

ANNUAL REPORT OF THE NORMAL FARM PRACTICES PROTECTION BOARD
April 1, 2004 – March 31, 2005

Introduction

The Normal Farm Practices Protection Board (“the Board”) is established by *The Farming and Food Production Act* to adjudicate issues pertaining to farm practices.

The Act protects farmers from nuisance complaints by neighbours, provided they are following normal farm practices. Nuisance complaints covered by the Act are limited to those arising from odour, dust, flies, light, smoke, noise and vibration. Farmers are also protected from municipal by-laws which restrict their normal farm practices.

“Normal farm practice” is defined in the Act as a practice which:

- a) is conducted in a manner consistent with proper and acceptable customs and standards, as established and followed by similar agricultural operations under similar circumstances, or
- b) makes use of innovative technology in a manner consistent with proper advanced farm management practices.

In responding to a complaint, the Board conducts a hearing to determine whether the farm practice involved is a “normal farm practice.” The Board may rule that the practice:

- a) is a normal farm practice,
- b) is not a normal farm practice, or
- c) must be modified in a specific manner to make it a normal farm practice.

If the Board rules that the farm practice is “normal,” the farmer can continue his operation in spite of the nuisance complaint or the restrictive by-law. If the practice is ruled not normal, the Board may order either that it be stopped, or that it is subject to the by-law. The Board may also rule that the practice would be normal if specific modifications are made.

Board Membership

Under the Act, the Board consists of a minimum of five members appointed by the Minister of Agriculture, Food and Rural Affairs. The members are appointed from across the province, with various backgrounds and expertise in agriculture and municipal affairs.

During the 2004-2005 fiscal year, there were seven members on the Board:

Chairperson	Robert Stephens	St. Marys	lawyer
Vice-Chair	Glenn C. Walker	Ridgetown	lawyer
	Bill French	Mitchell	dairy farmer
	Gordon Garlough	Williamsburg	cash crop and beef farmer
	John Markus	Beachville	dairy and swine farmer
	Andrew Millar	Fenelon Falls	beef farmer
	Linda O’Neil	Cambridge	former poultry farmer
	Ron Versteeg	Cumberland	dairy farmer

Hearings

To assist farmers and others appearing before the NFPPB, hearings are held in the municipality where the complaint originates. There is no charge for hearings. Legal counsel is not required, but parties may retain legal counsel if they wish, at their expense. To assist parties who are not represented by legal counsel, the Board this year developed a Citizen's Guide to the FFPPA and the NFPPB. The Guide explains the purpose of the Act, the role of the Board, the concept of "normal farm practice", Board procedures and the hearing process.

In cases where essential evidence may not be presented by the parties, the Board often calls its own expert witnesses.

Approximately 675 complaints pertaining to farm practices are received each year by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA). Through conflict resolution, OMAFRA agricultural engineers resolve the vast majority of these complaints; on average, only eight cases reach the Board annually. **In February 2005 the Board established a requirement that any case brought before it must first go through this conflict resolution process. The Board will hear a case only if conflict resolution has been tried unsuccessfully.**

In 2004-2005, the Board held hearings, pre-hearing conferences and teleconferences for eight cases. At the end of the fiscal year, seven cases had been completed with decisions issued; one case, 2000-01: Gardner et al v. Greenwood Mushroom Farm, remains outstanding, pending the outcome of a judicial review in the Courts.

The NFPPB has been affected by a Superior Court ruling overturning an NFPPB decision in the case 2002-03: Hill v. Municipality of Bluewater. The Court ruled that NFPPB has no jurisdiction over municipal zoning by-laws. The farmer is appealing the Court ruling to the Appeal Court, and OMAFRA will be participating in the appeal. **Until the matter is decided by the Appeal Court, the NFPPB will not be ruling on cases involving municipal zoning bylaws.**

Following are the cases to which the preceding paragraphs refer:

Case: 2003-06 Carson v. Werner
Address: Niagara-on-the-Lake, R.M. of Niagara
Issue: **Dust**
Dates of Hearing: April 7, 2004 (1 day)
Location of Hearing: Niagara-on-the-Lake
Panel Members: Glen Walker, Bill French, John Markus
Description:

A resident complained that dust from chicken litter blows onto his property from a neighbouring chicken operation and is affecting his family's health.

