

## ***The Farming and Food Production Protection Act, 1998 (FFPPA) and Nuisance Complaints***

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### **INTRODUCTION**

Rural Ontario is changing. Farms are increasing in size and complexity, and fewer people living in rural areas are farmers. To ensure the rights of all rural Ontario residents are respected, the Ontario government passed Bill 146, the *Farming and Food Production Protection Act, 1998* (FFPPA), in May 1998. The FFPPA protects farmers from liability due to nuisance disturbances and provides relief from restrictive municipal bylaws, for “normal farm practices.” This factsheet describes the FFPPA, how it protects “normal farm practice” in Ontario and how conflicts around nuisances and bylaws are handled.

In 2016, farmers and their families made up just over 1% of Ontario’s total population and less than 8% of Ontario’s rural population. Between 2011 and 2016, the number of people who identified as farmers, and their families, fell by 12%. Over the same period, the number of non-farming people living in rural areas and small towns grew by 7%.

For farmers, rural Ontario is more than a place to live. It is a place of business, where the agri-food industry provides their livelihoods and contributes \$48 billion per year to the provincial economy. When businesses and residents live and work in close proximity, conflicts sometimes arise. Not surprisingly, complaints sometimes come from farmers themselves.

### **MAIN THEMES OF THE FFPPA**

There are two main themes in the FFPPA:

- Farmers are protected from nuisance complaints made by neighbours, provided they are following “normal farm practices.”
- No municipal bylaw applies to restrict a “normal farm practice” carried on as part of an agricultural operation.

The FFPPA also established the Normal Farm Practices Protection Board (NFPPB or the “Board”). The role of the NFPPB is to determine whether an operation meets the definition of an agricultural operation and if a farm practice is “normal” based on the site-specific evidence provided.

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## WHY ONTARIO NEEDS THE FFPPA

The FFPPA is intended to meet the needs of all people who call rural Ontario home, by:

- protecting farmers from complaints and nuisance lawsuits regarding normal farming practices, allowing them to continue to effectively produce food, fibre and other agricultural products for Ontario
- providing rural residents clear guidance on farming practices and the types of disturbances that can occur, such as odours or noise, allowing them to better understand what life in rural Ontario will entail
- providing rural municipal leaders clear definitions and greater understanding of the impact of farming practices on rural life, allowing them to better manage conflicting interests and ensure normal farming practices can continue
- enabling all members of rural Ontario to access the Board, to address specific issues where normal farm practices may be in question

The preamble to the FFPPA says it best:

“...Because of the pressures exerted on the agricultural community, it is increasingly difficult for agricultural owners and operators to effectively produce food, fibre and other agricultural or horticultural products. It is in the Provincial interest that in agricultural areas, agricultural uses and normal farm practices be promoted and protected in a way that balances the needs of the agricultural community with provincial health, safety and environmental concerns.”

## WHAT THE FFPPA DOES NOT DO

The FFPPA has sometimes been incorrectly called the Right to Farm Act. This makes it seem like farmers can do whatever they wish on their own property, regardless of the consequences. This is not the case.

Farmers have a responsibility to act appropriately and in keeping with best management practices at all times. Farmers are only protected from liability concerning a nuisance when the activity causing the nuisance is a “normal farm practice.”

The FFPPA does not:

- give farmers the right to do whatever they wish on their own property
- eliminate conflicts or prevent neighbours from complaining
- permit farmers to violate the:
  - *Environmental Protection Act, 1990*
  - *Pesticides Act, 1990*
  - *Health Protection and Promotion Act, 1990*
  - *Ontario Water Resources Act, 1990*

Farmers will not be protected from lawsuits or other legal action if they are not following normal farm practices. At the same time, the FFPPA does not prevent anyone from pursuing an injunction against a farmer charged under another Act.

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## **AGRICULTURAL OPERATION**

The FFPPA defines an agricultural operation to be an: “agricultural, aquacultural, horticultural or silvicultural operation that is carried on in the expectation of gain or reward.”

