



# AOPA PRACTICE REVIEW COMMITTEE

Practices and Procedures

April 2007

AOPA PRACTICE REVIEW COMMITTEE .....	3
Practices and Procedures .....	3
1. Purpose of the Review Committee .....	3
2. Pre-review Procedures .....	3
A. How Reviews are Initiated .....	3
B. Composition and Structure of PRC.....	3
C. Authority and Obligations of PRC .....	4
Authority .....	4
Obligations .....	4
D. Responsibilities and duties .....	5
E. Communication .....	7
F. Record.....	7
3. Preparing for the Review/Mediation .....	8
A. Time to conduct the review .....	8
B. Parties to the Review.....	8
C. Disclosure of Information .....	8
D. Notice of the Review .....	9
E. Review by Interrogatory.....	9
F. Attendance.....	9
4. Procedure During the Review.....	10
A. Order of Presentation .....	10
B. Adjournments .....	10
C. Mediation .....	10
D. Duties of Chair for the Hearing .....	11
E. Duties of Members for the Hearing .....	12
F. Duties of Secretary to the PRC Process.....	12
5. Post Review Procedures.....	12
A. Obligation to Make Decision.....	12
B. Considerations in Making Decision.....	12
C. Written Decision.....	13
D. Format of the Written Recommendation.....	13
6. Costs.....	13

# AOPA PRACTICE REVIEW COMMITTEE

## Practices and Procedures

### 1. Purpose of the Review Committee

A Practice Review Committee (PRC) is established under section 5(1) of AOPA to deal with individual requests or Ministerial referrals to consider whether a nuisance disturbance resulting from an agricultural operation results from a generally accepted agricultural practice.

### 2. Pre-review Procedures

#### A. How Reviews are Initiated

A review is initiated in one of three ways.

1. Application under section 3 of the Agricultural Operation Practices Act (AOPA) to the Minister from a person who is aggrieved by odour, noise, dust, smoke, or other disturbance. Applications under section 3 must be in writing, and must contain a statement of the nature of the disturbance, the name and address of the applicant, the location of the agricultural operation, the name and the address of the owner or operator, if known, the name and address of the person who is aggrieved and the steps taken, if any, to resolve the disturbance.
2. Application by the owner or operator of an operation that is aware of a person who may be aggrieved by their operation.
3. A referral under section 38.1 of AOPA from the Natural Resources Conservation Board, to the Minister to establish a PRC.

#### B. Composition and Structure of PRC

1) The PRC shall consist of three members appointed by the Minister as an agricultural committee.

- Two members must have experience in the type of farming operation to which the application or referral relates.

2) One or more PRC may exist at any one time.

3) The Farmers' Advocate Office (FAO) will develop and maintain a list of potential Chairs to be based on their administrative tribunal experience and understanding. The FAO will develop and maintain a list of potential committee members as recommended by the agricultural industry. The FAO will make recommendation to the Minister as to the composition of the PRC from these lists and based on the type of application coming forward.

## C. Authority and Obligations of PRC

### Authority

The authority of the PRC comes from sections 2 – 9 of the AOPA. The PRC has the authority to:

- Consider whether a disturbance (odour, noise, dust, smoke or other disturbance resulting from an agricultural operation) results from a generally accepted agricultural practice.
- Inquire into and assist the parties in resolving the dispute.
- Recommend to the Minister what should constitute a generally accepted agricultural practice in respect of that agricultural operation.
- All the same powers and privileges as a commissioner under the Public Inquiries Act (PIA). This includes the power to:
  - Engage the services of counsel, clerks, reporters or assistants;
  - Engage the services of experts, persons having special technical or other knowledge or a qualified person to assist them;
  - Authorize a person to inquire into any matter within the scope of the review and report the evidence and the person's findings to the PRC;
  - Summon witnesses and require them to give evidence on oath, orally or in writing;
  - Summon persons to produce any documents, papers and things the PRC considers to be required for the full investigation of the matters;
  - Make copies of original documents and to accept copies of documents to be admitted into evidence;
  - Admit evidence it determines appropriate;
  - Appoint a person, sworn before a justice of the peace, to take evidence of a witness and report back.

### Obligations

The PRC has certain statutory obligations under AOPA, including:

- To give the parties the opportunity to present information and make recommendations;
- To notify the parties of the application or referral and any other matters the PRC considers necessary;
- To provide a written copy of any agreement of the parties or any recommendations of the PRC to:
  - The Minister;
  - Each of the parties, and
  - Any other person or organization the Minister directs.

