



# *The Farming & Food Production Protection Act (FFPPA)*

**Normal Farm Practices Protection Board  
Ontario Ministry of Agriculture, Food & Rural Affairs**



# Purpose of the Act

## Preamble:

- Concern arose that it was becoming increasingly difficult for farmers to produce food, fibre and other products effectively, because of complaints from neighbouring residents.
- The act was established to promote and protect agricultural uses and normal farm practices in agricultural areas, in a way that balances the needs of the agricultural community with provincial health, safety and environmental concerns.

# Applications under the FFPPA (Section 5)

- 5. (1) A person directly affected by a disturbance from an agricultural operation may apply to the Board, in a form acceptable to it, for a determination as to whether the disturbance results from a normal farm practice. 1998, c. 1, s. 5 (1).

## Questions before the board

- Is the person directly affected by a disturbance?
- Is the disturbance from an agricultural operation?
- Is the disturbance a result of a normal farm practice?

## Disturbances defined as:

- odour;
- noise;
- dust;
- light;
- smoke;
- flies;
- vibration.

# Applications under the FFPPA (Section 6)

- 6. (1) No municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation. 1998, c. 1, s. 6 (1).
- 6. (2) A person described in subsection (3) or a municipality may apply to the Board, in a form acceptable to it, for a determination as to whether a practice is a normal farm practice for purposes of the non-application of a municipal by-law. 1998, c. 1, s. 6 (2).
- 6(3) An application may be made by,
  - (a) farmers who are directly affected by a municipal by-law that may have the effect of restricting a normal farm practice in connection with an agricultural operation; and
  - (b) persons who want to engage in a normal farm practice as part of an agricultural operation on land in the municipality and have demonstrable plans for it. 1998, c. 1, s. 6 (3).

# Applications under the FFPPA (Section 6)

## Questions before the Board:

- Is the practice carried out as part of agricultural operation?
- Is the practice in question a normal farm practice?
- Is the current or proposed practice restricted by the by-law?
- In the instance of a proposed practice, does the person have demonstrable plans of the practice in question?

# Normal Farm Practices

The Act defines normal farm practice as a farming practice which:

- is consistent with proper, acceptable customs and standards of similar operations; or
- uses innovative technology according to proper, advanced farm management practices.