STATUS: A hearing was held, but before its completion the parties reached an agreement; the case was dismissed at the request of the parties.

Start Date: October 10, 2003

End Date: April 7, 2004

Case: 2003-03 Guy v. Township of Black River-Matheson
Address: Matheson, Cochrane County
Issue: **By-law: Tire Fence**
Dates of Hearing: June 4, 2004 (1 day)
Location of Hearing: Matheson
Panel Members: Glen Walker, Andy Millar, Ron Versteeg
Description:

A farmer applied for a Board ruling to allow him to keep his tire fences, which he considered to be normal farm practice. The municipality by-laws prohibited the use of tire fences. **This case had been put on hold while a similar case was processed (2003-01: Yake v. Town of Fort Erie).**

DECISION: In favour of municipality. The Board ruled that the use of the tire fence in that location was not a normal farm practice primarily because of the strong risk of breeding mosquitoes carrying West Nile Virus, and secondly because of the risk of fire.

Start Date: Nov 8, 2002

End Date: August 5, 2004

Case: **2003-09 Rutt v. Dejavu Raw Energy Farm Inc.**

Address: Wheatley, County of Essex

Issue: **Odour**

Dates of Hearing: July 21-22, 2004 (2 days)

Location of Hearing: Wheatley

Panel Members: Robert Stephens, Bill French, John Markus

Description:

A resident complained about odours from a new composting process at a greenhouse operation.

DECISION: The Board issued an interim decision giving the farm a timeline for development and refinement of the composting process. If the residents are still experiencing unacceptable levels of odour after February 28, 2005, the applicant may request a resumption of the hearing. Otherwise, the Board will issue a final decision after June 30, 2005.

Case: **2004-01 Larmond v. Bauer**

Address: Laurel, Dufferin County

Issue: **Odour**

Dates of Hearing: October 20-22, 2004; December 6-9, 2004 (7 days)

Location of Hearing: Laurel

Panel Members: Glenn Walker, Bill French, Ron Versteeg

Description:

A group of residents complained about excessive odour from a hog barn on a neighbouring farm.

DECISION: In favor of farmer, on condition that manure spread on tilled lands be incorporated into soil within 48 hours after spreading.

Case: **2004-02 Richardson v. Fox**

Address: Wooler, Hastings County

Issue: **Odour, Noise**

Dates of Hearing: January 11-12, 2005 (2 days)

Location of Hearing: Trenton

Panel Members: Glenn Walker, Gordon Garlough, John Markus

Description:

A resident complained about excessive noise and odour from a new chicken barn on a neighbouring farm.

DECISION: In favor of farmer. The Board found that there was no unreasonable interference of the use and enjoyment of the applicant's land by the farming operation, and that the farmer's operation was a normal farm practice.

Case: **2004-03 Lowe v. Hausler**

Address: Cambridge, R.M. of Waterloo

Issue: **Odour**

Dates of Hearing: August 24, 2004 (1 day)

Location of Hearing: Guelph

Panel Members: Glenn Walker, Bill French, John Markus

Description:

A group of residents complained about odours from the burning of manure at a neighbouring horse farm.

DECISION: In favor of applicants. The Board ruled that the burning of manure at that location is not a normal farm practice.

Case: 2004-04 Brunton v. Town of Gravenhurst

Address: Gravenhurst, Muskoka District

Issue: **By-law**

Dates of Hearing: December 20-22, 2004

Location of Hearing: Gravenhurst

Panel Members: Glenn Walker, Gordon Garlough, John Markus

Description:

A farmer was charged by the Town of Gravenhurst for fire violations during land clearing operations. The farmer came to the NFPPB for a ruling that his burning practices constitute normal farm practice and are therefore exempt from the Town's fire by-laws.

