employment Standards Regulation 6/2007, which came into force on April 30, 2007, states that except for the equal wage provisions of the Code (namely equal pay for equal work), Part 2 does not apply to employees employed in agriculture. The provisions of Part 2 to which the Regulations refer relate to minimum wage, hours of work, overtime, general holidays, annual vacations, vacation allowances, weekly day of rest, work breaks, call in wages, maternity, parental

and compassionate care leave, termination, home work, right to refuse to work on Sunday, children and adolescence, and individuals with disabilities.

We were advised verbally by the Employment Standards Branch that there is no similar legislation governing agricultural workers, and therefore they are offered none of the protections guaranteed under the Code.

Although we have not done a legislative history of the Code, we suspect agriculture workers were originally exempt given that most farm workers were family members and farm work was very different from other types of employment situations. We question whether, given the changing face of agricultural operations in Manitoba and a shift from the traditional family farm to ILOs, that this is an issue that should be revisited. We recognize that employment standards are likely beyond the scope of this review, however we have included a summary of this legislation and raise this issue simply as a matter of concern.

10. *The Environment Act*

This legislation is administered by Manitoba Conservation. Its purpose is to develop and maintain an environmental management system in Manitoba which will ensure that the environment is maintained in such a manner so as to sustain a high quality of life, including social and economic development, recreation and leisure for this and future generations. In that regard, the Act:

- is complementary to, and support for, existing and future provincial planning and policy mechanisms;
- provides for the environmental assessment of projects which are likely to have significant effects on the environment;
- provides for the recognition and utilization of existing effective review processes that adequately address environmental issues; and
- provides for public consultation in environmental decision making while recognizing the responsibility of elected governments including municipal governments as decision makers.

The departmental functions of Manitoba Conservation are broad and expressly set out in the Act as including:

- the administration and enforcement of this Act, the regulations, licenses and orders;

- the administration and enforcement of any other Acts and regulations as determined by the Lieutenant Governor in Council ("LG");
- the development and implementation of standards and objectives for environmental quality of Manitoba in consultation with other government departments and the public;
- the establishment and maintenance of an effective method of public involvement in environmental decision making;
- research, monitoring, studies and investigations related to the acquisition of knowledge, data or technological understanding necessary to perform its mandate;
- the provision of technical, analytical services; and
- the development of environmental management strategies and policies for the protection, maintenance, enhancement and restoration of environmental quality in Manitoba.

To assist the Minister in carrying out the objects and purposes of the Act, advisory committees may be established for the purpose of providing advice and assistance. In addition, the Act establishes the CEC, whose mandate also includes providing advice and recommendations to the Minister, as well as conducting investigations into environmental matters or specific environmental concerns, either on its own or at the request of the Minister.³⁰ The CEC is authorized under the Act to hold public meetings or public hearings to fulfill its statutory duties, including gathering or disseminating information or gathering evidence from the public. If the CEC is requested to hold a hearing by the Minister regarding a proposed development, notice must be given to the public and any person is entitled to make representations so long as they make their intention to do so in writing. Transcripts of hearings before the CEC must be maintained for a period of 10 years.

The Act also establishes a public registry where the following documents are made available:

- a summary, prepared by the proponent, of the proposed development;
- the disposition and status of each proposal;

³⁰ Section 6(3) of the Act excludes matters involving the gathering of evidence to determine whether or not a specific proponent is complying with the provisions of the Act and the regulations from the CEC's investigatory powers.

- a copy of the environmental license;
- a copy of the assessment report;
- justification for not accepting the advice and recommendations of the CEC;
- justification for refusing to issue an environmental license; and
- such other information as the Minister or Director may from time to time direct.

In addition to what is required to be filed in the public registry noted above, the Act also allows the Minister, for the purposes of increasing environmental awareness in Manitoba, to produce informational material and make that material available to the public.

In the context of licensing, the Act prohibits persons from constructing, operating or altering a development without an environmental license, and prevents persons from proceeding with a development without a license or if a license has been refused. The term “development” is defined in the Act as follows:

“development” means any project, industry, operation or activity, or any alteration or expansion of any project, industry, operation or activity which causes or is likely to cause:

- (a) the emission or discharge of any pollutant³¹ into the environment³², or
- (b) an effect on any unique, rare, or endangered feature of the environment, or
- (c) the creation of by-products, residual or waste³³

31 The term “pollutant” is defined in the Act as meaning any solid, liquid, gas, smoke, waste, odour, heat, sound, vibration, radiation, or a combination of any of them that is foreign to or in excess of the natural constituents of the environment, and (a) affects the natural, physical, chemical, or biological quality of the environment, or (b) is or is likely to be injurious to the health or safety of persons, or injurious or damaging to property or to plant or animal life, or (c) interferes with or is likely to interfere with the comfort, well being, livelihood or enjoyment of life by a person.

32 The term “environment” is defined in the Act as meaning (a) air, land, and water, or (b) plant and animal life, including humans.

33 The term “waste” is defined in the Act as including rubbish, litter, junk, or junked obsolete or derelict motor vehicles, or obsolete or derelict equipment, appliances or machinery; slimes, tailings, fumes, waste of domestic, municipal, mining, factory or industrial origin; effluent or sewage; human or animal wastes; solid or liquid manure; or waste products of any kind

products not regulated by *The Dangerous Goods Handling and Transportation Act*, or

(d) a substantial utilization or alteration of any natural resource in such a way as to pre-empt or interfere with the use or potential use of that resource for any other purpose, or

(e) a substantial utilization or alteration of any natural resource in such a way as to have an adverse impact on another resource, or

(f) the utilization of a technology that is concerned with resource utilization and that may induce environmental damage, or

(g) a significant effect on the environment or will likely lead to a further development which is likely to have a significant effect on the environment, or

(h) a significant effect on the social, economic, environmental health³⁴ and cultural conditions that influence the lives of people or a community in so far as they are caused by environmental effects;

It is an express term in the Act that environmental licenses for new developments, or alterations to existing licenses that affect or may affect water, must comply with *The Water Protection Act*. In addition, it is expressly stated that the Act is also subject to *The Water Resources Conservation Act*.

The Act divides developments into three classes and only those projects expressly listed in *Classes of Development Regulation 164/88* are subject to an environmental assessment and licensing. An "assessment" is defined in the Act as a means of evaluation of a proposal to ensure that appropriate environmental management practices are incorporated into all components of the life cycle of a development.

In the context of agricultural operations, *Classes of Development Regulation 164/88* confines them to Class 1 and limits them to only food processing plants, meat processing and slaughter plants, and rendering plants. Class 2 developments include waste treatment and storage developments, but they only

whatsoever or the run-off from such wastes.

³⁴ The term "environmental health" is defined in the Act as meaning those aspects of human health that are or can be affected by pollutants or changes in the environment.

include, for instance, aerated wastewater treatment lagoons and wastewater treatment lagoons.³⁵

In accordance with *Licensing Procedures Regulation 163/88*, to obtain an environmental license for a proposed development, a proponent must make an application and include specific information in the proposal, namely:

- the location of the proposed development;
- a description of existing land use on the site and land adjoining the site;
- a description of the proposed development and method of operation
- a description of all previous studies and activities relating to feasibility, exploration or project siting;
- a description of potential impacts of the development on the environment, including, but not limited to:
 - the type, quantity and concentration of pollutants to be released into the air, water or land;
 - the impact on surface water and groundwater;
 - the socio-economic impacts resulting from the environmental impacts; and
 - a description of proposed environmental management practices to be employed to prevent or mitigate adverse implications from the impacts having regard to: containment, handling, monitoring, storage, treatment and final disposal of pollutants, conservation and protection of natural or heritage resources, environmental restoration and rehabilitation of the site upon decommissioning, and protection of environmental health.

The Act authorizes the issuance of licenses for preliminary steps relating to a development and gives both the Minister and the Director the authority to issue a series of licenses in advance of approval at any stage of the construction, alteration, operation or setting into operation of the development. A license of preliminary steps may only be approved, however, if the environmental impact of the preliminary step is known and is either insignificant or capable of being mitigated with known technology and a summary of the proposal has been registered in the public registry. Further, the Act specifically makes it clear that there is no obligation on the part of the Minister or Director to issue any

³⁵ An "aerated wastewater treatment lagoon" is defined in the Act as meaning an impoundment into which wastewater is discharged for storage and treatment and in which mechanical or diffused air aeration is used to supplement the natural oxidation. A "wastewater treatment lagoon" is defined in the Act as meaning an impoundment into which wastewater is discharged for storage and treatment by natural oxidation.

subsequent licenses merely by virtue of the fact that a preliminary license has issued.

The process for an assessment of a proposed development varies depending on if it is a Class 1, 2 or 3 development. For ease of reference and to illustrate the differences between the type of assessments, we have attached a chart at Tab E. It is clear there are significant differences, both of terms of who issues the license and what action is required and what is discretionary.

The Act includes provision for participant funding and gives the Minister the authority to require a proponent of a Class 1, 2 or 3 development, or a joint assessment, to provide financial or other assistance to persons or groups participating in the assessment process.

If a development will be altered such that it will no longer conform to the terms and conditions of a license, or is likely to change the environmental effects, the proponent must notify the Director or the Minister before proceeding with the alteration. If it is a minor alteration, meaning the alteration is insignificant or is able to be accommodated by an assessment process, the Director or Minister may give approval in writing and impose terms and conditions. If it is a major alteration, the proponent must seek approval and the alteration will be treated according to the assessment process for Class 1, 2 or 3 developments, as the case may be.

Environmental officers appointed under the Act are given broad powers to enter into and inspect premises to determine compliance, if there are reasonable and probable grounds to believe a pollutant is being discharged or environmental damage is occurring. The Act allows for emergency measures to be taken if a situation exists that does or is likely to result in unsafe conditions or irreparable damage to the environment. Also, if it is in the public interest to take emergency action to alleviate an environmental emergency or where a health emergency is declared by the Minister of Health, the Minister may take whatever action is necessary to mitigate the emergency or alleviate the threat to health without going through the usual process set out in the Act.

Section 41(1) sets out the regulations that may be made under the Act. Those currently relevant to the hog industry, or potentially relevant should ILOs ever become subject to an environmental assessment under the Act, are as follows:

- respecting the classification of developments in each class and the setting out of an assessment process for each class;

- setting out the policies for environmental management as they relate to economic development, conflicting land or resource use, and industrial density;
- restricting or limiting the number and types of developments that may cause adverse cumulative effects that may be permitted to be constructed or operated in the province or any part thereof;
- respecting the setting of environmental quality objectives for part or all of Manitoba, the process for setting of those objectives, and the use of objectives;
- respecting the requirement of evidence of financial responsibility in the form of insurance or an indemnity bond, or other form as may be satisfactory to the Director, for persons owning or operating developments that will or may cause environmental damage;
- respecting the design, location, configuration, construction, adaptation, alteration, operation, maintenance and installation of developments to mitigate their adverse environmental and environmental health effects;
- prescribing, setting standards or conditions for, or prohibiting the methods of collection, treatment, distribution and disposal of pollutants;
- prescribing limits, terms and conditions on the release of pollutants, or the prohibition of release of pollutants or in the type, quantity, or conditions respecting resource utilization from any development;
- respecting the use restriction, or prohibition of use of any product or substance that may pollute or damage the environment;
- requiring certain developments or certain classes of development to register with the department;
- requiring a permit for the construction or operation of certain developments, and the issuance or withdrawal of the permits by the Director or environment officer and the limits, terms and conditions to be included in the permits issued by the Director or the environment officer;
- respecting the methods of testing samples and prescribing the equipment or apparatus or structures to be used for taking samples;
- respecting livestock production operations;

- respecting the environmental management practices to be incorporated into the design, construction, operation, closure or rehabilitation of a development;
- respecting the financial and other assistance to be provided to persons and groups participating in the assessment process by proponents of a development;
- respecting costs that are payable by the proponent associated with hearings held with respect to either joint assessments or with respect to Class 1, 2 and 3 developments;
- respecting costs that are payable by a person with respect to the monitoring of, or the review of that person's obligation to monitor, pollutants, effluent quality, environmental quality or other similar matters in accordance with the limits, terms and conditions of a license, order or regulation;

Regulations made under the Act may apply to all or only part of the province. In addition, the Minister is given the authority to make regulations declaring or designating certain areas of the province as sensitive or critical areas and prescribing standards or controls respecting environmental matters in those areas. If an environment license had been issued prior to the making of such regulations, the regulation prevails.