The PRC also has certain statutory obligations under PIA, including:

- To allow persons to be represented by counsel;
- To determine if a witness may be adversely affected and if so, give the witness an opportunity to give evidence;
- To determine if a person's interests may be adversely affected by any evidence given in a review and if so, to give the person an opportunity to give evidence and to call and examine a witness or cross-examine a witness, either personally or by counsel;
- Before finding misconduct on or by any person, give reasonable notice of the allegation to that person or the person's counsel and the opportunity to give evidence, call and examine witnesses.

The PRC has a duty to ensure procedural fairness in all that it does. Procedural fairness includes:

- Ensuring the person knows the case before the PRC and is given the opportunity to respond. This includes providing notice, giving sufficient time to prepare for the review, ensuring disclosure of information the PRC will consider, providing a forum to share information and make presentations on the matter, allow a party to cross-examine witnesses, allowing representation by counsel, and treating parties equally in the process;
- Ensuring the PRC members are not biased;
- Ensuring any decision is made by the PRC appointed to the review.

#### D. Responsibilities and duties

The Members:

- i. Are responsible for reviewing and familiarizing themselves with the application, agenda and any other information provided to them by the Farmers' Advocate Office in advance of the review date;
- ii. Must attend any site visit;
- iii. At any time during the process, and with all parties present, may ask relevant questions;
- iv. Shall disclose at the earliest opportunity (whether arising before or during the review) any situation which is or may be a conflict of interest with the parties, counsel of a party or a witness, or which may be perceived as leading to a reasonable apprehension that the member is biased;

- v. Shall keep an open mind during the review and shall not make any decisions on the application until all the evidence and submissions are received or heard;
- vi. Shall participate in the decision making process;
- vii. Shall not discuss or make statements to the media or non-related parties;
- viii. Shall agree that any private deliberations remain private and only the final decision and reasons of the panel are shared; and
- ix. Shall determine if a site visit is required.

**The Chair:**

- i. Performs the same responsibilities and duties of a member;
- ii. In consultation with the Farmers' Advocate Office, determines the time and location of the review and is responsible for arranging the agenda;
- iii. Presides over and controls the review process and is responsible for outlining the specific procedures and conduct to be followed at the review;
- iv. Chairs any review hearing;
- v. Submits a written, signed recommendation of the PRC or agreement of the parties to the Minister.

**The Farmers' Advocate Office (FAO):**

- i. Shall act as the Secretary to the PRC process unless, another agency is appointed by the Minister.
- ii. Is responsible to receive and process the application and any submissions, which may include:
  - o Coordinating site visits and hearings;
  - o Providing proper notice of the hearings;
  - o Coordinating the receipt and disclosure of pre-hearing information and documents;
  - o Assisting the committee in preparing any written agreement or report;
  - o Acting as a liaison between the applicant, operator and the committee for administrative purposes;
  - o Compiling an official record of the review.

The Minister, under s.7 (1) of AOPA, may determine the practice and procedures of a PRC. The following general practices also apply to the PRC:

- A quorum of a PRC is three (3) committee members, including the Chair.

#### E. Communication

All communication with the parties, whether verbal or written, must be facilitated through the Secretary to the PRC process.

Any communication between committee members and the parties must take place in the presence of all the parties in order to allow all parties to hear and respond to all of the issues.

Committee members will hold their committee caucus discussions in private.

#### F. Record

The Secretary to the PRC process will compile an official record of the review/mediation that may contain the following:

- Application;
- Any pre-review information provided by the parties;
- Any correspondence between the parties and the PRC surrounding the review or mediation;
- Any pre-review orders or ruling provided by the committee or the Chair
- Minutes of the review;
- Any orders or rulings made by the Chair made during the review;
- Any statement of facts agreed to by the parties;
- Any video or audio recording made;
- Names of all witnesses and parties;
- Documentary evidence admitted;
- Information about any site visit;
- The recommendation and reasons;
- Any mediated agreement;
- Any notification of the recommendations or mediated agreement.

The record will not include:

- o The personal notes of the PRC members, or
- o Additional copies or other documents not considered at the review.

The record will be held for a minimum of ten (10) years before destruction.