Examples listed in the FFPPA include:

- draining, irrigating or cultivating land
- growing, producing or raising:
  - livestock, poultry and ratites
  - fur-bearing animals
  - bees
  - cultured fish
  - deer and elk
  - game animals and birds
  - any additional animals, birds or fish prescribed by the minister
- the production of agricultural crops, greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, tree and turf grass, and any additional agricultural crops prescribed by the minister
- the production of eggs, cream and milk
- the operation of agricultural machinery and equipment
- the application of fertilizers, soil conditioners and pesticides
- ground and aerial spraying
- the storage, handling or use of organic wastes for farm purposes
- the processing by a farmer of the products produced primarily from the farmer’s agricultural operation
- activities that are a necessary but ancillary part of an agricultural operation such as the movement of transport vehicles for the purposes of the agricultural operation
- any other agricultural activity prescribed by the minister conducted on, in or over agricultural land

## **NORMAL FARM PRACTICE**

The FFPPA defines a “normal farm practice” as one that:

- “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
- makes use of innovative technology in a manner consistent with proper advanced farm management practices.”

Just because something is “customarily” or “commonly done,” does not make it “normal.”

The real question is, would a farmer with average to above-average management skills use this same practice on his/her farm under the same circumstances?

Whether a practice is “normal” or not varies depending on location, type of farm, method of operation and timing of the farm practice. This definition of “normal” is site-specific for a given set of circumstances and may change over time.

Under the *Nutrient Management Act, 2002* (NMA), any practice that is consistent with a regulation made under the NMA is a normal farm practice. Similarly, any practice that is inconsistent with the NMA regulation is not a normal farm practice.

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## **NUISANCES COVERED UNDER THE FFPPA**

The FFPPA protects farmers from liability for a specific list of seven nuisance disturbances, provided these disturbances result from normal farm practices. These nuisances are:

- odour (e.g., from manure handling and storage, cannabis operations)
- light (e.g., from greenhouses, farm equipment used at night)
- vibration (e.g., from trucks, fans, boilers)
- smoke (e.g., from burning tree prunings)
- flies (e.g., from manure or spilled feed)
- noise (e.g., from crop-drying fans, bird-scaring equipment, irrigation pumps)
- dust (e.g., from field tillage equipment, agricultural truck traffic)

Nuisance issues do not include activities that could be harmful or dangerous to people or the environment, such as pollution of the natural environment. These activities are covered under other legislation.

## **HOW TO HANDLE NUISANCE CONFLICTS**

If a nuisance from a farming practice is creating a disturbance, first try to resolve the matter by speaking directly with the farmer believed to be creating the nuisance. Be open to hearing the farmer's point of view to help open the lines of communication. Many complaints are resolved this way, and most farmers prefer to address concerns directly.

If the complaint cannot be resolved directly, contact OMAFRA's Agricultural Information Contact Centre at 1-877-424-1300 or [ag.info.omafra@ontario.ca](mailto:ag.info.omafra@ontario.ca). Provide all relevant details of the situation, including other steps taken to seek resolution.

An OMAFRA staff person will initiate the Normal Farm Practices Conflict Resolution Process and try to facilitate a resolution. The majority of farm nuisance conflicts are resolved this way in Ontario.

If a nuisance complaint still cannot be resolved, the complainant has the option of applying for a hearing before the Normal Farm Practices Protection Board. ([nfppb.ca/application-process/](http://nfppb.ca/application-process/))

## **MUNICIPAL BYLAWS THAT RESTRICT FARMING PRACTICE**

The FFPPA provides relief for farming practices that are being restricted by municipal bylaws. If the farming practice is deemed to be "normal" under the FFPPA, the bylaw does not apply to that practice at that particular location.

If a bylaw conflict arises, contact OMAFRA's Agricultural Information Contact Centre. An OMAFRA staff person will initiate the Normal Farm Practices Conflict Resolution Process and try to facilitate a resolution. A small percentage of complaints received by OMAFRA involves municipal bylaws. If not resolved, the farmer may apply to the Board for a hearing.

When a bylaw hearing is to be held, anyone who owns property within 120 m of the site of the farm practice is entitled to be notified of the hearing and to participate in it.

