



**FROM:** Robert C. Clark  
Interim Chair, NRCB

**DATE:** December 21, 2005

Les M. Lyster  
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**TO:** Honourable David Coutts  
Minister, Sustainable Resource Development

Honourable Doug Horner  
Minister, Agriculture, Food and Rural Development

**RE:** Effective Delivery of the Agriculture Operation Practices Act (AOPA)


As you requested, we have carefully reviewed the recommendations of the Cuff Report regarding NRCB Governance. We have held discussions with stakeholders, including the Intensive Livestock Working Group, the Alberta Association of Municipal Districts and Counties, the Alberta Urban Municipalities Association, and Non-Government Organizations to obtain their views of the Cuff recommendations. In addition, we have discussed these issues with a number of individuals in the livestock industry across the province as well as with staff of the NRCB.

We have prepared the attached report, entitled "*The Effective Delivery of AOPA*", which we believe will resolve all or most of the issues identified by Cuff and create a regulatory system that better meets the needs of both the livestock industry and other stakeholders. The report outlines the basis for achieving an improved delivery of the *Agricultural Operation Practices Act*, a proposed governance model, and a legal and policy framework for implementation. It also includes a point by point response to each of Cuff's 20 recommendations and a timetable for implementation. Also included is a draft example of a regulatory policy and philosophy that would be useful for discussion with stakeholders and adoption by the NRCB.

We believe that the majority of the issues impacting the delivery of AOPA by the NRCB in the past can be traced to a real or perceived lack of leadership, policy direction, trust, and communications. Our recommendations emphasize the separation of the functions of the Chair and the CEO, commitment to written and published regulatory policies, institution of regular accountability sessions, restructured advisory groups, and multi-stakeholder involvement in the continuing improvement of the regulatory system.

Stakeholders feel some urgency in getting on with the job of resolving outstanding issues. Our proposed timetable reflects this urgency and calls for implementation to be substantially complete by the spring of 2006, when the recruitment of a permanent Chair and CEO has been finalized. To this end, we would like to meet with you at your earliest convenience to obtain your comments, your direction and your approval to proceed with the details of implementation.

Yours sincerely,



Robert C Clark,  
Interim Chair, NRCB

Les M. Lyster,  
Interim CEO, NRCB

John Donner  
ADM, AFRD

c.c. Barry Mehr, Deputy Minister, Agriculture, Food and Rural Development  
Brad Pickering, Deputy Minister, Sustainable Resource Development

## Effective Delivery of the Agricultural Operation Practices Act

This report is intended to respond to the recommendations of the Cuff Report and to seek Ministers' support to proceed with reform of the NRCB's delivery of the Agricultural Operation Practices Act (AOPA).

### 1. Purpose

One of Cuff's more fundamental recommendations called for a definition of a purpose statement for AOPA. It is proposed that the purpose of AOPA be defined as follows:

*To ensure that the province's livestock industry can meet the growing opportunities of local and world markets without compromising the ability of Alberta's environment and natural resources to support other activities, now and into the future.*

### 2. Success

In pursuing that purpose, how we seek to achieve AOPA's objectives effectively is critical to success. Success will be dependent upon:

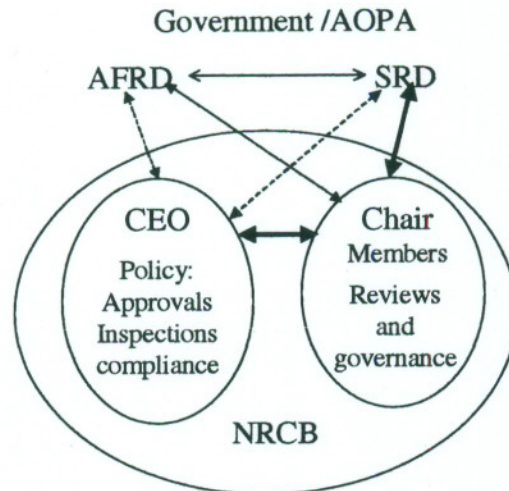
1. Clarity and consistency of policy
2. Clear regulations
3. Science and risk based standards
4. Ensuring the system is open, integrated and transparent
5. Building trust and confidence
6. Timely decisions
7. Fair and impartial processes and decisions
8. Efficient and effective issue resolution
9. An independent board review process
10. Communication and stakeholder participation