## Normal Farm Practices

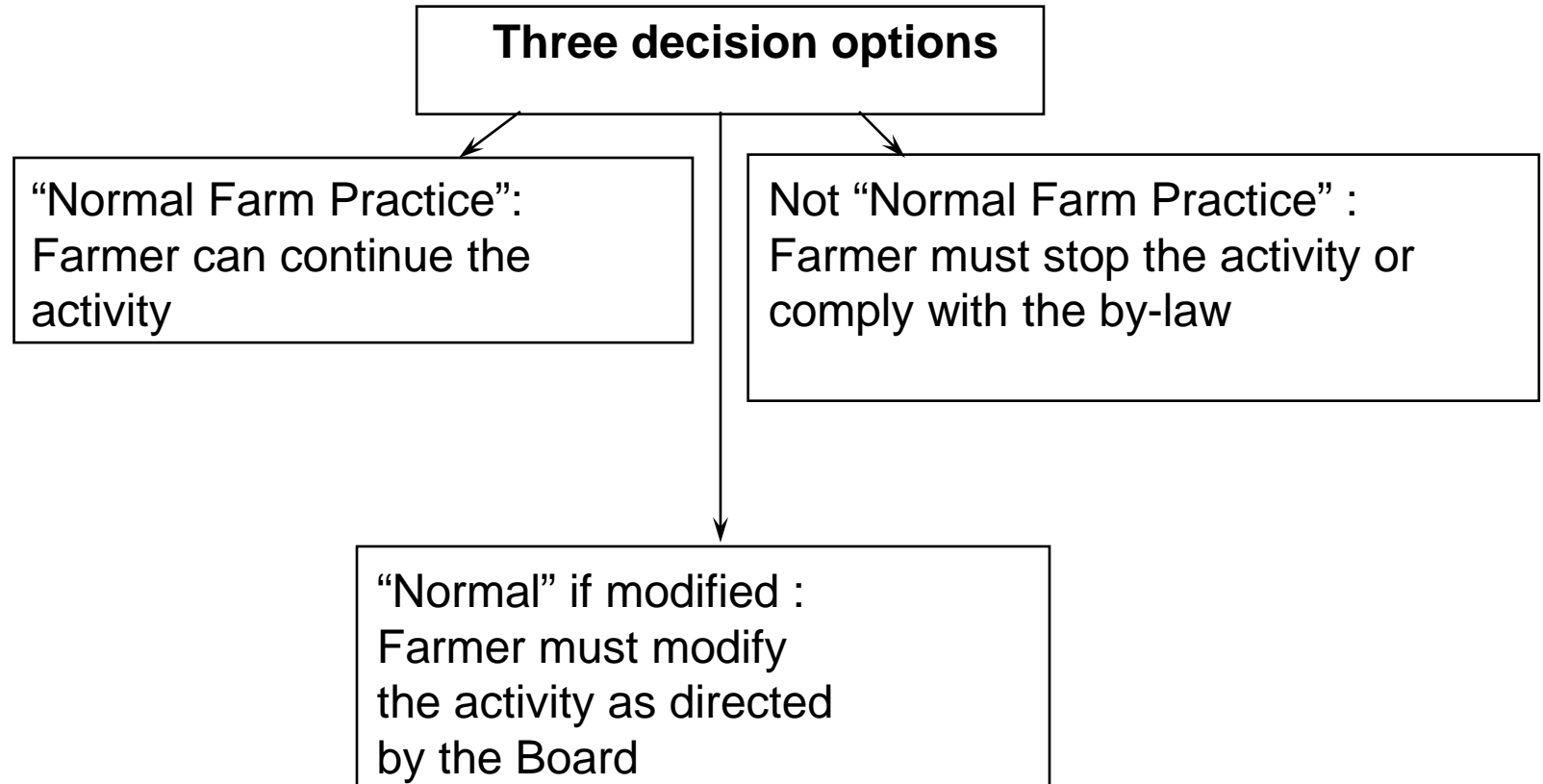
- The FFPPA does not give farmers the right to contravene:
  - *(a) Environmental Protection Act;*
  - *(b) Pesticides Act;*
  - *(c) Health Protection and Promotion Act;*
  - *(d) Ontario Water Resources Act.*

## The Board Hearing

- Quasi-judicial process usually held at the municipal chambers
- A pre-hearing/settlement conference is held first
- For the hearing, panel of three board members
- Parties do not need lawyers, but they can bring lawyers if they choose
- Hearing takes average of 4 days
- Decision rendered within 60 working days



# Board Decisions



## Decisions:

- Every Board decision is site-specific.
- In arriving at a decision, the board considers several factors to balance the farmer's needs with provincial health, safety and environmental concerns.
- This is especially relevant in cases involving municipal bylaws. The board considers:
  - the purpose of the bylaw,
  - the effect of the farm practice on adjoining lands and neighbours, and
  - whether the bylaw reflects a provincial interest under any other piece of legislation or provincial policy statement.

# Board Membership

- Farmers from different commodity groups and geographic areas
- Two lawyers (Chair, Vice-Chair) to chair hearings and other legal proceedings

# Conflict Resolution Process is mandatory

- OMAFRA receives an average of about 160 complaints per year regarding farm practices.
- Before the Normal Farm Practices Protection Board (NFPPB) can consider an application for a hearing, the case must first go through the Farm Practices Conflict Resolution Process.
- 98% of cases are resolved through conflict resolution by OMAFRA's agricultural engineers or environmental specialists.