## **THE NORMAL FARM PRACTICES PROTECTION BOARD**

The Normal Farm Practices Protection Board (the "Board") will hold a hearing to address a formal complaint under the FFPPA that cannot be resolved through the Normal Farm Practice Conflict Resolution Process. The Board consists of farmers and lawyers appointed by the Minister of Agriculture, Food and Rural Affairs. The Minister will also select a chair and vice-chairs of the Board.

At a hearing, a panel of the Board members is selected, which includes either the Board chair or vice-chair and two additional Board members. To avoid conflict of interest, panel members for a hearing are selected from a different geographic area than where the parties reside.

To arrive at a decision, the Board hears evidence from the parties involved and considers the relevant sections in the Act. "Evidence" includes the oral testimony of witnesses, documents, physical items or anything else that a party considers important to its case. Evidence must be relevant, credible and factual. Witnesses who have been qualified as experts by the Board are allowed to give opinions within their area of expertise.

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While parties, witnesses and experts may have strong opinions on a particular practice or disturbance, only the Board can render a legal decision concerning whether the issue is considered a disturbance, and whether the practice is normal based on the evidence presented, which could include the location, farm type, method of operation and timing of farm practice.

### **HOW TO APPLY FOR A HEARING OF THE NORMAL FARM PRACTICES PROTECTION BOARD**

Board applications must be made in writing and must be signed by the applicant(s). Within the application, provide a brief but complete summary of the disturbance and other relevant details. The Board may refuse to hear a case if it considers the application to be trivial, frivolous, vexatious, not made in good faith, or if it appears the applicant has insufficient personal interest.

Applications for nuisance complaints must include:

- the name, street and mailing addresses and contact information for the applicant(s) (the person(s) requesting a hearing), including a daytime telephone number
- the name, street and mailing addresses of the respondent(s) (the farmer(s) alleged to be creating the nuisance) and the location the nuisance occurred
- the nature of the complaint, including:
  - date(s) of complaint(s)
  - pictures, if they are helpful
  - how the nuisance affects the applicant
  - what authorities have been involved in trying to resolve the issue

Applications for bylaw complaints must include:

- the name, street and mailing addresses and contact information for the applicant(s) (the person(s) requesting a hearing), including a daytime telephone number
- a copy of the bylaw in question
- the bylaw number, the date it was passed, the name of the municipality that passed it and the address of the municipal office
- a description of the practice to be reviewed
- the location & contact information for the farmer in question

Forward the signed application and all attachments to:

Normal Farm Practices Protection Board  
1 Stone Rd. W., 2nd floor, Guelph, ON N1G 4Y2  
Phone: (519) 826-3433, Fax: (519) 826-4232  
E-mail: [NFPPB@ontario.ca](mailto:NFPPB@ontario.ca)

Once the Board decides to hold a hearing, a date and location is chosen. The Board normally holds its hearing in the county or region where the case originated. It can take several months or more from time of application to the Board until the hearing is held and a decision is issued.

### **AT THE HEARING**

Applicants and respondents (“parties”) should be aware of the following before applying for or attending a hearing:

- A hearing is a formal process, with both sides presenting evidence and witnesses.
- Hearings are normally held in municipal chambers and other wheelchair-accessible locations.
- Hearings are open to the public. Attendance can range from only a few people to several hundred people, including interested neighbours and members of the general public.
- Parties and all attendees must remain courteous and respectful at all times. The Board has the authority to maintain order in a hearing and have those orders enforced by police if necessary.
- Only the Board, the applicant(s), respondent(s) and those invited to give testimony are permitted to speak. If any other person(s) wishes to be a party or make a presentation to the Board, they must request permission at the start of the hearing.
- Lawyers are not required, and parties may represent themselves. Parties who wish to hire legal representation may do so at their own expense.
- If a party wishes to ensure important witnesses will attend the hearing, they can ask the Board to summon the witnesses. Civil servants (including OMAFRA staff) who are to appear as witnesses must be summonsed. This must be done far in advance of the hearing date. Contact the Board to initiate a summons.