### 3. Revised Structure and Framework

A revised structure and framework for the delivery of AOPA within the NRCB mandate will be required. It should be defined in the following way:

The Minister of Alberta Agriculture, Food and Rural Development (AAFRD) is accountable for AOPA legislation, and the Minister of Sustainable Resource Development (SRD) is responsible for the Natural Resources Conservation Board (NRCB) Act and delivery of AOPA through the NRCB. Approvals and inspection functions and the review function are delivered within the NRCB framework with an overall accountability to the Ministers of SRD and AAFRD. The Chair is responsible for governance and reviews, and the CEO is responsible for operations and operational policy.

## Proposed Governance



These relationships are defined by a memorandum of understanding (MOU) among the two Ministers, the Chair of the NRCB, and the Chief Executive Officer (CEO) on behalf of the NRCB. In accordance with Ministers' decision to split the functions of the Chair and the CEO, the relationship between the Chair and CEO will be further defined by a written delegation and confirmation of authority.

### 4. Role of the CEO

The CEO is responsible for the delivery of the approval and compliance functions pursuant to AOPA. The CEO provides management, direction and training of NRCB staff delivering the approval and compliance functions. The CEO will lead development of the business plan including budget and performance measures. He or she will be responsible for developing operational policy in an open and transparent manner, engaging stakeholders. Staff responsible for the delivery of AOPA approval and compliance functions will report to the CEO, as an AOPA division of the NRCB.

The CEO's responsibilities and accountabilities will be further defined in a written job description, the delegation and confirmation of authority, and the Memorandum of Understanding (MOU).

In connection with natural resource project approvals pursuant to the *NRCB Act*, the CEO will provide support and resources to the Board to carry out its functions under the *NRCB Act*.

The CEO will be selected through an open competitive process with the two Deputy Ministers, the interim Chair and CEO, and major stakeholders represented on the interview panel.

## 5. Role of the Chair

The Chair provides overall leadership to the Board in organizing and making decisions on reviews pursuant to AOPA. The Chair would establish panels to consider applications for review and to conduct reviews. The Chair oversees the Board process for deciding and forwarding approvals to Cabinet on reviewable natural resource projects.

The Chair is responsible for overall corporate governance. The Chair and the Board will provide strategic direction to the business plan. The Chair holds the CEO responsible for the overall performance of NRCB in meeting objectives under the *NRCB Act* and AOPA. If there are performance deficiencies, appropriate action will be taken in consultation with the Deputy Ministers of AAFRD and SRD.

The Chair's responsibilities and accountabilities will be further defined in a written job description, the delegation and confirmation of authority, and the MOU. It is expected the Chair's responsibilities will normally take 50% - 80% of a full time commitment.

The Chair will be selected through an open competitive process with the two Deputy Ministers, the interim Chair and CEO, and major stakeholders represented on the interview panel.

## 6. Role of the Board

The three responsibilities of the Board are corporate governance, review role of AOPA, and the decision role on reviewable natural resource projects under the *NRCB Act*.

The Board would consist of part time members. The Board should consist of a Chair and include the appointment of three members for purposes of continuity and expertise. Those three members would contribute 50% – 80% of a full time commitment to NRCB matters. Rosters of members (acting) would be maintained with four members available on call for AOPA review panels and two for *NRCB Act* hearings.

The Ministers may want to invite nominations from stakeholders from whom they would appoint the Acting roster.

The Chair will designate members to consider an application for review (appeal) and/or to conduct a review (appeal).

## 7. Accountability and Consultation Mechanisms

It will be necessary to restructure current advisory committee arrangements to provide for an increased emphasis on multi-stakeholder consultation.