# 5-Year Snapshot on Complaints

|                  | ODOUR | NOISE | DUST | FLIES | SMOKE | LIGHT | VIBRATION | BY-LAW | TOTAL |
|------------------|-------|-------|------|-------|-------|-------|-----------|--------|-------|
| <b>2015-2016</b> | 45    | 28    | 2    | 20    | 0     | 1     | 1         | 10     | 107   |
|                  | 42%   | 26%   | 1%   | 19%   | 0%    | 1%    | 1%        | 9%     |       |
| <b>2014-2015</b> | 48    | 45    | 2    | 20    | 1     | 0     | 0         | 15     | 131   |
|                  | 37%   | 34%   | 2%   | 15%   | 1%    | 0%    | 0%        | 11%    |       |
| <b>2013-2014</b> | 53    | 56    | 7    | 18    | 3     | 0     | 0         | 19     | 156   |
|                  | 34%   | 36%   | 4%   | 12%   | 2%    | 0%    | 0%        | 12%    |       |
| <b>2012-2013</b> | 65    | 42    | 7    | 35    | 3     | 3     | 0         | 9      | 164   |
|                  | 40%   | 26%   | 4%   | 21%   | 2%    | 2%    | 0%        | 5%     |       |
| <b>2011-2012</b> | 77    | 73    | 10   | 34    | 4     | 6     | 0         | 2      | 206   |
|                  | 37%   | 35%   | 5%   | 17%   | 2%    | 3%    | 0%        | 1%     |       |

# 2015-2016 Complaint by Region

| County                      | Odour     | Noise     | Dust     | Flies     | Light    | Vibration | By-Law    | County Totals |
|-----------------------------|-----------|-----------|----------|-----------|----------|-----------|-----------|---------------|
| Brant                       | 3         | 1         |          | 1         |          |           |           | 5             |
| Chatham-Kent                | 1         |           |          |           |          |           |           | 1             |
| Durham                      | 2         |           |          |           |          |           |           | 2             |
| Elgin                       | 1         |           |          | 1         |          |           |           | 2             |
| Essex                       | 2         | 3         |          |           |          |           |           | 5             |
| Grey                        |           |           |          | 1         |          |           |           | 1             |
| Haldimand                   | 2         | 1         |          |           |          |           | 1         | 4             |
| Halton                      | 1         |           |          |           |          |           |           | 1             |
| Huron                       | 4         | 1         | 1        |           | 1        | 1         |           | 8             |
| Kawartha Lakes              | 1         |           |          |           |          |           |           | 1             |
| Lambton                     | 3         |           |          |           |          |           |           | 3             |
| Leeds & Grenville           | 1         |           |          |           |          |           | 1         | 2             |
| Lennox & Addington          | 2         | 2         |          | 1         |          |           |           | 5             |
| Middlesex                   |           |           |          |           |          |           | 2         | 2             |
| Niagara                     | 8         | 16        | 1        | 10        |          |           | 1         | 36            |
| Norfolk                     |           | 1         |          | 3         |          |           | 1         | 5             |
| Oxford                      | 1         | 3         |          | 3         |          |           |           | 7             |
| Peel                        | 1         |           |          |           |          |           |           | 1             |
| Perth                       | 4         |           |          |           |          |           |           | 4             |
| Renfrew                     | 1         |           |          |           |          |           |           | 1             |
| Simcoe                      | 1         |           |          |           |          |           | 3         | 4             |
| Stormont, Dundas, Glengarry | 3         |           |          |           |          |           |           | 3             |
| Timiskaming                 | 1         |           |          |           |          |           |           | 1             |
| Waterloo                    |           |           |          |           |          |           | 1         | 1             |
| <b>Wellington</b>           | <b>2</b>  |           |          |           |          |           |           | <b>2</b>      |
| <b>TOTAL</b>                | <b>45</b> | <b>28</b> | <b>2</b> | <b>20</b> | <b>1</b> | <b>1</b>  | <b>10</b> | <b>107</b>    |