- If either party presents pictures, videos, written documents or other items in the hearing, these items must be introduced by a witness to be considered as evidence by the Board. These items are not returned.
- In many instances, the Board makes a site visit to better understand the case. The visit is not used to gather evidence, but only to help the Board understand the evidence presented at the hearing.
- There is no fixed length of time to complete a hearing. However, it usually takes a minimum of one-half day to as many as 5 days or more, depending on the complexity of the case.
- The Board only has jurisdiction over the seven nuisances and the bylaw issues outlined in the FFPPA and will not consider complaints about other matters, even if they are agricultural in nature (e.g., drainage conflicts).

The sequence of events in the hearing is outlined by the chair of the hearing panel at the outset of the hearing.

- The applicant(s) testify as to their version of events and state why they believe they are aggrieved. The respondent(s) then cross-examine the applicant(s), and the Board may have additional questions. Witnesses and experts invited to speak on behalf of the applicant(s) then give their testimony, are cross-examined and questioned by the Board.
- The respondent(s) testify as to their version of events followed by a cross-examination by the applicant(s) and questions from the Board. Witnesses and experts invited to speak on behalf of the respondent(s) then give their testimony, are cross-examined, then questioned by the Board.
- The Board may choose to visit the site of the complaint at an appropriate time during the hearing.
- Expert(s) summoned by the Board to attend the hearing (if any) outline their expertise on the topic, and answer questions from the Board, the applicant(s) and the respondent(s).
- The applicant(s) then summarize their case.
- The respondent(s) then summarize their case.
- The hearing is adjourned. The Board panel then deliberates to arrive at a decision.

## **DECISIONS OF THE BOARD**

The Board issues its decision in written form, with reasons explaining the decision. It normally takes 4–6 weeks after a hearing for the decision to be issued.

The Board will decide whether the farm practice in question:

- is a normal farm practice
- is not a normal farm practice
- will be a normal farm practice if the farmer makes specific modifications to the practice

If the practice is deemed normal, for a nuisance case, the Board will dismiss the application. For a bylaw case, the Board will rule the bylaw does not apply to this practice at this particular farm location. In both cases, the farmer is free to continue the practice under the protection of the Act. The Board will not entertain further complaints unless circumstances have changed.

If the practice is deemed not normal, for a nuisance case, the Board will order the farmer to cease the practice. For a bylaw case, the Board will rule the bylaw applies to the practice and the municipality may enforce the bylaw.

If the practice is deemed normal if modified, for a nuisance case, the Board will order the farmer to make the required modifications. For a bylaw case, the Board will rule the bylaw does not apply provided the farmer makes the required modifications.

Decisions by the NFPPB must be consistent with any directives, guidelines or policy statements issued by the Minister of Agriculture, Food and Rural Affairs in relation to agricultural operations or normal farm practices.

Under the Act, any party to a hearing may appeal an order or a decision of the Board, on any question of fact, law or jurisdiction. The appeal must be made to the divisional court of the Superior Court of Justice, within 30 days of the date of the order or decision.

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## ENFORCEMENT OF BOARD DECISIONS

Like other regulatory agencies, NFPPB orders and decisions are enforced in the same way as court decisions. The procedure for enforcement is established by the *Statutory Powers Procedure Act*, which governs agencies, boards and commissions of the provincial government. First, one of the parties must file a certified copy of the decision or order with the Superior Court of Justice. The decision or order then becomes a decision or order of the court and is enforceable. The party seeking enforcement would apply to the court at the court offices.

## CONCLUSION

Disputes concerning farm practices can be challenging and uncomfortable. The *Farming and Food Production Protection Act, 1998*, and the Normal Farm Practices Protection Board provide protection for farmers to allow the business of farming to continue and provide rural residents and municipalities a forum to address specific concerns. OMAFRA continues to work with farm organizations and rural municipalities to increase awareness of the realities of rural living, and OMAFRA's specialists continue to offer abatement, conciliation and mediation services to reduce the impact of nuisance issues on rural Ontario.

## RESOURCES

For more information on resolving nuisance complaints and the Board process, review the following resources:

[Normal Farm Practices Protection Board](#)

[So... You're Moving to the Country](#)

OMAFRA Factsheet *Responding to Agricultural Nuisance Complaints*

[Farm Practices Conflict Resolution Process](#)

[Citizen's Guide to the Normal Farm Practices Protection Board](#)

[Canadian Legal Information Institute \(CanLII\) database of past Board decisions](#)

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