- Accountability Sessions
  - Accountable to Minister of AAFRD and Minister of SRD
  - Co-chaired by Deputy Ministers of AAFRD and SRD
  - Attendance would include Ministers of AAFRD and SRD, multi-stakeholder representatives, Chair, CEO, and ADM of Environment and Food Safety, AAFRD
  - Focus on overall performance of AOPA delivery during the past period of time and into the future
  - Initially meeting every six months, moving to an annual meeting
  
- Policy Advisory Group
  - Accountable to the Deputy Ministers of AAFRD and SRD through periodic reporting
  - Co-chaired by ADM of AAFRD and CEO
  - Membership would consist of multi-stakeholder representatives, an NRCB board member, and representatives of other departments, as needed
  - May strike sub-committees or working groups
  - Focus:
    - Review regulatory philosophy and policy
    - Develop and promote appropriate or necessary legislative and regulatory change
    - Evaluate and recommend improvements to processes and procedures
    - Review current issues
  - Initially meeting quarterly, moving to semi-annually
  
- Technical Advisory Group
  - Accountable to the CEO and ADM of Environment and Food Safety of AAFRD
  - Chaired by the ADM of Environment and Food Safety of AAFRD
  - Membership would consist of technical specialists from industry, AAFRD and the NRCB
  - Focus is to develop technical guidelines, e.g.
    - Risk assessment
    - Monitoring
    - Construction standards
  - Initially meeting monthly, then on a regular basis at the call of the Chair
  - Stakeholders may be involved or consulted on individual issues as appropriate.

## 8. Written Regulatory Philosophy and Policy

Certainty, consistency and transparency will be aided by a written and published statement of regulatory policy and philosophy developed in consultation with stakeholders. We expect this to be an early priority of the Policy Advisory Group. A draft example is attached as Appendix II.

## 9. Providing Better Service

In order to provide improved services to the public of Alberta, it will be necessary to:

- Engage in more dialogue with stakeholders
- Provide increased extension services
- Increase the use of mediation and alternate dispute resolution
- Prepare and apply a level of service document.
- Demonstrate clear, consistently applied policy
- On-going review of processes to enhance efficiency and effectiveness
- On-going review of procedures to streamline and simplify where possible
- Address priority issues and concerns (such as grandfathering and pre-2002 compliance audits) in a timely fashion

## 10. Conclusion

Concerns have been identified in terms of policy, leadership, trust and communications. In this report we recommend and emphasize the following:

- Separation of the functions of CEO and Chair
- Commitment to written policy statements
- Institution of regular accountability sessions
- Restructured advisory groups
- Involvement of multi-stakeholders

To accomplish this we need to proceed quickly with:

- Completion of the MOU and Delegation and Confirmation of Authority Document
- Communication with stakeholders
- Open competitive process to hire permanent Chair and CEO
- Changes to AOPA Regulations
- Publication of a draft regulatory policy for discussion

**Appendix I**

**Status of Cuff Recommendations and Timelines for Action**

<b>Cuff Recommendation</b>	<b>Status of Recommendation</b>	<b>Action Taken to Date</b>	<b>Future Actions</b>
1. Structural options	Accepted. Final result will be close to Option 1	CEO/Chair functions already separated.	To be defined and confirmed in MOU and Delegation documents no later than mid-January. Involves Ministers, Chair, CEO.
2. Mandate of Board	Accepted. Some role in governance will be added.		To be limited to reviews (appeals) and some governance in MOU.
3. Split COO/Chair	Accepted.	CEO/Chair functions already separated.	As per 1. above.
4. Competitive Recruitment of permanent Chair and CEO	Accepted.	Position descriptions in draft form.	Executive Search will advertise before Feb. 12. Interviews by mid-March, completion by end of March.
5. Part time Board	Accepted.	Part time and Acting members will be appointed.	Will require O/C to change.
6. Chair oversight of Review (Appeals)	Accepted.		As per 1. above.
7. Clarify policy intent	Accepted. Right-to-farm protection is already in part 1 of AOPA	Purpose statement drafted Committed to regulatory and policy change Committed to policy change	MOU/Business Plans by mid-January. Regulatory policy/philosophy to be published by mid-February, finalized by June.
8. Coordination with AENV	Accepted.	Coordination of Water Licence-AOPA Approval at applicant's choice	Rewrite NRCB/AENV MOU
9. Mediation before review (appeal) heard	Accepted.		Enhance NRCB mediation capabilities
10. CEO/Review Panel	Not accepted. Board will decide on merits of review request. Chair's role to convene review panel.		