DECISION: In favor of municipality. The Board ruled that the farmer's burning practice would be a normal farm practice if he abided by the Outdoor Fire Regulation (Ontario Regulation 207/96) and the municipal by-law established to implement that regulation. Alternatively, the farmer could file an annual Agricultural Burn Planning Checklist for the approval of the Fire Chief; obtain permission by phone the morning of each proposed burn and follow any instructions issued by the Fire Chief.

Case: 2000-01: Gardner et al v. Greenwood Mushroom Farm

Address: Ashburn, R.M. of Durham

Issue: **Odour**

Dates of Hearing: October 18, 2004

Location of Hearing: Ashburn

Panel Members: Bob Stephens, Glenn Walker, Linda O'Neill

Description:

The applicants complained about odours arising from a mushroom composting operation. The mushroom producer, Greenwood Mushroom Farms (GMF), was taken to court and assessed to pay damages to the applicants, but the court did not stop the mushroom operation. The case was appealed to the Court of Appeal, which upheld the lower Court decision, and to the Supreme Court, which refused to hear the case. Since the Court had not closed down the operation, the applicants took the matter to the NFPPB. In the meantime, GMF began installation of expensive technological modifications to reduce odour. At a hearing in June 2003, both parties agreed to the Board's recommendation that time be allowed for completion of the modifications, and then odour testing be done to determine if objectionable odours were still being emitted. Odour testing was done by consultants in the summer of 2004, and a hearing was scheduled for October 2004 to complete the case.

STATUS:

On completion of odour testing, the consultants' report was issued to both parties in advance of the hearing. The applicants submitted a motion to delay the hearing until a separate charge, laid by one of the applicants against GMF under the Environmental Protection Act, was heard. The Board denied the motion and the hearing began on schedule. A second motion was filed by the applicants to stop the hearing. The Board ruled against that motion. The applicants applied the Superior Court for a Judicial Review of the Board's ruling. The Board suspended the hearing pending the Court's decision on the Judicial Review.

Start Date: November 21, 1995

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Case: 2002-03: Hill v. Municipality of Bluewater
Address: Varna, Huron County
Issue: **By-law: Minimum Distance Separation (MDS)**
Dates of Hearing: October 24,25, 2002
Location of Hearing: Varna
Panel Members: Bob Stephens, Glenn Walker, Linda O'Neill

Description:

A farmer said that the municipality built new facilities near his hog operation in 1984 and re-zoned the area, doubling the minimum distance separation (MDS) required for barn expansion. In 2001 the farmer applied for a permit to expand his operation; he said his application was refused on grounds of the doubled MDS. The farmer challenged the municipal decision before the Board.

Status: The Board ruled that the farmer had to meet MDS, but that the doubled distance required by the municipality was not justified in this case. The decision was appealed to the Superior Court. The Court overturned the Board decision, stating that the NFPPB has no jurisdiction over municipal zoning by-laws. The farmer is appealing the Court ruling to the Appeal Court. OMAFRA will be participating in the appeal.

Start Date: June 6, 2002

End Date: April 22, 2003

Appeal in progress.

Rules of Practice

In June 2004, the Minister of Agriculture and Food appointed an Agricultural Advisory Team (AAT) to ensure that Ontario's growth management strategy addresses the concerns of agricultural stakeholders. Reporting in December 2004, the AAT gave the following advice to the government in relation to the *Farming and Food Production Protection Act* (FFPPA):

"Urge greater reliance on the Farm and Food Production Protection Act to clearly identify normal and approved farm practices. Improve the application and awareness of the Act by:

- *Emphasizing early-mediation and conflict resolution to address contentious issues before they escalate, including calling upon and involving people with expertise and knowledge of agriculture issues to act as mediators with the goal of avoiding a hearing; and*
- *Increasing public education and communications to raise awareness and understanding in both the farm and non-farm community about normal and approved farm practices."*

Conflict resolution has always been part of the process for handling farm practice complaints. As stated earlier, OMAFRA engineers resolve the majority of complaints, with only eight cases on average reaching the NFPPB. In response to the AAT recommendation, the Board passed a motion on February 14, 2005, adding the following rule to its Rules of Practice and Procedure:

RULE #65

65. (1) Before accepting an application for a hearing, the Board shall be satisfied that the Farm Practices Conflict Resolution Process established by the Resources Management branch of the Ontario Ministry of Agriculture and Food (OMAF) has been applied and has been unsuccessful in resolving the conflict between the parties.
- (2) At the request of any party to a proceeding, the Board may proceed to review, approve and make an Order, if appropriate, to facilitate any settlement achieved by means of the Farm Practices Conflict Resolution Process. At the direction of the Chair, such hearing may take place by way of written or electronic hearing as defined in the Statutory Powers Procedure Act R.S.O. 1990, c. S.22, as amended.