## Hot-Button Topics (Section 5)

- Odour
- Noise
- Flies

# Odour

- Most common complaint received by staff
- Typically, issues arise from the spreading of manure
- These complaints are often easily managed by our field staff with education.
- In its 30 year history the Board has ruled on 17 cases with Odour being the primary nuisance.
- The 17 cases breakdown as follows:
  - 5 swine farms
  - 2 mushroom farms
  - 1 cattle
  - 3 other
  - 3 chicken farms
  - 2 horse farms
  - 1 dairy
- Currently:
  - Board file **2015-02 – Dell et. al v. Zeifman Partners Inc.**
  - Anaerobic Digester processing grape pomace and other waste



# Noise

- Second most common complaint
- Recently, the most common noise complaint received by staff is the use of self-propelled propane cannons to scare birds (i.e. “bird bangers”)
- The Board’s history with bird bangers is as follows:
  - **2010-01 Dubois v. Burkhardt (No. 2)**
    - Region: Niagara
    - Purpose: Scare birds from grapes
    - Decision: Ruled in favour of applicant deemed excessive use
  - **2008-03 Dubois v. Burkhardt**
    - Region: Niagara
    - Purpose: Scare birds from grapes
    - Decision: Ruled in favour of applicant deemed excessive use

- The Board's history cont'd:
  - **2006-06 Brown v. Howes**
    - Region: Prince Edward
    - Purpose: Scare birds from grapes
    - Decision: In favor of Respondent; fell within BMP guidelines
  - **2003-02 Van Order v. Nolan**
    - Region: Lennox & Addington
    - Purpose: Scare deer from tomatoes @ night
    - Decision: In favor of Applicant; not a normal farm practice
  - **2001-01 Martin v. JMJ Farms**
    - Region: Niagara
    - Purpose: Excessive rock music to scare birds from grapes
    - Decision: in favor of the Applicant; not a normal farm practice

# Noise

- Board history cont'd
  - **2000-03 Horbal v. Deschatelets**
    - Region: Nippising District
    - Purpose: 24 hr use to scare birds and racoons from sweet corn
    - Decision: In favor of the Respondent
  - **1992-01 Bader v. Dionis**
    - Region: Niagara
    - Purpose: Scare birds from grapes
    - Decision: In favor of the Respondent
- Currently before the Board:
  - **2015-03 Smith v. Smith**
    - Region: Hastings
    - Purpose: Scare birds from sweet corn

# Bird Bangers Guidelines

|  | Never | Must | Should | May |
|--|-------|------|--------|-----|
| < 50 m from house ( $\geq 125$ m typical)            | X     |      |        |     |
| Outside 'normal' season (before/after)               | X     |      |        |     |
| Operation outside daylight hours                     | X     |      |        |     |
| Setback to homes based on ring-graph                 |       | X    |        |     |
| Set up properly so spins all directions              |       | X    |        |     |
| Adjust timers to sunrise/sunset & DST                |       | X    |        |     |
| Monitor closely; more if not living there            |       | X    |        |     |
| Light sensor over-ride option added                  |       | X    |        |     |
| $\geq 125$ m apart unless $<4$ ha, then $\geq 100$ m |       |      | X      |     |
| Move weekly so bird don't get used to                |       |      | X      |     |
| Don't place row directly in line with home           |       |      | X      |     |
| Account for echoing Niagara Escarpment               |       |      |        | X   |
| Tell neighbours $\leq 175$ m about BB plans          |       |      |        | X   |
| Give cell # to neighbours $\leq 175$ m away          |       |      |        | X   |

# Flies

- Background
  - Flies are often associated with other nuisances, however, recently it has become an acute problem for poultry facilities..
  - Over the 30 year History of the Board, it has handled 5 cases involving flies
    - 1994-02 Holt v. Abonyi
    - 2001-06 Malloy v. Byford
    - 2007-04 Kaeppler v. Maisoneuve
    - 2015-02 Dell et. al. v. Ziefman Partners
    - 2014-03 Tucker v. Five Oaks Farms

# Flies

- Actions to date:
  - Three NFPPB decisions rendered
    - **1994-02– Holt v. Abonyi** – coupled with an odour nuisance. Involved poultry barn – Board ordered that its staff would assist farmer in finding a qualified expert to assist with fly control in the barn
    - **2001-06 – Malloy v. Byford** – coupled with odour nuisance. Cattle feeders too close to neighboring property. Board ruled in favor of the farmers
    - **2007-06 Kaepfner v. Maisonneuve** – coupled with odour nuisance. Involved rotting bales of hay. Board ordered the farmer to store the bales of hay 100m away from the neighboring property
  - Fly control BMP book.