Any person affected by the issuance of a license or permit by the Director, the refusal by the Director to issue a license or permit, any order, instruction or directive from the Director, any of the terms or conditions imposed by the Director or any order or direction given by an environment officer, may appeal to the Minister, who may do any or all of the following:

- require the CEC hold public meetings or hearings;
- refer the matter back to the Director for reconsideration;
- vary, cancel or stay the decision; or
- dismiss the appeal.

If it is an appeal of the issuance of a license by the Director, the refusal by the Director to issue a license or the imposition of terms and conditions by the Director, the Minister must refer the proposed disposition to the LG for approval.

If a person is dissatisfied with the Minister's decision not to hold a public hearing or the terms and conditions of a Class 3 license, an appeal may be filed with the Minister, who must then refer it to the LG to do any or all of the following:

- require the CEC hold public meetings or hearings respecting the proposed development for advice and recommendations;
- vary or cancel the license;
- refer the matter back to the Director or Minister for reconsideration; or
- dismiss the appeal.

If new evidence emerges that was not previously considered, the Minister may re-open the appeal process and consider the new evidence.

Contravention of the Act, the regulations, an order license or permit is an offence and each day the contravention continues is considered to be a separate offence. Upon conviction, the penalties for a first offence are a fine of not more than \$50,000 or six months' imprisonment or both, and for each subsequent offence, a fine of not more than \$100,000 or imprisonment of not more than one year, or both. The penalty also may include suspension or revocation of the license for such time as a judge sees fit.

Corporations are also subject to prosecution under the Act and if found guilty, the penalties for a first offence are a fine of not more than \$500,000 and for each subsequent offence a fine of not more than \$1,000,000. The penalty may also include suspension or revocation of the license. Any officer, Director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of an offence is a party to and guilty of the offence and is liable on conviction to the penalties against individuals referred to above.

Additional penalties a judge may impose upon conviction are to require the convicted person to:

- take such action as may be necessary to refrain from committing any further offences or from causing any further environmental damage;
- take such action to clean or restore the environment from damage caused by the offence;
- pay damages or make restitution to any person who suffered damages as a result of the offence; or

- pay an additional fine up to the monetary benefit the person acquired as a result of the offence.

Any person may lay an information in respect of any offence under the Act or the regulations, however that must be done within one year from the date the subject matter of the proceedings arose or the day on which sufficient evidence came to the knowledge of an environment officer.

11. *Livestock Manure and Mortalities Management Regulation 42/98*

Given the *Livestock Manure and Mortalities Management Regulation 42/98* ("LMMMR") pertains exclusively to the hog industry and will no doubt be given careful consideration by the CEC in this process, we have chosen to provide a summary separate from that of *The Environment Act*.

The purpose of the LMMMR is to prescribe requirements for the use, management and storage of livestock manure and mortalities so they are handled in an environmentally sound manner. The LMMMR prohibits anyone from handling, using or disposing of livestock manure, or storing livestock manure in an agricultural operation in such a manner that it is discharged or otherwise released into surface water, a surface watercourse or ground water.

The LMMMR also prohibits anyone from storing livestock manure except in a manure storage facility or as field storage³⁶. A permit is required for a manure storage facility and it must conform to Schedule A, which sets out siting and setback requirements³⁷, requirements for the construction of earthen storage facilities, and special requirements for hydrogeologically sensitive areas.

Further, the LMMMR prohibits anyone from storing, handling or disposing of livestock manure, or applying livestock manure to land, except in accordance with a Manure Management Plan ("MMP") that has been registered by the Director. This prohibition, however, applies only to agricultural operators with more than 300 animal units, unless it will be expanded or the Director believes it is likely to cause pollution to the surface water, ground water or soil, or the manure will escape the boundaries of the operation.

A permit under the LMMMR is also required for the construction, modification or expansion of a confined livestock area capable of housing 10 or more animal units, unless the Director approves otherwise. Before a permit can issue, the

³⁶ Only solid manure may be stored as field storage.

³⁷ The minimum setback requirements are 100 m from any surface watercourse, sinkhole, spring, well or boundaries of the agriculture operation.

Director must examine the site of the proposed confined area and evaluate the site's soil, geology and proximity to aquifers, or direct the applicant to conduct examinations to determine the appropriate siting and construction requirements. An applicant is entitled to a permit so long as the Director is satisfied that the construction may be carried out in a manner that ensures the environment is protected.

Before applying livestock manure as a fertilizer, the LMMMR requires an operator to submit a MMP for registration, together with a soil nutrient analysis³⁸. Only those persons recognized as qualified under the LMMMR may prepare a MMP.

Prior to registering a manure storage facility, if the Director believes the facility's integrity is causing, or would likely cause, pollution of surface water, ground water, or soil, or livestock manure will escape from the boundary of the agriculture operation, the operator may be ordered to conduct an examination of the facility's integrity and proximity to surface water, surface watercourses, wells, springs, sinkholes, ground water or other environmentally sensitive areas and submit a report. In addition, before registering the manure storage facility, the Director may require the operator to provide protection to nearby watercourses, wells, springs, sinkholes or other environmentally sensitive areas, to repair the manure storage facility to correct deficiencies, or modify it to correct deficiencies. The Director may refuse to register the facility if not satisfied that the environment is protected or the operator fails to comply with any requirements.

The Director may issue experimental permits allowing the experimental application of manure to land other than in accordance with the Regulations.

There are a number of safeguards in place in the LMMMR relating to protection of the environment and concerns regarding the environmental impacts of ILOs, namely:

- there must be sufficient suitable land;
- the Director must be satisfied that the environment will be protected in the event of a failure of the facility;
- an engineer's certificate certifying the work complies with the LMMMR;
- installation of monitoring wells if necessary where water analysis reports of the water from the well must be submitted;

³⁸According to the LMMMR, a MMP must be submitted before February 10th if the plan provides for a fertilization program starting the following spring or before July 10th of a crop year, if the plan provides for a fertilization program starting the following fall.

- annual water analysis reports of water from the livestock drinking water source where there are 300 or more animal units;
- implementing a monitoring and reporting program if there is reason for the Director to believe the storage, handling and management of livestock manure is causing or is likely to cause pollution of surface water, ground water or soil;
- requiring an operator to report to the Director if the livestock production operation is discontinued or not active for more than one year and in such circumstances there must be a plan as to how the facility will be decommissioned;
- field storage must be at least 100 m from any surface watercourse, sinkhole, spring or well and must be stored in a manner that does not pollute the surface water, ground water or soil;
- there must be dikes around the field storage area to prevent the escape of livestock manure that may cause pollution;
- livestock manure stored in a field storage must be removed and disposed of at certain times and the field must remain empty of manure for at least one year and before storing manure again, the operator must grow a crop on the emptied manure storage area to deplete the area of any leached nutrients;
- composting of manure must be carried out in a specific manner;
- manure spills from a vehicle or a leak from a manure storage facility must be reported;
- livestock manure cannot be applied to land other than as a fertilizer on which a crop is growing or will be planted in the next growing season;
- livestock manure cannot be applied to land in a manner that may result in the concentration of residual nitrate nitrogen being higher than a certain level;
- livestock manure cannot be applied to land, if due to meteorological, topographical or soil conditions, or the rate of application, it causes pollution or escapes from the boundaries of the agriculture operation;
- livestock manure cannot be applied to land adjacent to surface water or a surface watercourse except in accordance with minimum setback requirements³⁹;

³⁹ The minimum setback requirements are set out in Schedule C to the LMMMR.

- provisions are in place regarding allowable application to land relating to phosphorous levels;
- provisions are in place regarding phosphorous levels for operations that existed prior to the coming into force of the LMMR;
- if phosphorous levels are at a certain amount, an operator cannot establish an agriculture operation or expand one unless there are additional lands suitable for the application of livestock manure within a reasonable distance and the Director has approved the plan;
- there cannot be winter spreading of livestock manure between November 10 and April 10 unless there are less than 300 animal units, except in an emergency or in extenuating circumstances, and in such case the minimum setback requirements set out in Schedule B must be complied with;
- livestock manure cannot be spread in the fall, between September 10 and November 10 unless it is incorporated into the soil or injected, with the exception of "regularly inundated areas" if certain conditions are met⁴⁰;
- mortalities must be kept in a secure storage room, covered container or secure location and continually frozen or refrigerated if not disposed of within 48 hours. Disposal of mortalities must be done in accordance with the LMMR, for instance:
 - by burning, burial or composting, or by delivery to a rendering plant;
 - an operator cannot incinerate or burn mortalities on the property unless it will not cause pollution of surface water, ground water or soil;
 - if disposal is done by burning, there must be an incinerator installed that complies with the LMMR; and
 - burial is not permitted if there are more than 300 animals;
- if the number of mortalities is more than the operation's routine capacity to dispose of, the operator must report the situation to an environment officer;
- livestock in a confined area cannot have access to surface water;
- a confined livestock area cannot be located within 100 m of any surface watercourse, sinkhole, spring or well and the operation's boundaries;

40 "regularly inundated" is defined in the LMMMR as meaning an area subject to flooding on an average basis of at least once every five years and the Red River Valley Special Management Zone.

- manure in a confined livestock area must be removed at least once per year and done in accordance with the LMMR⁴¹;
- the Director may require a "collection basin"⁴² for a confined livestock area if it is necessary to prevent the discharge of water contaminated with manure into a surface watercourse.

Upon written application or on his or her own initiative, the Director is given authority to vary the requirements of LMMMR where an innovative or environmentally sound practice or procedure relating to the use, management or storage of livestock manure or mortalities is not sanctioned or prohibited therein. In addition, the Director may upon written application, but not on his or her own initiative, vary the siting requirements for a manure storage facility, composting site or confined livestock area if it is believed its construction, modification or expansion would significantly lower the risk of pollution of surface water, ground water or soil for an existing agriculture operation.

The LMMMR expressly states that by no later than March 31, 2011, the Minister must consider the effectiveness of regulating livestock manure application to the land on the basis of phosphorous after consultation and make recommendations as to whether amendments are required.

12. *The Family Farm Protection Act*

This Act is administered by Manitoba Agriculture, Food and Rural Initiatives and its intent is plain from the title - to protect farmers, farmland in Manitoba and the traditional lifestyle in rural and farm communities. The specific objectives set out in the Act are:

- to protect farmers⁴³ against the unwarranted loss of their farming operations during periods of difficult economic circumstances;

41 The LMMMR requires manure from a confined livestock area to be stored at the agriculture operation, applied to the land or otherwise disposed of, unless the Director considers less frequent removal appropriate.

42 The term "collection basin" is defined in the Regulation as meaning a structure intended to collect runoff water contaminated by manure and constructed primarily from soil by excavating or forming dikes. According to the Regulations, collection basins cannot be constructed in the winter and they must have a minimum holding capacity and maximum capacity requirements must be met.

43 The term "farmer" is described in the Act as meaning a person engaged in farming in Manitoba, and includes all individuals holding an interest in farmland in joint tenancy with an individual engaged in farming in Manitoba.

- to preserve the agricultural land base of Manitoba and to ensure that farmland is farmed and managed during periods of difficult economic circumstances;
- to preserve management skills of farmers during periods of difficult economic circumstances;
- to preserve human resources of the agricultural community of Manitoba; and
- to preserve the existing lifestyle of farm communities in Manitoba and the tradition of locally owned and managed family farms.

The Act establishes the Manitoba Farm Mediation Board, whose members are appointed by the government. In fulfilling its statutory duties and obligations, the Board is allowed to engage the services of technical or professional advisers, specialists or consultants and it may, with the consent of the Minister, utilize the services of any officer or employee of the department.

The Act prohibits actions against farmers without first obtaining leave from the Court of Queen's Bench, for instance under a mortgage, encumbrance, security agreement or judgment, if the farmer could be deprived of ownership or possession of the farmland. Within 30 days of filing an application for leave, an applicant must give notice to the Board, who must then prepare a report addressing the issues giving rise to the application and file it with the Court of Queen's Bench. In preparing its report, the Board may consider a number of factors, for instance:

- whether the matter may be resolved by agreement between the creditor and the affected farmer without the necessity of further proceedings;
- whether the affected farmer is likely to receive financial assistance or concessions from any creditor or from any other source in an effort to satisfy the issues giving rise to the application;
- the effect of factors beyond the control of the farmer, including the inability to market agricultural products, depressed prices for agricultural products, or high cost of production;
- the financial capacity of the affected farmer and the affected farmer's farming operation to meet existing and anticipated cash flow requirements; and
- the impact of the loss of the farmland which is described in the application on the affected farmer, the affected farmer's family and the community of which the affected farmer is a part.