Internet Access

Summaries of all NFPPB decisions are available on the NFPPB website, accessible through the OMAFRA website. Full decisions are available electronically or in hard copy by contacting the Agricultural Information Contact Centre at 1-877-424-1300, or by email at ag.info@omaf.gov.on.ca.

Performance Measurement

Following is a report on Board Performance Measures set in the Business Plan for 2004-2005. These goals were based on the performance management model suggested by the Agency Reform Secretariat of Management Board Secretariat.

1. *Request for Hearing – Fairness:* that all parties be satisfied that they are treated fairly when a request for a hearing is sent to the Board. No fairness complaints were to be received.
Results: No fairness complaints were received.
2. *Request for Hearing – Accessibility:* that all parties be satisfied that they have reasonable access to relevant information when a hearing request is sent to the Board. No complaints about accessibility were to be received.
Results: No complaints about accessibility were received.
3. *Request for Hearing – Timeliness:* reducing the time between receipt of a complete request for a hearing and a decision on acceptance of the request. This time period should not exceed 20 days.
Results: In two of the four new cases handled this year, applicants were each sent acceptance letters within 7 days of the Chair's decision. In the third case, it took 21 days and in the fourth, 38, because of the Chair's workload and availability. The average time taken for all four cases was 18 days.
4. *Request for Hearing – Courtesy:* that all parties be satisfied that they are treated with respect when dealing with the Board with regards to a hearing request.
Results: No complaints were received about lack of courtesy or respect.
5. *Schedule Hearing – Fairness:* that all parties be satisfied that they are treated fairly in the scheduling of hearings. No complaints about fairness were to be received.
Results: No complaints about fairness were received.
6. *Holding Hearing – Fairness:* that all parties be satisfied that they are treated fairly during hearings. No complaints about fairness were to be received.
Results: No complaints about fairness during hearings.
7. *Holding Hearing – Quality and Consistency:* that high quality and consistency be maintained in the procedure and conduct of hearings. There were to be no complaints or appeals based on hearing procedure.
Results: There were not complaints or appeals based on hearing procedure.
8. *Holding Hearing – Transparency:* that the policies and procedures followed in hearings be clear and understandable to everyone. There were to be no complaints based on lack of understanding of hearing procedure.
Results: There were not complaints based on lack of understanding of hearing procedure.
9. *Holding Hearing – Courtesy:* that all parties be satisfied that they are treated with respect during a hearing. There were to be no complaints about lack of courtesy or respect to parties during hearings.
Results: No complaints about courtesy were received.
10. *Render Decisions – Fairness:* that all parties be satisfied that the Reasons given for the decision are fair. There were to be no complaints about fairness in Decisions.
Results: No complaints about fairness were received.
11. *Render Decisions – Timeliness:* the period between the date of the hearing and the issues of written Decision with Reasons was set at 60 days.
Results: Decisions were issued for four new case hearings at an average of 27 days.
12. *Render Decisions – Quality and Consistency:* That Decisions be understandable, relevant and accurate with no

errors in law or fact. There were to be no complaints or successful appeals based on errors in law or fact.

Results: To date there have been no successful appeals. Two decisions have been appealed; both are in progress.

13. *Render Decisions – Expertise*: That Decisions be written with skill, knowledge and technical competence. There were to be no complaints about lack of understanding of written Decisions.

Results: There were no complaints about lack of understanding of written Decisions.

Submitted this 14th day of September, 2005.

Original signed by Glenn Walker

Glenn C. Walker
Chair