## Hot-Button Topics (Section 6)

- Site Alteration By-Laws
- Tree-Cutting By-Laws

# Hot Button Topics (Site Alteration By-law)

- Background
  - Municipalities have the authority under section 142 of the Municipal Act to pass site alteration by-laws, which cover the removal and acceptance of fill.
  - Municipalities are not taking a consistent approach to enacting the by-laws, which has caused issues amongst the farmers and those opposed to fill operations.
  - Over the past 2 years the Board has handled 5 site alteration by-law cases:
    - 2014-02 Stull v. Town of Halton Hills (**Completed**)
    - 2014-05 Cox v. Town of Mono (**Completed**)
    - 2015-01 Snieg v. Town of New Tecumseth (**Completed**)
    - 2015-04 Reid v. Town of Puslinch (**Scheduled Dec 2016**)
    - 2015-05 Slade v. City of Pickering (**Motion to Dismiss**)



# Hot Button Topics (Site Alteration By-law)

- Actions to date:
  - Three NFPPB decisions rendered
    - **2014-02 Stull v. Town of Halton Hills** – deemed the practice a normal farm practice, but the by-law was not restrictive
    - **2014-05 Cox v. Town of Mono** – deemed the practice was not a normal farm practice.
    - **2015-01 Snieg v. Town of New Tecumseth** – deemed the practice a normal farm practice and deemed the by-law restrictive
  - MOECC Policy Framework to deal with the movement of excess soil across the province
  - OMAFRA Factsheet – high level discussion of what a producer should be aware should he or she consider accepting fill.

# Hot Button Topics (Tree Cutting By-law)

- Background
  - Municipalities have the authority under section 135 of the Municipal Act to pass by-laws for the purposes of regulating the destruction or injuring of trees.
  - Over the past 4 years the Board has handled 5 cases
    - 2012-05 Macpherson v. County of Huron (**Completed**)
    - 2013-02 Sproul v. County of Huron (**Completed**)
    - 2015-09 Robko Farms v. County of Oxford (**Preliminary Stages**)
    - 2016-01 Meijaard v. County of Norfolk (**Scheduled Feb 2017**)
    - 2014-03 Stanley v. County of Huron (**Preliminary Stages**)

# Hot Button Topics (Tree Cutting By-law)

- Actions to date:
  - One NFPPB decision rendered
    - **2012-05 Macpherson v. County of Huron**– Board does not have jurisdiction because the area in question was zoned NE1 or NE2 and PSW, which does not permit agricultural uses.
    - **2013-02 Sproul v. County of Huron**– Board does not have jurisdiction because the area in question was zoned NE1 or NE2, which does not permit agricultural uses.
  - Generic Tree Conservation By-law Template generated by the Province in January 2013.
  - Ontario Woodlot Association's website holds the generic by-law along with FAQ regarding tree cutting by-laws.
  - Ontario BMP books. E.g. Woodlot Management, vol 1 & 2

# Ministry Resources

- Citizen's Guide
  - To assist people who are participating in an NFPPB hearing and to further facilitate urban rural understanding
- Outreach Pamphlet: “ So You're Moving to the Country”
- Hearing Pamphlet: “Are You Preparing For A NFPPB Hearing?”
- Hearing Pamphlet: “ The Hearing Procedure”
- NFPPB Decisions: <http://www.canlii.org>
- Agricultural Information Contact Centre:  
1-877-424-1300; [ag.info@omafra.gov.on.ca](mailto:ag.info@omafra.gov.on.ca)