The Act also establishes the Manitoba Farmers Peer Advisory Committee to assist in reviewing financial arrangements between a farmer and his or her creditors to reach an arrangement for payment or settlement of the indebtedness.

13. *The Farm Lands Ownership Act*

This Act is administered by Manitoba Agriculture, Food and Rural Initiatives and its purpose is to control ownership of farmland in Manitoba⁴⁴. The legislation expressly states that only the following may, directly or indirectly, take, acquire, receive or hold an interest in farm land:

- an eligible individual⁴⁵;
- a family farm corporation⁴⁶;
- a municipality;
- a local government district;
- an agency of government;
- subject to any limitations provided for in the regulations, a qualified Canadian organization⁴⁷; and

44 The term “farm land” is defined in the Act as meaning real property that is situated outside a city, town village (including an unincorporated village) or hamlet and that is used or is reasonably capable of being used for farming, but excludes (a) minerals, excepting sand and gravel, contained in real property, (b) real property used for the purposes of extracting, processing, storing, or transporting of minerals, excepting sand and gravel, and (c) real property used by a corporation supplying telecommunication, railway, pipeline or other services prescribed by the board or by regulation where and for so long as the real property is used for the purpose of supplying those services or purposes ancillary thereto.

45 The term “eligible individual” is defined in the Act as meaning a natural person who is (a) a citizen of Canada, or (b) a permanent resident of Canada within the meaning of the *Immigration and Refugee Protection Act* (Canada). The term “farmer” is defined in the Act as meaning an eligible individual (a) who receives a significant portion of his income either directly or indirectly from his occupation of farming, and (b) who spends a significant portion of his time actively engaged in farming. Note the Farm Lands Ownership Regulation 204/87R contains further definitions of terms such as “actively engaged”, “significant portion of his income” and “significant portion of his time”.

46 The term “family farm corporation” is defined in the Act as meaning a corporation (a) that is primarily engaged in the business of farming, (b) that is under the “control in fact” of farmers or eligible individuals related to farmers, or a combination of both, and (c) of which a majority of the issued and outstanding shares of each class of share are legally and beneficially owned by farmers or eligible individuals related to farmers.

47 The term “qualified Canadian organization” is defined in the Act as meaning (a) a corporation, partnership, syndicate, joint venture, cooperative or association all the shares or interests of which are legally and beneficially owned by, or (b) the trustee or trustees of a trust all the

- subject to s. 3(16) (failure to become an eligible individual), a qualified immigrant⁴⁸.

The Act establishes the Manitoba Farm Lands Ownership Board, whose powers include:

- the administration and enforcement of the Act and regulations;
- carrying out surveys, research programs and obtaining statistics for the purposes of the board;
- conducting hearings and investigations if the board has reason to believe a person has taken, acquired, received or holds an interest in farm land in contravention of the Act;
- require information from any person taking, acquiring, receiving or holding an interest in farm land, or proposing to do so.

If there are reasonable grounds for so doing, and if prior notice has been given to all persons affected and there is an opportunity to be heard, the Board may issue an order that an interest in farm land has been acquired, taken or received in contravention of the Act. In addition, the Board may apply to the Court of Queen's Bench for an order against anyone failing to comply with its order and if successful, a judge may issue an order for such things as the sale, extinguishment or distribution of any interest in farm land.

Anyone, including a corporation, who contravenes the Act or the regulations, provides false information or hinders or prevents the effective administration of the Act, or anyone who aids and abets in such conduct, is guilty of an offence and is liable to a fine and court costs. Prosecution under the Act must take place within two years after the date of the alleged offence.

14. *The Farm Practices Protection Act*

This legislation is administered by Manitoba Agriculture, Food and Rural Initiatives. Its purpose is to protect and shield those engaged in an “agricultural

beneficiaries of which are, eligible individuals, but does not include corporations which have any shares listed on a stock exchange.

⁴⁸ The term “qualified immigrant” is defined in the Act as meaning a natural person, wherever resident, who establishes to the satisfaction of the board that he or she is entitled to and intends to become an eligible individual within two years after acquiring an interest in farm land.

operation”⁴⁹ from nuisance actions for any odour, noise, dust, smoke or other disturbance resulting from the operation. No one may commence an action so long as the agricultural operator is using “normal farm practices” and is not in violation of a land use control law, *The Environment Act*, regulation or order, or *The Public Health Act*, regulation or order.

The term “normal farm practice” is defined in the Act as a practice that is conducted:

- (a) in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations under similar circumstances, including the use of innovative technology used with advanced management practices; and
- (b) in conformity with any standards set out in the regulations.

The legislation establishes the Farm Practices Protection Board, which is made up of members appointed by the government to deal with complaints of those affected by agricultural operations. Although the Board may establish its own procedures and rules of practice, at any matter before it, parties must be given the opportunity to present information and make representations.

Any person aggrieved by any odour, noise, dust, smoke or other disturbance resulting from an agricultural operation may apply in writing to the Board for a determination as to whether the disturbance results from a normal farm practice. An aggrieved person may not apply for an injunction until the Board has made a decision or has refused to hear the application. Further, no one may commence an action in nuisance unless such an application has been made, but an aggrieved person is not obligated to pursue an action simply by requesting the Board make such a determination.

Upon receipt of a written application, the Board may inquire into the dispute and attempt to resolve it. The Board is not required to take any action if the subject matter of the application is trivial, frivolous, vexatious, not made in good faith or the applicant does not have a sufficient personal interest in the matter.

If a dispute cannot be resolved, the Board may dismiss the complaint, order the agricultural operator to cease the practice if it is determined not to be a normal farm practice, or else order the agricultural operator to modify the practice so it is consistent with a normal farm practice. If the operator fails to comply with the

⁴⁹ The term “agricultural operation” is defined in the Act as including the raising of livestock and the application of manure.

Board's order, it may be filed in the Court of Queen's Bench and it is then deemed to be a judgment of the Court. The Board can then apply for an order of contempt, an order for costs, or any other order necessary to give effect to the judgment.

In addition to its duties relating to disturbance complaints, the Board is also required, upon request by the Minister, to study any matter relating to farm practices and report its findings and recommendations.

The Act gives authority for regulations to be made relating to standards for the purpose of defining the term "normal farm practice", and also as to what matters to which the Board must have regard when making such a determination.

Normal Farm Practices Regulation 20/2004 contains an express provision relating to hogs and hog manure and states that when determining what constitutes a "normal farm practice", the Board is to have regard to the Farm Practices Guidelines for Hog Producers in Manitoba published by Manitoba Agriculture and Food in December, 1998, as amended or replaced from time to time. For ease of reference, the Index and Forward to the Guidelines are attached at Tab F.

15. *The Ground Water and Water Well Act*

This legislation is administered by Manitoba Water Stewardship and applies to all sources of ground water⁵⁰ and all wells⁵¹, whether drilled or developed before or after it came into effect, with the exception of wells for domestic use on one's own land using one's own equipment.

The Act prohibits anyone from drilling a well without taking reasonable precautions to avoid polluting, contaminating or diminishing the purity of groundwater in the area. In addition, subject to the provisions of *The Environment Act*, an owner shall not deposit or place in or near a well on his or her property any material, substance or thing that might pollute, contaminate or diminish the purity of water in the well or the ground water in the area of the well or allow anyone else to do so. Further, if a well has been abandoned or not properly sealed or capped, the owner may be ordered by the Director to rehabilitate, seal or cap the well to prevent pollution, contamination or diminishment of purity of ground water.

50 The Act defines "ground water" as water beneath the surface of land.

51 The Act defines a "well" as any opening made by drilling into the ground for the purposes of obtaining ground water or scientific data on ground water, whether water is obtained or not.

The legislation also deals with licensing of those engaged in the business of drilling wells and prohibits anyone from engaging in the business of well-drilling without a license issued under the Act. *Well Drilling Regulation 228/88R* sets out the licensing process and requirements to obtain a license.

The Director is given authority under the Act to access all wells, all records, all plants and equipment related to or used in connection with the drilling of wells and may inspect such wells and records, for instance by taking samples or carrying out such tests or examinations as are considered necessary or desirable.

In addition, the Act allows the Minister to undertake both a survey of ground water resources in Manitoba and a study of conservation, development and utilization of ground water.

Regulations permitted under the legislation include:

- the establishment of ground water conservation programs and for the purposes of such a program, restricting and regulating the use of ground water and the flow or output of waters from wells;
- prescribing measures to be taken to prevent or diminish the pollution or contamination of ground water;
- respecting any other matter relating to the conservation, development and control of ground water resources.

16. *The Municipal Act*⁵²

This legislation is administered by Manitoba Intergovernmental Affairs. It provides the authority to create urban and rural municipalities throughout the province, and sets out the manner in which they are to be governed.

The role of a municipal council is to develop and evaluate policies and programs, to ensure the powers, duties and functions of the municipality are carried out, and to carry out the powers, duties and functions expressly given to it under the Act or any other Act. As part of their duties, council members are to consider the well being and interests of the municipality as a whole and to bring to the council's attention anything that would promote the well being and interests of the municipality. A municipal council is expressly allowed to encourage economic

⁵² Given the size of *The Municipal Act* and the fact that we are only providing a summary of its provisions in general, we have not included a copy of it with our list of legislation.

development⁵³ in any manner it considers appropriate and it may adopt a strategic plan for economic development.

Municipal councils may only act by resolution or by-law. A resolution is not valid unless it is passed at a council meeting. Each proposed by-law must be given three separate readings at the same council meeting and may be passed after it receives third reading and is signed. A by-law that is inconsistent with an Act or regulation in force in the province is of no effect to the extent of the inconsistency. In addition, a by-law is invalid if the council acted in excess of its jurisdiction, acted in bad faith, or if it is discriminatory, but it will not be considered invalid merely on the grounds that it is unreasonable or not in the public interest.

Every council meeting must be conducted in public, except in certain circumstances, and every person has the right to attend unless there is improper conduct on the part of that person. Minutes of meetings and other municipal records are to be accessible to the public unless the meeting was closed.

The power given to a municipal council to pass by-laws under the Act is stated in general terms, as follows:

- to give broad authority to the council and to respect its right to govern the municipality in whatever way the council considers appropriate, within the jurisdiction given to it under this and other Acts; and
- to enhance the ability of council to respond to present and future issues.

The Act gives authority to a municipal council to pass by-laws in a wide variety of matters, in particular the safety, health, protection and well being of people and safety and protection of property.

Municipal councils are authorized under the Act to do a number of things, for instance:

- regulate or prohibit;
- adopt by reference in whole or in part a code or standard made or recommended by the Government of Canada, a province or a recognized technical or professional organization and require compliance with that code or standard;

⁵³ The term "economic development" is defined in s. 258(1) of the Act as meaning the establishment, expansion or continuation of a business or industry.

- deal with any development, activity, industry, business or thing in different ways or divide any of them into classes and deal with each class in a different way;
- provide for a system of licenses, permits and approvals;
- require that land be kept and maintained in a safe and clean condition;
- regulate activities or things that in the opinion of the council are or could become a nuisance, which may include noise, odours, unsightly property or fumes;
- enforcement procedures, including inspections to determine whether by-laws are being complied with and to remedy any contravention, for instance by creating offences and penalties.

Despite the broad powers given to municipal authorities, the Act expressly allows the Lieutenant Governor in Council to make regulations restricting the power or duty of a municipal council to pass a by-law. However, except in an emergency, the Minister, in formulating or reviewing the regulations, must provide an opportunity for consultation with, and seek the advice and recommendations of, the Municipal Advisory Committee.⁵⁴

17. *The Municipal Council Conflict of Interest Act*

This legislation is administered by Manitoba Intergovernmental Affairs. Its purpose is to ensure members of municipal councils are not in a conflict of interest position regarding any matters coming before it. The Act also prohibits the use of confidential information acquired by a council member in the performance of his or her duties for personal gain. In addition, it prohibits a council member from communicating, directly or indirectly, with another council member for the purpose of influencing the municipality to enter into a contract or other transaction, or confer a benefit, in which that council member or any of his or her dependants has a direct or indirect pecuniary interest.

The Act sets out specific circumstances in which a direct or indirect pecuniary interest will be presumed. It also imposes on a council member with such an interest, a duty to disclose, if during a meeting there arises a matter in which a council member or a dependant has a direct or indirect pecuniary interest, the general nature of that interest, to withdraw from any meetings without voting or

⁵⁴ The Municipal Advisory Committee is established under the Act and is made up of members appointed by the Minister.

participating in the discussion, and to refrain at all times from attempting to influence the matter.