<b>Cuff Recommendation</b>	<b>Status of Recommendation</b>	<b>Action Taken to Date</b>	<b>Future Actions</b>
11. Divisions and panels	Accepted.	Panels already being established for decision making purposes.	
12. Board legal and support staff	Accepted.	Legal Counsel for the Board and for operations has been separated.	Appropriate resources will be provided to meet the Board's needs.
13. Business Plan and Measures	Accepted.	New process under design	PAG and Accountability Group will receive copies for discussion.
14. Resource allocation and consistency	Accepted partially.	Interim CEO has provided increased management and leadership; reviews of processes have begun.	CEO will manage.
15. Approvals/Extension	Not accepted. AAFRD will increase role in extension.		Level of Service Document will be developed by April. AAFRD extension to be enhanced. Rewrite AAFRD-NRCB MOU
16. Communicate changes to stakeholders	Accepted.	Met with stakeholder groups.	Plan will be developed by mid-January. First communication with stakeholders shortly thereafter.
17. Enhance odour research	Accepted.		AAFRD will pursue.
18. Consultant Review of approval/application/compliance processes.	Accepted in principle, but will be conducted by CEO.	Management responsibility Now reviewing processes New accountability and advisory committee structures defined.	Consultation process to be enhanced with new advisory committee structure. Technical groups meet in early February, PAG in mid-March. Regulatory committee to meet in early January. Compliance policy to be reviewed by PAG.

Cuff Recommendation	Status of Recommendation	Action Taken to Date	Future Actions
19. Training and information/ongoing reviews	Accepted.	CEO takes responsibility. Training is part of the CEO responsibilities. Reviews of procedures and processes are underway.	
20. Consultants review of implementation	Not accepted. Will be done in conjunction with multi-stakeholder group		First accountability session to be held in fall, 2006.

## Appendix II

### An Example of Possible Regulatory Philosophy/Policy

Effective administration of a regulatory regime demands close attention to the reality that surrounds the regulator and the intent of the elected representatives that created the regime to do a specific job in the first place. Losing touch with the regulator's environment and failing to adjust to the demands of changing conditions, changing technologies and changing government policy is a sure way to undermine the credibility and effectiveness of the entire regulatory framework.

#### The regulator can improve:

- its consistency of decision-making,
- the predictability of its program delivery,
- its credibility with the general public and those it regulates, and
- general compliance with the regulatory regime

through publishing a set of "policies" or "guidelines"<sup>1</sup> from time to time which define the set of principles or beliefs the regulator intends to apply to questions which regularly come before it for resolution. This approach channels discretion without fettering it.<sup>2</sup> As one example, the Canadian International Trade Tribunal publishes a long list of guidelines, which lay out its general approach to defined issues<sup>3</sup>. These guidelines are "... *not a binding statement of how the Tribunal's discretion will be exercised in a particular situation, however it is meant to provide guidance to both the Tribunal and its stakeholders when dealing with cases*".<sup>4</sup>

In the administration of AOPA, certainty and consistency will be aided by an outline of regulatory philosophy<sup>5</sup>. The following may be of assistance in focusing attention on what such a philosophical framework for the NRCB might include.