### 3. Preparing for the Review/Mediation

#### A. Time to conduct the review

The PRC should endeavor to conduct the review within 90 days following receipt of the written application, or as soon thereafter as possible.

#### B. Parties to the Review

The parties to an application for review, under section 3(3), are:

- The applicant;
- The owner or operator of the agricultural operation;
- The person aggrieved;
- Any other person the Minister considers appropriate.

The parties to a referral for review, under sections 4 and 38.1, are:

- The Board;
- The owner or operator of the agricultural operation about whom the referral is made;
- Any other person the PRC considers to be directly affected.

#### C. Disclosure of Information

Not later than thirty (30) days before the date of the proposed review, the Secretary to the PRC process will provide to the parties and PRC members written notification of the proposed date and time of the review. This preliminary notice will also include:

- i. Deadlines and procedures for the parties to:
  - Provide documents and printed information intended to be relied upon at the review;
  - Names of all persons who will attend the review;
  - Raise procedural objections or questions.
- ii. Adjournment requests and what will occur if a person does not attend the scheduled review.

Any documents or printed information intended to be relied upon at the review, including the names of those persons who will attend, must be provided to the Secretary to the PRC process no later than 15 days before the date of the proposed review or mediation session.

A party has the responsibility for ensuring the PRC and all other parties receive sufficient numbers of copies of the information they intend to use. Any information provided by the parties to the Secretary to the PRC process will be distributed to all the parties and to the committee members.

Any further information received from a party later than 15 days before the date of the review can only be admitted with the approval of the Chair.

#### D. Notice of the Review

The applicant's correspondence will be directed to the Chair and the parties as soon as possible.

The Secretary to the PRC process, following consultation with the PRC and the parties, will arrange the date, time and location of the site visit and review.

Not later than fifteen (15) before the date of the review, the Secretary to the PRC process will provide to the applicant, agricultural operator and PRC members with:

- Written notification of the date, time and location of the review
- An agenda outlining the order of presentation, with appropriate documents.

Notice will be given to all parties, which may include but is not limited to,

- Double registered mail;
- Regular mail, delivered to postage service 10 days prior to review;
- Electronic mail with electronic receipt;
- Facsimile transmission;
- Website for the PRC.

#### E. Review by Interrogatory

If the Chair determines it is appropriate, the PRC may conduct its review by way of interrogatory. Interrogatories are written questions designed to discover key facts about an opposing party's case that one party to a review asks an opposing party.

#### F. Attendance

If either of the parties has received proper notice of the review, but is not present, it is up to the PRC to decide whether to proceed in their absence or to reschedule the review.

If a party knows in advance that they will not be able to attend on the date set, it is that party's obligation to notify the Secretary to the PRC process accordingly. Failure to do so could result in the review proceeding without that party.

Adjournments may be granted, depending on the circumstances. Before deciding on an adjournment, the PRC will hear from all affected parties. When the PRC grants an adjournment it will determine what conditions, if any apply.

## 4. Procedure During the Review

### A. Order of Presentation

The PRC hearing proceeds using the following order of presentation:

1. Opening Statements
  - a. The Applicant
  - b. The Operator (if different from the applicant)
  - c. Intervener(s)
2. Evidence by Parties
  - a. The Applicant
  - b. The Operator (if different from the applicant)
  - c. Intervener(s)
3. Rebuttal by Parties
  - a. The Applicant
  - b. The Operator (if different from the applicant)
  - c. Intervener(s)
4. PRC Expert witnesses
5. Summary statements
  - a. Intervener(s)
  - b. The Applicant
  - c. The Operator (if different from the applicant)

All parties can ask questions during the evidence and rebuttal portions of the hearing.

The Chair has the discretion to reduce or extend the presentation times. The times include any evidence given by third parties. The Secretary to the PRC process is responsible for monitoring the time limits.

### B. Adjournments

Any party may request an adjournment.

The PRC, after consultation, rules if and when an adjournment will be taken and for what period of time.

### C. Mediation

During the initial phase of the review process, mediation can occur between the parties. The mediator can be:

- One or more of the PRC members;
- The Chair;
- The Farmers' Advocate Office with the consent of all parties.

During the mediation process, the PRC must take concerted effort to remain, and appear to remain, unbiased. Section 8(1) of the Act states that the PRC must assist the parties by “structuring negotiations, facilitating communication, and identifying the issues and interest of the parties.” Care should be taken during the mediation to restrict the PRC’s involvement to the specific activities mentioned above.