18. *The Planning Act*

This legislation is administered by Manitoba Intergovernmental Affairs. It gives authority to LG to, by regulation, establish provincial land use policies to guide sustainable land use and development in the province. Such provincial land use policies may contain a series of goals and policies that relate to such things as:

- rural and regional development in the province, including agricultural development; and
- the protection and enhancement of the environment, including water sources, sensitive lands⁵⁵, renewable resources and areas of natural or historic significance.

The council of a municipality is responsible for the adoption, administration and enforcement of its development plan by-law, zoning by-laws and all other by-laws respecting land use and development. A municipal council or planning district⁵⁶ may establish a "planning commission"⁵⁷ to make decisions about applications for variances and conditional uses.⁵⁸

The Act requires municipal councils and planning districts to prepare a development plan that must be generally consistent with Provincial Land Use

55 The term "sensitive land" is defined in the Act as including (a) land that is susceptible to flooding, permafrost, erosion or that has unstable slopes or poor drainage; (b) areas of special significance for animal, bird or plant life, including wetlands, forests and nesting areas; and (c) land on which any development is likely to harm ecological diversity.

56 The term "planning district" is defined in the Act as "a planning district established under Part 3". The councils of two or more municipalities may apply to the Minister to establish a planning district to improve sustainable land use and development in the area. The board of a planning district is responsible for the adoption, administration and enforcement of the development plan by-law for the entire district, and the administration and enforcement of zoning by-laws, secondary plan by-laws, building by-laws and by-laws dealing with minimum standards of maintenance and occupancy of buildings. A planning district may also review and coordinate the policies and programs of its member municipalities relating to land use and development. The goal of establishing a planning district is to improve and coordinate land use and development in the region and to promote cooperation between planning districts and municipalities in the delivery of services and the development of infrastructure.

57 The term "planning commission" is defined in the Act as meaning one established under Part 3. The duties of a planning commission are to hold hearings and make decisions regarding applications for variances or conditional uses.

58 The term "conditional use" is defined in the Act as meaning a use of land or a building that may be permitted under a zoning by-law.

Policies.⁵⁹ The Act also allows two or more municipal councils or planning districts to develop a regional strategy for the area under their jurisdiction that must be generally consistent with provincial land use policies.

Provincial land use policies are expressly set out in *Provincial Land Use Policies Regulation 184/94* and:

- are intended to promote sustainable development and act as a guide to local authorities undertaking and reviewing land use plans;
- may be refined and adapted at the local level to suit the needs of different areas of Manitoba;
- are general in nature given the wide range of uses of land throughout the province. They do not take into account all local situations and must be applied with common sense and discretion to be sure that the overall goal of sustainable development is achieved;
- although some contain detailed criteria and specifications, they are not intended to be interpreted as mandatory regulations or rigid formulas. They may be varied in exceptional circumstances to ensure that they are as responsive as possible to local conditions;
- no one Policy has priority over another, and only in specific cases where the circumstances of a proposed development are weighed, can one form of development or one type of resource be seen as the most appropriate for a location.

According to the Act, a development plan established by a municipal council or planning district must contain the following components:

- the plans and policies of the planning district or municipality respecting its purposes and its physical, social, environmental and economic objectives;
- through maps and statements of objectives, direct sustainable land use and development;
- set out measures for implementing the plan; and
- such other matters as the Minister or the board or council considers advisable.

⁵⁹ The Principles and Guidelines for Sustainable Development and Provincial Land Use Policies are set out in *Provincial Land Use Policies Regulation 184/94* and for ease of reference those relevant to the hog industry are attached at Tab G.

The Act expressly states that each development plan must include a livestock operation policy in order to provide guidance for zoning by-laws dealing with livestock operations. The development plan must set out the general standards that will be followed respecting the siting and setback of livestock operations and must divide the planning district or municipality into one or more areas designated as one of the following:

- areas where the expansion or development of livestock operations of any size may be allowed; or
- areas where the expansion or development of livestock operations involving a specified maximum number of animal units⁶⁰ may be allowed; or
- areas where the expansion or development of livestock operations will not be allowed.

Except as provided in a development plan or zoning by-law respecting siting and setback conditions, the Act prohibits a board or council from imposing any restrictions or conditions on either the location of a livestock operation or the number of animal units involved in a livestock operation. In addition, a municipal by-law or zoning by-law respecting nuisance odours or prohibiting or regulating the storage, application or use of manure does not apply to a livestock operation if the owner or operator:

- is complying with all other Acts and regulations regarding the storage, application or use of manure; and
- is complying with the terms and conditions of any permit or license required to be held under any Act or regulation.

In areas where expansion or development of livestock operations of any size may be allowed, the zoning by-law for that area must designate livestock operations involving 300 or more animal units as a conditional use. Livestock operations involving fewer than 300 animals units may be designated as either a permitted use or a conditional use.

There is opportunity for public consultation during preparation of a development plan, as a board or council must hold one or more public meetings and consult with a qualified land planner. In addition, a public hearing must be held between 1st and 2nd reading of the development plan by-law. After the public hearing is held, the board or council may give the by-law 2nd reading, make any necessary

⁶⁰ The term "animal unit" is defined in the Regulation as meaning the number of animals of a particular category of livestock that will excrete 73 kg of total nitrogen in a 12-month period.

major alterations, hold another public hearing, or pass a resolution not to proceed.

A development plan by-law that has been passed is then provided to the Minister for approval. Any person who made representations at the public hearing may file an objection to the development plan by-law with the Minister, and the objection may be referred to the Municipal Board for a public hearing.

Upon receipt of a development plan by-law passed by a board or council, the Minister may do any of the following:

- approve the by-law with no alterations or conditions;
- approve the by-law, subject to the board or council either making any alterations the Minister requires or complying with any condition imposed; or
- reject the by-law.

Once a development plan by-law has been adopted, it is binding on all persons and not subject to appeal. However, if the board or council decides not to proceed with the development plan by-law after it has been approved by the Minister, it must pass a resolution not to proceed. Notification of the Board's decision must be given to the Minister, any person who made representations at the hearing, and any person who made representations at the Municipal Board hearing, if one was held.

Either the board or council, or an owner of affected property, may initiate an amendment to the development plan. Such an application may be refused if in the opinion of the board or council it is without merit or is the same or substantially similar to an earlier application made within the previous year. The Minister may permit the board or council to amend a development plan without giving public notice, holding a hearing or submitting the amendment for approval if it is a minor amendment or is required to correct an error or omission.

Unless ordered otherwise by the Minister, development plans must be reviewed periodically, either on or before any deadline expressly set out in the by-law or within five years of the date it was adopted. Any such review must include a comprehensive examination of the development plan and public consultation.

The Act sets out deadlines for the establishment of development plan and zoning by-laws. In particular, all planning districts and municipalities that are not part of a planning district must adopt a development plan by-law that includes a livestock operation policy, or amend its existing development plan by-law to include a livestock operation policy by January 1, 2008. Further, all

municipalities must establish zoning by-laws within one year of adopting a development plan by-law or amend its existing zoning by-laws to ensure they meet the requirements of the Act by January 1, 2008.

Should a board or council fail to establish a development plan or conduct a periodic review of same, the Minister has the authority under the Act to prepare a development plan by-law or an amendment on its behalf. In such a case, the Minister may refer the matter to the Municipal Board for a hearing and to receive the Board's recommendations. A development plan prepared by the Minister must be approved by the LG and once it is, for all intents and purposes it is considered to be a development plan by-law passed by the council or board.

When preparing, amending or re-enacting a development plan by-law, a board or council must consider any regulation made under s. 4 of *The Water Protection Act* governing, regulating or prohibiting any use, activity or thing in a water quality management zone. It must also consider any watershed management plan approved under *The Water Protection Act*.

A board or council may also adopt a secondary plan by-law to deal with any matters contained in the development plan by-law, but any such by-law must be consistent with the development plan by-law.

Unless the municipality is part of a planning district that has adopted a district-wide zoning by-law, it must adopt a zoning by-law that is generally consistent with the development plan by-law and any secondary plan by-law. A zoning by-law must divide the municipality into zones, prescribe permitted and conditional uses for land and buildings in each zone, and set out the procedure for applying and issuing development permits. General development requirements must be set out in a zoning by-law having regard to any permitted or conditional uses approved for a particular zone. A zoning by-law may contain provisions prohibiting or regulating such things as:

- the use of the land;
- the construction or use of buildings;
- the number, lot coverage, floor area, yard size, dimension and location of buildings on parcels of land;
- the design details of buildings and building sites;
- the open space around and between buildings, minimum separation distances between buildings on a site and minimum separation distances between buildings and other buildings or uses;

- waste storage and collection areas, and facilities and enclosures for storing waste and other liquids; and
- the construction of a building within a specified distance of a water body or ground water surface.

With respect to livestock operations, the Act expressly sets out a specific requirements for a zoning by-law. In particular, the legislation states that zoning by-laws respecting livestock operations must be generally consistent with the livestock operation policy of the planning district or municipality.

If the livestock operation policy designates an area as a place where livestock operations may be allowed, the zoning by-law must designate livestock operations involving 300 or more animal units as a conditional use and may designate livestock operations involving less than 300 animals units as a permitted use or a conditional use. Further, a zoning by-law must establish siting and setback requirements for livestock operations that meet the minimum standards established by regulation and that are generally consistent with the livestock operation policy of the planning district or municipality.

The minimum siting and setback requirements relating to livestock operations are set out in the Appendix to the *Provincial Land Use Policies Regulation 184/94*. With respect to setbacks, a new or expanded livestock operation must meet the minimum requirements set out in the LMMMR. As for separation distances, the Regulation sets out specific separation distances from a single residence or a designated area to either an earthen manure storage facility or to animal housing facility and a non-earthen manure storage facility.

Between 1st and 2nd reading of a zoning by-law there must be a public hearing. If there are no objections, the board or council may give the by-law 2nd and 3rd reading, or pass a resolution not to proceed with the by-law. If there are objections from any person, and a second objection from the Minister, the matter will be referred to the Municipal Board.

The enactment of a zoning by-law does not affect buildings, land, the use of land, or the intensity of the use of land if it lawfully existed prior to the that date.

Any person who believes a zoning by-law adversely affects his or her property rights may apply for an order varying specific provisions of the by-law insofar as they apply to the affected property. In that case a public hearing must be held and the board or council may reject or vary the by-law if:

- it is compatible with the general nature of the surrounding area;

- it will not be detrimental to the health or general welfare of residents living or working in the surrounding area; and
- it will not negatively affect other properties or potential development in the surrounding area.

With respect to conditional uses, the Act states that no one may undertake a conditional use without first obtaining approval. The owner, or a person authorized by the owner, of affected property must make an application to the board or council. Upon receipt of an application for a conditional use, notice must be given and a public hearing must be held. Any person may make representations at the public hearing on the application and after the hearing, the board, council or planning commission must either reject the application or approve it so long as:

- it is compatible with the general nature of the surrounding area;
- it will not be detrimental to the health or general welfare of people living or working in the surrounding area;
- it will not negatively affect properties or potential developments in the surrounding area; and
- is generally consistent with the development plan, zoning and any secondary by-laws.

An order of the board or council is final and not subject to appeal.

When approving an application for a conditional use, the board, council or planning commission may impose any conditions it considers necessary, and require the owner to enter into a development agreement. Approval of a conditional use may be revoked if the applicant or owner of the affected property fails to comply with the conditional use order or a condition imposed. Any modifications to a condition of the the conditional use approval must go through the same process as though an original application had been made.

With respect to livestock operations involving fewer than 300 animal units, the Act allows only certain conditions to be imposed and expressly states that any condition must be relevant and reasonable. The following are the only allowable conditions:

- measures to ensure conformity with the applicable provisions of the development plan, zoning and any secondary by-laws;

- requiring covers on manure storage facilities and/or requiring shelter belts to be established to reduce odours from the livestock operation;
- requiring the owner of the affected property to enter into a development agreement dealing with the affected property and any contiguous land owned or leased by the owner on one or more of the following matters:
 - the timing of construction of any proposed building;
 - the control of traffic;
 - the construction or maintenance, at the owner's expense either in whole or in part, of roads, traffic control devices, fencing, landscaping, shelter belts or site drainage works required to service the livestock operation;
 - the payment of a sum of money to the planning district or municipality to be used to construct anything related to the previous condition.

With the exception of a cover on a manure storage facility or a shelter belt, the Act expressly prohibits a board or council from imposing any other conditions respecting the storage, application, transport or use of manure from a livestock operation.