The components of a useful outline of regulatory philosophy that could be adopted<sup>6</sup> by the NRCB might look something like the following<sup>7</sup>:

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<sup>1</sup> It should be clearly understood that these policies or guidelines do not provide "cookie-cutter" answers to every question. Obviously, every case is different and the specific circumstances of the case must be taken into account before the question is answered. Depending on these circumstances, the answer may or may not be consistent with published policies or guidelines.

<sup>2</sup> See "A Manual for Ontario Adjudicators", p. 55. "*Where inconsistency in the exercise of discretion is a potential problem, it is advisable for the decision-making body to develop and set out policies, guidelines or principles to promote fairness and consistency in the exercise of discretion.*"

<sup>3</sup> See [http://www.citt-tcce.gc.ca/publicat/index\\_e.asp#5](http://www.citt-tcce.gc.ca/publicat/index_e.asp#5)

<sup>4</sup> See, for example, CITT's "Guideline on Public Interest Inquiries", effective April 15, 2000.

<sup>5</sup> It is not enough to point to the Act for regulatory philosophy, as the Act contains no statement of purpose or intent, nor does it outline any generalized approach to the interpretation of the legislation or the delivery of the regulatory program.

<sup>6</sup> A regulatory philosophy could be published by the Board or by the CEO after suitable publication and opportunity for clientele to comment. It could also be incorporated in the MOU between the Minister, the Board and the CEO.

<sup>7</sup> These may need further detail. The following are intended as examples and directions only.

### Purpose of the AOPA:

The NRCB recognizes that the purpose of the Act is to ensure that the province's livestock industry can meet the growing opportunities of local and world markets without compromising the ability of Alberta's environment and natural resources to support other activities, now and into the future.

### Priorities of the NRCB in the administration of AOPA:

1. Facilitating the responsible growth of the livestock industry in Alberta
2. Promoting a balanced and environmentally sensitive use of Alberta's environment and natural resources.
3. Respecting the interests of affected municipalities as set out in the municipal development plan land use provisions.
4. Contributing to a harmonious relationship between the livestock industry and other segments of society.
5. Ensuring the integrity of AOPA processes and outcomes

*(Note: AOPA processes are the means to the end and are thus less important than achieving the end itself.)*

### Approvals:

1. Approvals are an outcome driven process, using a risk management approach.
2. Minimal risk to Alberta's environment and natural resources, rather than zero risk, will be the objective.
3. Approvals will support a cost-effective approach to development or expansion plans where possible.
4. Variances and equivalents will be used if the same risk level (degree of protection and safety) or lower can be achieved

### Reviews:

1. Mediation or other appropriate dispute resolution processes should be attempted prior to formal reviews.
2. No mediation is possible without the commitment of all affected parties.

### Compliance/Enforcement:

1. Coaching, education and extension to achieve compliance are preferable to formal enforcement actions.
2. Except in emergency cases, enforcement orders should be issued only after verbal and letter directives and/or negotiated agreements have been attempted. Enforcement orders are regarded as a tool of last resort.
3. Emergency enforcement orders are used only in cases where imminent and significant risk to the environment is apparent.
4. The use of enforcement orders will be directed to cases in the following order of importance:
  - a. Where environmental damage has occurred, is occurring or is likely to occur

- b. Where adjacent land owners are adversely affected
- c. Where an operator demonstrates a willful or repeated disregard for the requirements of AOPA.
- 5. Except where required as part of the normal AOPA regulatory process (follow-up monitoring of AOPA approvals), the focus of inspections and audits will be complaint driven.<sup>8</sup>
- 6. Inspections to determine compliance with AOPA approvals or enforcement orders are considered to be a normal part of the AOPA regulatory process.
- 7. When responding to complaints, resources will be allocated first to complaints from those who identify themselves. Anonymous complaints will be pursued as resources permit (with the exception of complaints which allege imminent environmental damage).

Advisory Committees:

- 1. The NRCB is committed to seeking and using advice where appropriate to seek improvements in the system and to meet the objectives of the legislation.

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<sup>8</sup> For greater clarity, some detail explaining what the NRCB considers to be "normal" would be useful.