Any agreement between the parties reached during mediation must be documented, signed by the parties and witnessed. An original signed copy of the agreement should be provided to each of the parties, and an original signed copy should be kept on the file, and provided to the Minister and any other person or organization the Minister directs, as outlined in section 9(1) of the Act.

The Chair, as appointed by the Minister, is authorized to sign a certificate attached to the agreement as outlined under section 9(2) of the Act.

#### D. Duties of Chair for the Hearing

During the review the Chair shall:

- Act as Chair;
- Instruct the Secretary to the PRC process what to record in the minutes;
- Communicate the panel’s rulings on any objections or requests;

In the opening comments, the Chair:

- Declares the review open;
- Determines if there is quorum for the hearing and, if so, declares that there is quorum;
- Declares that all necessary parties have received proper notice of the review;
- Introduces the nature of the review;
- Introduces the parties in attendance;
- Asks if there are any declarations of perceived conflicts of interests by PRC committee members;
- Asks if there are any objections by either of the parties to:
  1. Any of the members of the PRC;
  2. To the review proceeding;
  3. Any other matters.
- Advises parties regarding the procedure to be used in the hearing such as introducing evidence, exhibits, witnesses;

- Asks if there are any requests by either party.

#### E. Duties of Members for the Hearing

During the review the Members:

- Shall disclose any situation that may be a conflict of interest or, which may be perceived as leading to a reasonable apprehension of bias or a lack of objectivity to ensure that the PRC is fair and impartial;
- Shall be prepared to deal with the submissions having reviewed any written submissions in advance but keeping an open mind to what may occur in the hearing;
- May, during the hearing, seek clarification from the parties;
- May, during the hearing, ask for further information;
- Shall refrain from private conversation or discussion with the participants before the review, during adjournments, and prior to the report being issued;
- Must be present throughout the entire review.

#### F. Duties of Secretary to the PRC Process

The Secretary to the PRC process shall record the proceedings.

### 5. Post Review Procedures

#### A. Obligation to Make Decision

Upon completion of the hearing, the PRC is obliged to make a recommendation to the Minister as outlined in section 9 of the Act.

#### B. Considerations in Making Decision

The PRC acts as a panel in making the decision. In making the decision regarding the recommendation, the PRC:

- May assess the credibility of the evidence presented;
- Must consider all of the parties submissions that are relevant to what may or may not constitute a generally acceptable agricultural practice in the circumstances;
- Must consider whether the disturbance in question results from a generally accepted agricultural practice.

The PRC may also consider the comments made by the committee members in the presence of the parties with respect to what in their experience may constitute a generally accepted practice and each party's arguments or evidence that may vary or require an alternate generally accepted practice.

The PRC must consider all the relevant information presented in making their decision.

### C. Written Decision

When writing the recommendation, the PRC should outline its findings of fact, its findings as to what constitutes a "generally accepted agricultural practice," whether the present operation meets the generally accepted agricultural practice standard, and whether the disturbance results from a generally accepted agricultural practice. The PRC shall:

- Outline all the considerations that formed part of its decision;
- The reasons for its findings and recommendations.

All members of the PRC shall review the draft written decision. The Chair signs the final decision on behalf of the panel. Upon completion, a copy of the decision must be forwarded to each of the parties, the Minister and any other person or organization the Minister directs.

### D. Format of the Written Recommendation

The official record of the hearing process must include:

- The names of the Committee members conducting the hearing;
- The date and location of the hearing;
- The names of those who appeared before the committee;
- The legislative authority for the hearing;
- A list of any and all exhibits presented to the committee;
- Any relevant findings of fact agreed to by all parties;
- Any relevant findings of fact determined by the committee, including a summary of evidence presented that led to the finding of fact;
- The committee's recommendation as to what constitutes a "generally accepted agricultural practice," including why something may or may not constitute such a practice;
- Whether the present operation meets the generally accepted agricultural practice standard, and whether the disturbance results from a generally accepted agricultural practice;
- The determination of the case and reasons for reaching the determination.

## 6. Costs

The administrative costs of the PRC are the responsibility of Agriculture and Food.

Each party, applicant or agricultural operator or intervener, is responsible for its own costs regardless of the recommendation of the PRC.