If a planning district or municipality does not have a development plan by-law or zoning by-law in place at the time an application for approval of a livestock operation with fewer than 300 animal units is considered, or it only has a planning scheme in place, it may only be approved if it is generally consistent with provincial land use policies and the proposed operation meets the siting and setback requirements for livestock operations established by the Regulation.

With respect to applications to approve a conditional use for what are referred to in the Act as “large scale” livestock operations, meaning they involve 300 or more animal units, the Act sets out a specific process that must be followed.

Upon receipt of an application, a board, council or planning commission must provide a copy of the application, together with all supporting materials, to the Minister as soon as is reasonably practicable. Upon receipt of that documentation, the Minister must then refer it to the Technical Review Committee (“TRC”) of that region of the province.⁶¹ The TRC may require the applicant to provide additional information. The TRC must then prepare a report setting out its findings and recommendations respecting the application and provide it to the board, council or planning commission. The TRC's report must also be made available for inspection and copying at the office of the applicable planning district or municipality.

⁶¹ The Technical Review Committee is established under s. 113 of the Act.

At least 30 days after receiving the TRC's report, the board, council or planning commission must fix a date for a public hearing regarding the application. Notice of the hearing must be sent to the applicant, the Minister, all adjacent planning districts and municipalities, and every property owner located within three kilometres of the site of the proposed livestock operation, even if the property is located outside the boundaries of the planning district or municipality. The notice of the hearing must include confirmation that the TRC's report is available for inspection and copying.

At the public hearing of the application, any person is afforded an opportunity to make representations. After the hearing, the board, council or planning commission must make an order either rejecting or approving the application. An application may only be approved if the TRC has determined, based on the available information, that the proposed operation:

- will not create a risk to health, safety or the environment, or that any risk can be minimized through the use of appropriate practices, measures and safeguards;
- will be compatible with the general nature of the surrounding area;
- will not be detrimental to the health or general welfare of people living or working in the surrounding area;
- will not negatively affect other properties or potential development in the surrounding area; and
- is generally consistent with the development, zoning and any secondary by-laws.

The Act permits only certain conditions to be imposed by a board, council or planning commission and expressly states that any condition must be relevant and reasonable. Those conditions are:

- measures to ensure conformity with the applicable provisions of the development, zoning and any secondary by-laws;
- measures to implement recommendations made by the TRC;
- requiring a cover on a manure storage facility and/or a shelter belt to reduce odours from the livestock operation;
- requiring the owner of the affected property to enter into a development agreement.

As is the case with conditional use permits relating to livestock operations with less than 300 animal units, the Act prohibits the imposition of any conditions respecting the storage, application, transport or use of manure from a livestock operation.

The approval of a livestock operation with more than 300 animal units may be revoked if the applicant or the owner of the affected property fails to comply with the conditional use order or any condition imposed.

A copy of the order must be sent to the applicant, the Minister and any person who made a representation at the public hearing.

If a planning district or municipality does not have a development plan or zoning by-law in place, or only has a development scheme in place, an application may only be approved if the TRC has determined, based on the available information, that the proposed operation:

- will not create a risk to health, safety or the environment, or that any risk can be minimized through the use of appropriate practices, measures and safeguards;
- will be compatible with the general nature of the surrounding area;
- will not be detrimental to the health or general welfare of people living or working in the surrounding area;
- will not negatively affect other properties or potential development in the surrounding area; and
- is generally consistent with the development, zoning and any secondary by-laws.

In addition, the proposed operation must be generally consistent with provincial land use policies or the development plan by-law and meets the siting and setback requirements established by the Regulation.

No development⁶² or expansion of a livestock operation that is subject to an application for approval may take place until the application is approved and the applicant complies, or agrees to comply, with any condition imposed on the

62 The term "development" is defined in the Act as meaning (a) the construction of a building on, over or under land; (b) a change in the use or intensity of use of a building or land; (c) the removal of soil or vegetation from land; and (d) the deposit or stockpiling of soil or material on land and the excavation of land.

approval. Further, no development or expansion may take place until the applicant obtains every approval, permit or license required under any legislation, regulation or by-law in respect of the proposed operation or expansion, and complies with, or agrees to comply with, any condition attached to such approval.

The Act allows for designated employees or officers of a planning district or municipality to enter onto land or into a building to conduct an inspection to determine compliance with a by-law or permit. Notice of such action is required unless it is an emergency situation. Written orders for non-compliance may be issued to remedy the contravention and the owner may be ordered to, for instance, cease doing something or change the way it is being done, or to take action to remedy the contravention within a specified period of time. If an order has not been complied with, a board or council may take any action or measure reasonably necessary to remedy the contravention.

It is an offence to contravene the Act, a by-law adopted under the Act or a permit, but prosecution for the contravention must take place within two years. If a contravention occurs for more than one day, each day constitutes a separate offence. Anyone found guilty of an offence under the Act is liable to a fine of not more than \$5,000 or imprisonment of not more than six months, or both, and in the case of a corporation, of a fine of not more than \$20,000. In addition to those penalties, a judge may also order the person to comply with the provision of the Act or by-law that was contravened and/or to pay to the planning district or municipality the amount of costs incurred as a result of the contravention.

The Act gives the Minister additional discretionary duties, for instance to:

- make recommendations to the LG on the development of land use policies;
- coordinate provincial land use and development policies and programs with federal and local government land use and development policies and programs;
- conduct a study of any issue related to land use and development in the province;
- issue guidelines to planning districts and municipalities on any matter under the Act;
- promote cooperation between planning districts and municipalities on regional land use and development issues; and
- promote public participation in the development of land use and development policies.

The Act also provides for the establishment of an Interdepartmental Planning Board (“IPB”) made up of officials from government departments and agencies involved in matters relating to land use and development. The IPB is given discretionary authority to:

- advise and assist the Minister and government departments and agencies on all matters affecting the use and development of land in the province;
- coordinate government policies affecting the use and development of land in the province;
- review and make recommendations to the Minister on any proposed special planning area or development plan by-law, and all matters relating to planning districts; and
- any other duties assigned to it by the Act or any other Act, or by the LG.

The Act expressly states that if there is a conflict between a provision of it and a provision of *The Conservation Districts Act*, the provisions of this Act prevail.

The Act gives broad authority regarding the making of regulations, for example:

- respecting special planning areas;
- respecting development plans; and
- establishing siting and setback requirements for livestock operations.

19. *The Public Health Act*

This legislation is administered by Manitoba Health and gives the Minister the authority to supervise all matters relating to the preservation of life and the health of people of the province, and of all matters relating to the prevention of injury to life and limb not specifically dealt with under some other Act. The Minister is given broad power and must, for instance, do such things as:

- investigate and inquire into the causes of disease, ill health, and death, in the province, and the causes of injuries to life or limb the prevention of which is not specifically dealt with under some other Act;
- investigate and inquire into the steps that may be taken to reduce the causes of disease, ill health, death, and such injuries; and

- advise the government and officers of the government on matters relating to public health and safety in matters not dealt with specifically under some other Act.

Public health inspectors derive their authority from this legislation and may be appointed by local municipal governments or the Minister. In order to administer or determine compliance with the Act, regulations or a municipal by-law related to health, a medical officer of health may enter into and inspect any place or premises⁶³, other than a dwelling, at any reasonable time. If there is reason to believe there is an immediate threat to public health due to a serious health hazard⁶⁴ or a dangerous disease⁶⁵, a medical officer of health may enter the place or premises, including a dwelling, at any time and without a warrant to exercise his or her powers under the Act to prevent, control or deal with the threat. For the purposes of enforcing the legislation, its regulations and any by-law of a municipality relating to health, a medical officer of health may, for example:

- order an insanitary condition⁶⁶ on, in or in connection with any premises to be abated by the owner or occupant, or both, within a specified period of time;
- order any premises that is or constitutes an insanitary condition to be vacated; or
- order any structure or building that is or constitutes an insanitary condition that cannot be abated, or is not abated after being ordered to be within the specified period of time, to be demolished.

In addition to the above, medical officers of health are given additional powers to administer or determine compliance with the Act or the regulations in relation to a serious health hazard or a dangerous disease. If it is reasonable to believe a

63 The term “premises” is defined in the Act as meaning land and structures, or either of them, and any adjacent yards and associated buildings and structures, whether of a portable, temporary or permanent nature, and includes (a) a body of water, (b) a motor vehicle or trailer, (c) a train or a railway car, (d) a boat, ship or similar vessel, and (e) an aircraft.

64 A “serious health hazard” is defined in the Act as meaning (a) a substance, thing, plant, animal or other organism, (b) a solid, liquid or gas, or any combination of them, or (c) a condition or process; that presents or may present a serious and immediate threat to public health.

65 The term “dangerous disease” is defined in the Act as meaning Ebola, Lassa fever, plague, smallpox or a disease designated by the Minister under section 1.1.

66 The term “insanitary condition” is defined in the Act as meaning a condition or circumstance (a) that is offensive, or (b) that is, or may be, or might become injurious to health, or (c) that prevents or hinders the suppression of disease, or (d) that contaminates or pollutes, or may contaminate or pollute food, air, or water, or (e) that might render food, air, or water injurious to the health of any person.

serious health hazard exists or may exist and an order is necessary to prevent, remedy, mitigate or otherwise deal with the situation, any or all of the following action may be taken by the medical officer of health:

- make any inspection, investigation, examination, test, analysis or inquiry considered necessary;
- detain or cause to be detained any motor vehicle, trailer, train, railway car, aircraft, boat, ship or similar vessel;
- require any substance, thing, solid, liquid, gas, plant, animal or other organism to be produced for inspection, examination, testing or analysis;
- seize or take samples of any substance, thing, solid, liquid, gas, plant, animal or other organism;
- require any person to:
 - provide information, including personal information, personal health information, or proprietary or confidential business information; and
 - produce any document or record, including a document or record containing personal information, personal health information or proprietary or confidential business information;
- take photographs or videotapes of a place or premises, or any condition, process, substance, thing, solid, liquid, gas, plant, animal or other organism located at or in it; or
- do any of the following:
 - bring any machinery, equipment or other thing into or onto a place or premises;
 - use any machinery, equipment or other thing located at or in a place or premises;
 - require that any machinery, equipment or other thing be operated, used or dismantled under specified conditions; or
 - make or cause an excavation to be carried out.

An order under this provision may be made against the following persons:

- an owner, occupant or person who appears to be in charge of the place or premises;

- a person who is, or appears to be, in charge of a substance, thing, solid, liquid, gas, plant, animal or other organism;
- a person who is engaged in or carries out an enterprise, activity or process; or
- any other person or category of persons specified in the regulations,

and it may require that person to do or refrain from doing something to prevent, remedy, mitigate or otherwise deal with the serious health hazard, including:

- investigate the situation, or undertake tests, examination, analysis, monitoring or recording, and provide the medical officer of health with any information the medical officer of health requires;
- isolate, hold or contain a substance, thing, solid, liquid, gas, plant, animal or other organism specified in the order;
- remove a substance, thing, solid, liquid, gas, plant, animal or other organism specified in the order;
- destroy a substance, thing, solid, liquid, gas, plant, animal or other organism specified in the order, or otherwise dispose of it;
- require a place, premises, or part of a place or premises to be vacated;
- prohibit entry to or restrict use of a place, premises, or part of a place or premises;
- construct, excavate, install, modify, replace, remove, reconstruct or do any other work in relation to a place or premises, or to a thing specified in the order;
- clean or disinfect a place or premises, part of a place or premises, or a thing specified in the order;
- refrain from manufacturing, processing, preparing, storing, handling, displaying, transporting, selling, or offering for sale or distribution any substance, thing, solid, liquid, gas, plant, animal or other organism; or
- refrain from using any place or premises, or any substance, thing, solid, liquid, gas, plant, animal or other organism, or restrict its use.

Upon making such an order, the medical officer of health may cause a place, premises or other area to be placarded so as to give public notice of the order.

To prevent, control or deal with a threat to public health, the Minister, or a person designated by the Minister or the chief medical officer of health, may provide information to, or obtain information from, a government department or agency, a municipality, a regional or local health authority, a band as defined in the *Indian Act*, a federal government department or agency, a government department or agency of another province, or a government or agency of a government of a foreign country. This information may include personal information, personal health information and proprietary or confidential business information.

Failure to comply with a medical officer of health's order is an offence and it is considered to be a continuing offence for each day the non-compliance continues. If the failure to comply involves an expenditure or loss exceeding \$2,000, or will seriously interfere with a business, trade or industry, a medical officer of health, before proceeding to enforce the order or recommend prosecution for failure to comply, must report the matter to the Minister and/or to the municipality concerned. Similar conditions apply if the person subject to an order cannot be located. In such cases where a medical officer of health has reported non-compliance to the Minister and/or the municipality concerned, no further action may be taken to enforce the order or to prosecute the person for failure to comply without an order of the Court of Queen's Bench.

A municipality or the provincial government may recover expenses incurred to remedy the insanitary condition and the amount may be either collected as a debt owing or entered as a tax on the tax roll of the municipality against the property.

The *Protection of Water Sources Regulation 326/88R* states that no one shall deposit or discharge into, or onto the bank of, any river, stream, lake, creek, spring, coulee, reservoir, pond, or dugout, or on the ice thereof, any manure, or permit the fouling or contamination of ice or water by the congregation or watering of stock at any water hole or place. Further, no person shall commit any act that will contaminate any underground water supply by the discharge of surface drainage, liquid waste into a well, abandoned well, hole, or other opening and no one shall fill or replenish any existing well except with water from an approved source satisfactory to the medical officer of health.

If an accumulation of manure, for example, is found on the banks of, or on the ice of, or in close proximity to, any water course or any act is being committed that causes contamination or pollution, or creates a nuisance or offence, or affects injuriously any public or private water supply, a medical officer of health, an

inspector or the Minister must order the person responsible to desist from any such practice and to clean up and remove all such material.

Collection and Disposal of Wastes Regulation 321/88 states that in addition to the meaning of the term “insanitary condition” under the Act, it also includes:

- any nuisance;
- any condition, matter or thing that may be injurious to health;
- insufficient light or ventilation in a room or other enclosed area; and
- the existence of liquid waste, decayed matter (including dead animals), unless it is deposited or adequately stored for suitable disposal.

This Regulation also states that the owner, occupier or user of any premises must maintain the premises, including the land and buildings, in a sanitary and orderly condition and shall prevent the deposit of any waste material from that property upon or into other premises except as authorized by a license or permit.

Insanitary Conditions Regulation 325/88R prohibits persons from creating or maintaining an insanitary condition, or permit the existence of an insanitary condition. In addition, this Regulation states that all natural sloughs or other depressions or excavations in which water may, or does, accumulate so as to become stagnant, putrid or a source of annoyance shall wherever possible be effectively drained or filled with earth by the responsible person. In addition, this Regulation states that within 24 hours of the death of an animal, it must be burned, buried or otherwise disposed of in such a manner so as not to create an insanitary condition.

The Act permits regulations to be made regarding a broad range of matters, for example:

- declaring certain conditions or circumstances to be insanitary conditions and declaring that certain acts contribute to insanitary conditions;
- preventing the pollution or fouling of wells, underground waters, and springs;
- the testing of livestock and poultry for diseases communicable to man;
- respecting the inspection and regulation of food, including the method of production, processing, shipping and storage;

- respecting the confinement and disposition of contaminated, diseased or injured animals and the disposition of dead animals;
- respecting the testing of livestock for chemical residues, diseases or other conditions detrimental to public health.

The provisions of this Act do not affect or impair the validity of a municipal by-law relating to any matters dealt with under the legislation, unless it is contrary, in conflict with, or inconsistent. In such a case, this Act and its regulations prevail and the municipal by-law will be suspended and of no force and effect. A municipal by-law that imposes further restrictions or requires further conditions than this Act or regulation impose is not considered to be repugnant to, in conflict with, or inconsistent with this Act or the regulations solely for that purpose.

20. The Water Protection Act

This legislation is administered by Manitoba Water Stewardship. Its preamble recognizes certain basic principles and commitments regarding the protection of water in Manitoba, in particular that:

- an abundant supply of high quality water is essential to sustain all ecological processes, life-support systems and food production, and is paramount to the environmental, economic and social well-being of Manitoba now and in the future;
- access to sufficient, safe, acceptable and affordable water for personal and domestic use is internationally recognized as a fundamental right of citizens;
- the Government of Manitoba recognizes the importance of the Canada-United States Boundary Waters Treaty and other inter-jurisdictional agreements protecting water, and the shared right and responsibility of all jurisdictions in the Hudson Bay drainage basin to protect water resources within the basin;
- to most effectively ensure that drinking water is kept clean, safe and reliable, it is necessary to complement the provisions of *The Drinking Water Safety Act* with additional measures to protect drinking water sources;
- Manitobans recognize that many human activities, including the use and consumption of water for all purposes, the production of waste and wastewater effluent, and industrial, agricultural and recreational activities, may impair the quality and quantity of our water resources, and that stewardship of these invaluable resources is a responsibility shared by all;

- the Government of Manitoba is committed to watershed planning as an effective means to address risks to water resources and aquatic ecosystems⁶⁷, and believes the residents of watersheds should be consulted when watershed plans are developed.

In addition to the principles and acknowledgments that form the basis of this legislation, the Act expressly states as its purpose the protection and stewardship of Manitoba's water resources and aquatic ecosystems, recognizing:

- that Manitoba's social and economic well-being is dependent upon the sustained existence of a sufficient supply of high quality water;
- the importance of comprehensive planning for watersheds, with respect to water, land and ecosystems, on a basis that acknowledges and considers their interdependence;
- that water resources and aquatic ecosystems require protection to ensure the high quality of drinking water sources;
- the importance of applying scientific information in decision-making processes about water, including the establishment of standards, objectives and guidelines;
- the need to protect riparian areas and wetlands; and
- the benefits of providing financial incentives for activities that protect or enhance water, aquatic ecosystems or drinking water sources.

The Act allows for regulations to be made setting or adopting water quality standards, objectives or guidelines. Any such regulation may provide a provision that decisions made under *The Environment Act* or any other specified Act or regulation must consider its standards, objectives and guidelines and that a license should not be approved unless its effect will ensure compliance or consistency with same.

The legislation also allows for regulations to be made designating water quality management zones for the purpose of protecting water, aquatic ecosystems or drinking water sources. When considering whether to make such a designation,

⁶⁷ The term “aquatic ecosystems” is defined in the Act as meaning the components of the earth related to, living in or located in or on water or the beds or shores of a water body, including but not limited to (a) all organic and inorganic matter, and (b) all living organisms and their habitat, and their interacting natural systems.

the Minister may consider scientific and other information relating to the following:

- the physical characteristics of land in the area, including its topography and soil types;
- the ability of the soil or water in the area, or water downstream of the area, to assimilate nutrients and other pollutants;
- water bodies or groundwater in the area, including information relating to:
 - the water quality characteristics of the water;
 - the susceptibility of the water to contamination or adverse changes in level or in-stream flow; and
 - the extent to which the water is pristine or relatively undisturbed by human activity;
- the area's aquatic ecosystems;
- whether the area contains a source, or a potential source, of drinking water;
- whether the area supports species that are sensitive to alterations in water quality or quantity resulting from human activity;
- whether the area provides habitat for endangered species; and
- any other matter the Minister considers relevant.

Before recommending that a regulation be made to designate a water quality management zone, the Minister must also consider:

- water quality standards, objectives and guidelines that apply to the area;
- approved watershed management plans that apply to the area; and
- the proximity of the area to a national park, provincial park, ecological reserve or other protected area.

In addition, before a regulation is made designating a water quality management zone, the Minister may also consult with any water planning authority. Prior to a regulation being made, unless it is an emergency situation, the Minister must give notice of the proposed regulation to the public and must file the proposed regulation in the public registry. Any person may submit a written objection to the Director, however that written objection must be based on written

scientific or technical information related to the the area proposed to from all or part of the water quality management zone. Upon receipt of such an objection, the Director must notify the Minister and consider the objection and the supporting scientific or technical information. If the Director determines that there is an unresolved scientific or technical issue, expert advice must be obtained.

Once that is done, the Director must give the Minister his or her advice as to whether the proposed regulation should be varied or revised. If the regulation is approved, it must be reviewed within five years by the Water Council for its effectiveness and there must be consultation with persons affected by the regulation.

Regulations may also be made under the Act in a number of matters relating to water, for example:

- governing, regulating or prohibiting the discharge or other release of a pollutant into water;
- governing, regulating or prohibiting the access of livestock to water bodies or areas adjacent to water bodies;
- prescribing water management principles that are consistent with the purposes of the Act;
- respecting the establishment of programs to provide financial incentives to protect or enhance water, aquatic ecosystems or drinking water sources;
- respecting the manner in which the Director must obtain expert advice for the purpose of a proposed regulation to designate a water quality management zone.

The Act also establishes the Water Council, whose responsibilities are to:

- monitor the development and implementation of watershed management plans in the province;
- review regulations respecting water quality management zones, and provide advice to the minister;
- advise the minister about matters relating to water generally;
- coordinate the activities of advisory boards and similar entities that perform functions relating to water, including advisory boards and other entities specified by regulation;

- assist in reporting sustainability indicators relating to water; and
- perform any other duties assigned to it by an Act or regulation.

The Act provides for the designation of watershed management plans, including the designation of a water planning authority, for example the board of a planning district or a municipal council. Watershed management plans must be established after considering a number of factors, including relevant studies relating to water, land use, demographics, the capacity of the environment to accommodate development, and any other matter related to present or future physical, social or economic factors. A watershed management plan must contain specific elements, in particular the identification of issues relating to the protection, conservation or restoration of water, aquatic ecosystems and drinking water sources, and objectives, policies and recommendations. It must also identify ways in which the plan may be implemented, monitored and evaluated, recognizing the need to implement the plan with assistance of individuals, groups, and organizations.

When preparing a water management plan, the water planning authority must consult with applicable conservation districts, planning districts and municipal councils, First Nations with reserve land within the watershed, and there must be at least one public meeting to consult with residents of the watershed.

The water planning authority must submit its plan to the Minister for approval and the Minister may refer it to the Manitoba Water Council for its review and advice. The Minister may either approve the plan or refer it back to the planning authority for revision or amendment.

The Act establishes the Water Stewardship Fund, one of whose purposes is to provide grants in support of research, projects and activities that further the purpose of the legislation.

To administer or determine compliance with the provisions of the Act, officers appointed by the Minister may enter and inspect any place or premises, other than a dwelling place, at any reasonable time. Officers may also undertake any necessary investigations, examinations, testing, analysis or inquiry, take samples of or seize any substance, thing, solid, liquid, gas, plant or animal or require same to be produced for inspection. In addition, officers are given authority to access any records or documents in order to be able to fulfill their duties under the Act.

It is an offence to contravene any provision of the Act or an order issued under the Act, to make a false statement to an officer or to hinder, obstruct or interfere

with an officer acting under the authority of the Act. Each day the contravention continues is considered to be a separate offence and any person or corporation convicted of an offence under the Act is liable for fines and/or imprisonment. Prosecution of an offence must be commenced within one year after the day on which sufficient evidence to justify a prosecution came to the knowledge of an officer.

Anyone who reasonably believes violations of the Act have occurred, or may occur, may report the circumstances to an officer and no action lies against a person making such a report if done in good faith.

The public registry created under this legislation by the Minister must include the following:

- a draft of each proposed regulation or amendment to a regulation under the Act;
- every declaration, order or regulation made regarding serious water shortages;
- every order respecting transitional plans relating to commercial or agricultural operations affected by a regulation so they may either come into compliance with the regulation or be exempt from its application. Such an order may only issue if the Director is satisfied that the applicant will suffer serious economic hardship unless an order is issued and issuing an order will not result in activities that present or may present an unacceptable risk of significant harm to water or an aquatic ecosystem or place a drinking water source or public health at risk;
- each watershed management plan approved by the Minister; and
- such other information as the Minister may from time to time direct.

21. *The Water Resources Conservation Act*

This legislation is administered by Manitoba Water Stewardship. Its preamble sets out accepted principles for the conservation and protection of Manitoba's water resources and its associated ecosystems, as those water resources are recognized as being essential to the long term environmental, economic and social well-being of Manitobans. The legislation confirms that a water resource management scheme must ensure water from Manitoba's water basins is not removed in quantities that could have significant adverse effects on the ecological integrity of Manitoba's water resources and its associated ecosystems. Further, in light of the fact that future domestic needs and the potential effects of

climate change are unknown, water conservation schemes should be based on the precautionary principle and on sustainable water resource management practices.

The Act prohibits the drilling, diverting, extracting, taking, storing, selling or otherwise disposing of water for removal from a water basin or sub-water basin, except in certain limited circumstances. For instance, the prohibition does not apply in respect of water that is removed in the ordinary course of carrying water in a vehicle for the use of persons or animals while they are being transported or that is removed to meet short-term safety, security or humanitarian needs with the approval of the Minister.

It is an offence to contravene any provision of the Act or regulations and anyone found guilty of an offence is submit to a fine and/or imprisonment. Corporations may also be found guilty of an offence.

22. *The Water Rights Act*

This legislation is administered by Manitoba Water Stewardship and expressly states that except as otherwise provided in the Act, all property in, and all rights to, the use, diversion or control of all water in the province are vested in the Crown in right of Manitoba. The Act is subject to the provisions of *The Water Resources Conservation Act*, but prevails over the provisions of *The Municipal Act*.

The Act provides that water is to be used or diverted, or works⁶⁸ constructed, established or maintained in a certain priority, namely:

1. Domestic purposes⁶⁹;
2. Municipal purposes⁷⁰;

68 The term “water control work” is defined in the Act as meaning any dyke, dam, surface or subsurface drain, drainage, improved natural waterway, canal, tunnel, bridge, culvert borehole or contrivance for carrying or conducting water, that (a) temporarily or permanently alters or may alter the flow or level of water, including but not limited to water in a water body, by any means, including drainage, or (b) changes or may change the location or direction of flow of water, including but not limited to water in a water body, by any means, including drainage.

69 The term “domestic purposes” is defined in the Act as meaning the use of water, obtained from a source other than a municipal or community water distribution system at a rate of not more than 25,000 litres per day, for household and sanitary purposes, for the watering of lawns and gardens, and the watering of livestock and poultry.

70 The term “municipal purposes” is defined in the Act as meaning the use of water by a municipality or community for the purpose of supplying a municipal or community water distribution system for household and sanitary purposes, for industrial use or uses related to the industry, for the watering of streets, walks, paths, boulevards, lawns and gardens, for the

3. Agricultural purposes⁷¹;
4. Industrial purposes⁷²;
5. Irrigation purposes⁷³;
6. Other purposes.

The Act also states that except as provided for in the Act and regulations⁷⁴, no person shall:

- in any manner whatsoever use or divert⁷⁵ water unless first obtaining a valid license;
- construct⁷⁶, establish, operate or maintain any works⁷⁷ unless first obtaining a valid license; or
- control water or construct, establish, operate or maintain any water control works unless first obtaining a valid license.

The Act allows the Minister to impose any terms and conditions that may be either prescribed by the regulations or as may be required.

The licensing process is set out in the Act and regulations. An application must contain information, particulars and plans relating to the proposed use, diversion or control of water, or the proposed construction or establishment of works or

protection of property, for the flushing of sewers, and for other purposes usually served by a municipal or community water distribution system.

71 The term “agricultural purposes” is defined in the Act as meaning the use of water at a rate of more than 25,000 litres per day for the production of primary agricultural products, but does not include the use of water for irrigation purposes.

72 The term “industrial purposes” is defined in the Act as meaning the use of water obtained from a source other than a municipal or community water distribution system, for the operation of an industrial plant producing goods or services other than primary agricultural products, but does not include the sale or barter of water for those purposes or the use of water for recreational purposes.

73 The term “irrigation purposes” is defined in the Act as meaning the use of water at a rate of more than 25,000 litres per day for the artificial application to soil to supply moisture essential to plant growth.

74 Section 3(2) exempts persons exercising a right under any other Act of the Legislature or any Act of the Parliament of Canada, persons using water for domestic purposes where the person has lawful access to the water, and persons who construct wells to obtain water for domestic purposes. The term “well” is defined in the Act as meaning an artificial orifice in the ground constructed for the purpose of obtaining water.

75 The term “divert” is defined in the Act and includes block, dam, impound, obstruct, interfere with, remove, dispose of, alter or change the course or position of, or disturb, whether wholly or partially, any water whether flowing or at rest.

76 The term “construct” is defined in the Act as including alterations, reconstructions or improvements.

77 The term “work” is defined in the Act as including any excavation, well, structure, plant, operation or contrivance that diverts, or may divert, or is likely to divert water.

water control works⁷⁸. Further, if required by the Minister, an application must contain an agreement in writing executed by both the applicant and the owner of any affected land that the applicant undertakes to pay compensation for any damage that may result in the course of or arising out of preliminary work that is authorized by permit. In addition, *Water Rights Regulation 126/87* requires an applicant for a license to divert and use ground water to conduct aquifer pumping tests as a condition precedent to the issuance of the license.

If, by reason of the scope and nature of the proposed use, diversion or control of water, or the construction, establishment, operation or maintenance of a proposed work or water control work, and its possible impacts on other persons, the Minister may direct the applicant to publish a notice of the application in a newspaper having general circulation in the area affected. The notice must include at the very least confirmation of the nature of the license applied for and confirmation that any person wishing to object to the application may do so in writing to the Minister.

If the Minister determines that the application is one that by its nature and scope and possible impacts on others requires notice to the public, a public hearing must be held before the Municipal Board and any person may make representations for or against the application.

In considering an application for a license, the Minister must consider scientific and other information relating to the ground water and water body levels, and the in-stream flows, that are necessary to ensure the aquatic ecosystems are protected and maintained. If in the opinion of the Minister the application would negatively affect an aquatic ecosystem, it may be refused.

A license may be suspended or restricted if, based on scientific information, in the Minister's opinion a ground water level, a water body level, or an in-stream flow is insufficient to ensure that aquatic ecosystems are protected and maintained. To that end, the Minister may undertake investigations using scientific methods regarding ground waters or water body levels, or in-stream flows, anywhere in Manitoba to determine whether aquatic ecosystems are being negatively affected by insufficient levels or flows.

In addition, if in the opinion of the Minister a work or water control work is unsafe, the Minister may make an order requiring the licensee to make repairs or

⁷⁸ Section 4(2) of *Water Rights Regulation 126/87* lists the specific information that must accompany an application for a license to construct drainage works, for example a sketch or plan showing the body of water or area proposed to be drained, a description of the proposed drainage work and the proposed drainage outlet, and information showing any anticipated effects of the operation of the proposed drainage works upon irrigation or water supply generally and upon any future development for the purposes of irrigation or water supply generally.

additions or to demolish and reconstruct it so as to put it in a safe condition. Failure to comply with such an order may result in suspension or cancellation of the license in whole or in part.

Anyone using, diverting or controlling water, or constructing or operating any works or water control works without a license is subject to an order from the Minister requiring the person to:

- cease using or diverting the water;
- removing the works or water control works;
- ceasing controlling the water; or
- repairing, reconstructing or altering the works or water control works in a specified manner.

Failure to comply with the Minister's order may result in legal action being commenced without further notice to the person subject to the order.

There is an appeal process in the Act, and any person affected by an order or decision of the Minister may appeal to the Municipal Board, whose decision is final and not subject to further appeal.

It is an offence under the Act to:

- contravene or fail to comply with the Act, the regulations, an order, a license or permit;
- obstruct, hinder or interfere with an officer exercising a power authorized under the Act; or
- to deface, alter or remove any survey monument, bench mark or water gauge placed by a duly authorized person in connection with any works or water control works.

Each day's continuance of any offence constitutes a separate offence and, upon conviction, a person is liable to fines and/or imprisonment. A prosecution under the Act must be commenced within two years after the date the alleged offence was committed.

The Act permits regulations to be made in a broad range of matters, for example:

- prescribing the information, particulars and plans that must be submitted with an application for a license;
- respecting the duration and renewal of licenses;
- authorizing the establishment or placing or construction of devices for computing or measuring the volume and discharge of water in any place respecting the approval and inspection of works and water control works;
- respecting the use and disposition of water by licensees;
- respecting the measurement of water generally;
- respecting the storage, pondage, regulation, diversion or utilization of water for any purpose and for the protection of any source of water;
- respecting the control of water.

23. *The Workers Compensation Act*⁷⁹

This legislation sets out in detail the framework of a comprehensive compensation regime based on the principles of:

- collective liability of employers for workplace injuries and diseases;
- compensation for injured workers and their dependants, regardless of fault;
- income replacement benefits based upon loss of earning capacity;
- immunity of employers and workers from civil suits;
- prevention of workplace injuries and diseases;
- timely and safe return to health and work; and
- independent administration by an arm's length agency of government.

Part I of the Act relates to compensation to workers for personal injury by accidents arising out of and in the course of employment. According to *Excluded*

⁷⁹ Given the significant size of this legislation and that we are providing a summary that may be beyond the scope of this review, we have not included this Act in our bound volume of legislation we reviewed.

Industries, Employers and Workers Regulation 196/2005, any workers carrying on the business of farming are excluded from Part I of the Act.

As is the case with our review of *The Employment Standards Code*, we have included this legislation solely for the sake of completeness and with an understanding that protection of workers employed by ILOs may be beyond the scope of this review.

III. CONCLUSIONS AND RECOMMENDATIONS

We have divided our conclusions and recommendations into the three areas that guided our legislative review, namely open and transparent decision-making, monitoring and enforcement. What follows is a summary of our findings and recommendations under each.

A. Open and transparent decision-making

Government action must be open and transparent, as elected representatives are accountable to the public and the public is entitled to know what they are doing. This concept has always been the cornerstone of a democracy and is particularly crucial in the context of the hog industry because of its profound impacts on the environment and the consequences that may flow from wrong decisions or ill-informed decisions without sufficient public input and without all of the relevant information and scientific evidence.

It is trite to say that decisions made by governments after there has been a fair and open process instill greater public confidence and carry with them a far greater degree of legitimacy than decisions made behind closed doors or without regard to the voices of those affected.

Based on this, when we conducted our legislative review we identified decisions made relating to the hog industry, in particular with respect to the issuance of licenses or permits, where there are opportunities for public input and scrutiny.

We looked at public input from the standpoint of whether there is real and meaningful participation, for example not just by having the information made available for review, but by being given an opportunity to challenge the evidence put forward by an applicant or to present independent expert evidence and other relevant information that may not be before the decision-maker. PILC believes there is much value to hearing new ideas and to having all voices heard at the time decisions are being contemplated.

The benefits of a fair and open decision-making process are many. For instance, it ensures decisions are not one-sided in the sense that the only information before the decision-maker is from the industry. In those types of circumstances, when all that is presented is one party's perspective, there is a very real risk that the decision-maker unintentionally becomes nothing more than a rubber stamp.

In the context of the hog industry, given the serious consequences resulting from the known and unknown environmental impacts, we believe these decisions are

simply too important to be made in a vacuum. The environment knows no boundaries and all Manitobans have a stake in its protection.

(a) *The Contaminated Sites Remediation Act*

There are three significant decisions made under this Act in the event a site either becomes contaminated, or there is reason to believe it is. We have reviewed the circumstances surrounding the making of those decisions with a view to determining whether they are open and transparent or if the process could be improved.

The particular decisions are:

(i) *Is it a contaminated site?*

When making this decision, the Director must have reasonable grounds to believe a site is contaminated and, if so, an order is issued to the owner/occupier to conduct an investigation as to the existence, nature and extent of the contamination, or provide the results of any previous investigations. Based on the information provided by the owner/occupier, the Director will then decide if the site is contaminated and if it is found to be, to designate it as such. It is only if a site is designated as contaminated that notice is provided to the owner, anyone having an interest in the land and the municipality in which the land is located. A copy of the notice is also filed in the public registry.

The Act states that the public registry makes information available to the public, but it does not specifically provide for public input. In addition, while the Regulation sets out that any report or record received by the Director may be placed on the registry, it does not specifically include information provided by an owner/occupier when a site is under investigation as being potentially contaminated.

Our concern with this decision-making process is that the only information before the Director at the time a decision is made as to whether a site is contaminated is that provided by the owner. It does not expressly allow for receipt of information that may be in the possession of other persons who may have relevant information but are not aware the site is under investigation. It does not allow for the public to review or challenge the investigation report prepared by the owner in advance of the Director's decision.

We recommend, if this is not already being done, that notice to the public be made during the investigation stage. We also recommend that all material received by the Director when determining whether a site is contaminated be placed on the public registry and an opportunity be provided for comment and/or

receipt of additional relevant information. This ensures the Director has before him or her all relevant information. Our concern is that a site will not be designated as contaminated when in fact it is because the decision was based on inaccurate or incomplete information.

(ii) Is the remediation plan acceptable?

The Act requires the Director to order the person(s) responsible for the contamination to prepare a remediation plan. The Director must then consult with the potentially responsible persons but has the discretion to do one or more of the following: (1) engage consultants to review it and provide advice and recommendations; (2) refer it to the CEC for its advice and recommendations; (3) recommend that public hearings be held before the CEC; and/or (4) file it in the registry and invite comments.

The Act certainly provides for opportunities for consultation and public participation to varying degrees, ranging from comments to a full hearing before the CEC. Our concern is that while consultation with the potentially responsible persons is mandatory, public participation is only at the discretion of the Director. Depending on the nature and extent of the contamination and the seriousness of the impacts, we recommend there be consultation with experts or the CEC, and some some form of public participation, before a remediation order is approved.

(iii) Is the apportionment agreement acceptable?

The Director must approve any apportionment agreement arrived at between the persons responsible for the contamination. When doing so, the Director is to consider the circumstances surrounding the contamination, for instance the conduct of the persons responsible, and the actions, if any, taken to prevent the contamination. This is information of particular important to the public and the public should be aware of the circumstances leading up to a site being contaminated. We note the Regulations specifically state that all agreements must be filed in the public registry, and we presume that includes apportionment agreements.

We note that the Act states that if no satisfactory apportionment agreement is arrived at, then a hearing before the CEC is held, but participants are limited to only the parties and the Director. We believe that given the importance of remediation of contaminated sites and the need to ensure that those responsible are accountable for damage caused, there should at least be an opportunity for the public to make representations to the CEC at such hearings.

(b) *The Environment Act vs. The Planning Act*

We believe ILOs must be subject to some form of environmental assessment, the form of which could perhaps depend on the size of the operation, the number of animals, its location, etc. ILOs are currently not subject to an environmental assessment under *The Environment Act*, although they must receive approval under *The Planning Act*.

We specifically looked at assessment processes under both *The Environment Act* and *The Planning Act* to determine which, in our view, is more appropriate for ILOs. For the reasons set out below, in our opinion *The Environment Act* offers an opportunity for much more meaningful public participation and open decision-making than *The Planning Act* does.

Under *The Environment Act*, public input ranges from comments on proposals to a full CEC hearing that encompasses participation by interested parties and not just the applicant, the calling of witnesses, cross-examinations, etc. Depending on the circumstances, at the very least the public is made aware of a proposal and is provided an opportunity to comment. Further, there is an appeal process in the Act such that anyone affected by a decision regarding an environmental license may appeal to either the Minister or the LG, as the case may be, and in such case a public hearing is a possibility.

The situation under *The Planning Act* is quite different and, in our view, establishes a flawed process not consistent with administrative law principles of procedural fairness and natural justice.

Under *The Planning Act*, an application is first provided to a municipal council or board, and it is then passed along to the Minister for referral to the TRC for a consideration of the environmental risks posed by the proposed ILO and whether any risks can be minimized. The TRC then prepares its report and provides it to the municipal authorities and it is made available for inspection and copying.

A public hearing is held on an application, but interested persons are limited to making representations only. There is no opportunity for the calling of witnesses or challenging the information relied upon by the TRC in preparing its report. It is not clear from the Act whether any of the information that formed the basis of the TRC's report is made available or if the TRC is required to provide written and detailed reasons for its decision.

We have several concerns about the process set out in this legislation. First, all of the information that is before the TRC when considering the environmental impacts, risks and mitigation of damage comes from the applicant. As noted

above, when all that is before a decision-maker is the perspective of one party, there is a very real concern a decision will be made in a factual vacuum and in the absence of all relevant information.

Second, the TRC's report is prepared in advance of the public hearing. Therefore, a decision regarding the approval of an ILO, one we believe is of monumental importance given the environmental impacts, is made without any public input at all. The public has not been allowed to test or challenge the information provided by the applicant, nor it is given an opportunity to submit its own objective scientific evidence or make any representations of any kind. The TRC's report is critical to the process and yet it is made behind closed doors.

Third, there is no provision for participant funding in *The Planning Act* as there is in *The Environment Act*. As a result, even though there is a public hearing before the municipal council, the ability of persons wishing to participate may be severely curtailed due to a lack of funding to be able to effectively participate, for example by retaining expert witnesses. Participant funding is a key component of an environmental hearing before the CEC, as it is intended to level the playing field and ensure the process is fair. We are certainly not suggesting this means hog producers should bear all or any of the cost of participant funding, we are merely pointing out that it is provided for under *The Environment Act* but not *The Planning Act*.

Lastly, the members of the TRC are appointed by government and it is not clear from the legislation whether there must be representation on it from various stakeholder groups. We do not know the composition of the current TRC, however we point this out simply to question whether it reflects all of the various perspectives relating to the hog industry.

In our view, based on the above, an environmental assessment of ILOs would be more appropriate under *The Environment Act* rather than the current process under *The Planning Act*. We believe that given the known impacts of ILOs on the environment, the lack of knowledge regarding elimination or minimizing those impacts to the greatest extent possible, and what we may still not know about their impacts and long term effects, it is critical that the most comprehensive and meaningful environmental assessment process be adopted.

We are not making any comment as to whether each and every proposed ILO should be subject to an assessment, or the form of assessment that should be taken in every case, as those are issues best left to the CEC to decide based on its expertise and the scientific evidence.

Assessing ILOs under *The Environment Act* is also consistent with the theme of public participation in environmental decision-making that runs throughout the

Act. The government has stated clearly its commitment in that regard, whereas *The Planning Act* is intended for an entirely different purpose, namely land use planning.

Further, while the LMMMP does regulate the hog industry and does include a number of safeguards, it cannot replace the need to assess ILOs in a broader manner. The MPC itself acknowledges that each ILO is unique and therefore in our view it is critical that they be assessed properly on an individual basis.

With respect to other jurisdictions, PILC made informal inquiries to determine whether ILOs are subject to an environmental assessment in other provinces. We were not able to obtain information from every province, however attached as Tab H are the results of our inquiries. We were advised that Prince Edward Island requires environmental assessments, and New Brunswick and Newfoundland will assess an ILO in certain circumstances. We were also advised that ILOs in British Columbia, Alberta, Ontario and Nova Scotia are not subject to an environmental assessment. We were unable to obtain information relating to Saskatchewan or Quebec.

(c) *The Animal Care Act*

As set out in our summary, an exemption to the obligations imposed upon animal owners is if the treatment is considered to be an "accepted activity". Given the public's valid concerns about the treatment of pigs, we believe it is very important that this term be defined in a manner that is satisfactory to all concerned, not simply the industry.

We have attached a legislative history of the Act, which is contained at Tab I. According to the debate surrounding the legislation, it is clear that a distinction was intended to be made between the treatment of livestock and the treatment of domestic animals.

The Regulation under the Act adopts specific guidelines relating to the treatment of pigs and finds them to be "accepted activities".⁸⁰ We note that the guidelines date back to 1993 and it is specifically stated in the introduction that they were based on the knowledge available at the time. We also note that an addendum was added in 2003 regarding the treatment of early weaned pigs.

Given that the guidelines are somewhat dated and the fact that there has been an addendum, it is clear that there is a necessity to update acceptable codes of practice to reflect changing attitudes on what is acceptable, increased knowledge about the treatment of pigs and what best industry practices should be.

⁸⁰ The Recommended Code of Practice for the Care and Handling of Farm Animals: Pigs is found at Tab D.

We believe that the guidelines should be monitored and changed when required and that it is critical there be public consultation and input when doing so. What may at one time have been acceptable may not be anymore and it is crucial that the treatment of animals reflect society's view of what is acceptable. For your reference, we are attaching a newspaper article illustrating this point at Tab J. In that article, Dr. Temple Grandin cautions, "You have got to prevent bad from becoming normal." and we believe her advice should be heeded.

(d) *The Farm Practices Protection Act*

Similar to the framework of *The Animal Care Act*, an agricultural operator is not liable in nuisance so long as the conduct is considered to be a "normal farm practice". According to the Regulation, conduct consistent with the Farm Practices Guidelines for Hog Producers in Manitoba, published by Manitoba Agriculture and Food in 1998 is considered to be a normal farm practice.⁸¹

We conducted a legislative review of the Act in order to get a sense of its original intent, which is attached at Tab K. According to the debates surrounding the legislation, it appears it was intended to protect long term farmers from nuisance actions arising from the movement of urban dwellers into rural communities. It was not intended in any way to deal with the issue of ILOs.

Further, the debates make it clear that the term "normal farm practice" was not intended to reflect only the industry's perspective. There was a clear and express recognition that protection of the environment and public health take precedence and that farmers may have to change their practices to adapt to societal concerns in that regard.

Our interest in this matter is to ensure that the guidelines adopted to reflect "normal farm practices" are updated regularly and that they take into consideration viewpoints outside the industry. This is consistent with the Legislature's intent at the time the Act came into effect and it is consistent with the principle that government decision-making must include public input and consultation.

(e) *The Water Rights Act*

Hog producers must obtain a license under this legislation. An application for a license is submitted to the Minister. Depending on the circumstances, notice may be given and public input ranges from an opportunity to submit objections to a public hearing before the Municipal Board where representations may be

⁸¹ An index of the guidelines, together with the forward is attached at Tab F.

made. In addition, anyone affected by a decision under the Act may appeal to the Municipal Board.

We do not have specific recommendations as to the form of public process that should take place regarding any given application. We simply want to comment that the greater the degree and content of that public input, the more likely well-informed and well-reasoned decisions will be made and therefore greater environmental protections will be in place.

B. Monitoring

As we reviewed the material submitted to the CEC by the MPC and other groups such as Beyond Factory Farming, we identified the issue of monitoring as one of critical importance. In our view, as much accurate information as possible regarding the hog industry must be gathered, particularly in light of the long term environmental impacts of ILOs and what we still do not know. Proper monitoring confirms whether decisions that were made were the right ones and increased knowledge through such things as research, testing, investigations and gathering of statistics means that if it turns out that problems continue, unforeseen or unpredicted events occur, or what was thought would work actually does not, then those decisions may be corrected. We urge proper monitoring so that we are not operating in the dark when it comes to the hog industry.

Hand in hand with monitoring comes accessibility of the information gathered, meaning that it is available to the public so the public knows how ILOs are being monitored and how effective that monitoring is.

There is ample jurisdiction in the legislation for government to undertake such things as studies, research, testing, and gathering of statistics. Further, several pieces of legislation establish public registries to ensure this information is available to the public.

What follows is a list of legislation that contains express authority for undertaking such things as research and studies, or else that creates an advisory body with the authority to provide its advice and recommendations. We are not aware of what activities in that regard are currently underway, however we simply want to point this out and urge the CEC to recommend that there be coordination among government departments with jurisdiction over the hog industry.

In addition, we also urge the CEC to recommend that ongoing monitoring be made a priority so that accurate and objective scientific evidence, statistics, and the most current information as possible form the basis of government decisions and policies relating to the hog industry and the environment.

The list of legislation we identified as containing provisions relevant to monitoring is as follows:

The Department of Agriculture, Food and Rural Initiatives Act
The Agri-Food and Rural Development Council Act
The Animal Care Act
The Animal Diseases Act
The Contaminated Sites Remediation Act
The Dangerous Goods Handling and Transportation Act
The Environment Act
The Farm Practices Protection Act
The Ground Water and Well Water Act
The Planning Act
The Public Health Act
The Water Rights Act
The Water Protection Act

C. Enforcement

There must be public confidence that violators will be prosecuted for non-compliance with the law. The industry itself acknowledged in its written submission that there are violators out there - it estimates that 5 - 7% of ILO operators do not comply with their MMPs. While on its face that may not sound like a large percentage and the vast majority of operators comply, given the environmental impacts of just one ILO, a "one is too many" philosophy is in our view the more prudent approach to take.

In terms of prosecution, we mean not only responding to complaints, but also proactive enforcement through regular inspections and testing in order to ascertain compliance.

As part of our legislative review, we identified legislation containing offence provisions and we urge the CEC to recommend vigilant and consistent enforcement to ensure the environment is protected to the greatest extent possible. We also recommend, if it is not already being done, that government departments having jurisdiction over the hog industry coordinate their efforts to ensure there is compliance with all applicable legislation. Manitobans must be able to rely on the laws that are in place to protect the environment and know they are being properly and consistently enforced.

The list of legislation we have identified is as follows:

The Animal Care Act
The Animal Diseases Act
The Contaminated Sites Remediation Act
The Farm Lands Ownership Act?
The Farm Practices Protection Act
The Ground Water and Water Well Act
The Planning Act
The Public Health Act
The Water Rights Act
The Water Protection Act
The Water Resources Conservation Act

D. CONCLUSION

We appreciate the CEC has no easy task before it. The state of the hog industry in Manitoba raises numerous issues and there are a wide variety of perspectives to take into consideration. By focusing on process issues, we are hopeful PILC's contribution will be of assistance when the CEC makes its recommendations to the Minister.