



**Overview of the
Agricultural Operation Practices Act
Practice Review Committee**

Background

The Agricultural Operation Practices Act (AOPA) supports the growth of the livestock industry to meet market opportunities in an environmentally sustainable manner. AOPA also protects producers from liability in an action for nuisance resulting from an agricultural operation when the operator is following generally accepted agricultural practices.

Part 1 of AOPA sets out barriers to liability in actions for nuisance and establishes a Practice Review Committee process to deal with concerns about agricultural operations.

Introduction

The Farmers' Advocate Office assists in looking for solutions when disputes arise between the agricultural industry and neighbors over nuisance issues.

If a disagreement is brought directly to the attention of the Farmers' Advocate Office, the Farmer's Advocate's Office will work with the parties to resolve the dispute. If a complaint is not resolved through that process, a person who is aggrieved by a disturbance resulting from an agricultural operation, the owner or operator of the agricultural operation, or the Natural Resources Conservation Board may submit a written request to the Minister of Agriculture and Food to establish a Practices Review Committee (PRC) to resolve the dispute.

The written request must include, except in the case of a request from the NRCB:

- a. A statement of the nature of the disturbance.
- b. The name and address of the applicant.
- c. The location of the agricultural operation.
- d. The name and address of the owner or operator, if known.
- e. The name and address of the person who is aggrieved; and
- f. The steps taken by the applicant, if any, to resolve the disturbance.

Upon reviewing the request, the Minister will determine if the matter should go to a PRC. The Minister may refuse to form a PRC if the matter does not have any merit, or it has been the subject of a previous review or enforcement action.

If the Minister appoints a PRC, the Farmers' Advocate Office is responsible for the governance of the process and acts as secretariat to the PRC.

Practice Review Committees

Members

A PRC has three members. Two of the members must have experience in the type of farming operation to which the application or referral relates and all three members must have experience in administrative tribunals. One of the members will serve as the Chair of the committee.

Review Process

When a PRC is formed, parties to the dispute must be notified and given the opportunity to present information and make representations. The PRC will share the information with the various parties and may also conduct site visits. The PRC may attempt to resolve disputes by mediation or through a review. The PRC has latitude in how they will conduct the reviews and mediation proceedings but they must be fair and objective.

Costs

The parties to the review are responsible for their own costs regardless of the outcome of the review.

Resolution

If a dispute is resolved or the PRC makes recommendations, the PRC shall prepare a report that will be provided to the Minister and each of the parties involved. The report can then be admitted into evidence in any proceeding arising out of the matter giving rise to the report. If the report is admitted into evidence, it must be considered in the proceedings.

For more information contact

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Appendix 1

Agricultural Operations Practices Act - Extract

Definitions

1 In this Act,

- (a.1) “agricultural land” means
 - (i) land the use of which for agriculture is either a permitted or discretionary use under the land use bylaw of the municipality or Metis settlement in which the land is situated or is permitted pursuant to section 643 of the *Municipal Government Act*, or
 - (ii) land that is subject to an approval, registration or authorization;
- (b) “agricultural operation” means an agricultural activity conducted on agricultural land for gain or reward or in the hope or expectation of gain or reward, and includes
 - (i) the cultivation of land,
 - (ii) the raising of livestock, including domestic cervids within the meaning of the *Livestock Industry Diversification Act* and poultry,
 - (iii) the raising of fur-bearing animals, pheasants or fish,
 - (iv) the production of agricultural field crops,
 - (v) the production of fruit, vegetables, sod, trees, shrubs and other specialty horticultural crops,
 - (vi) the production of eggs and milk,
 - (vii) the production of honey,
 - (viii) the operation of agricultural machinery and equipment, including irrigation pumps,
 - (ix) the application of fertilizers, insecticides, pesticides, fungicides and herbicides, including application by ground and aerial spraying, for agricultural purposes,
 - (x) the collection, transportation, storage, application, use, transfer and disposal of manure, composting materials and compost, and
 - (xi) the abandonment and reclamation of confined feeding operations and manure storage facilities;
- (b.2) “approval” means an approval under Part 2;
- (b.4) “authorization” means an authorization under Part 2;
- (b.5) “Board” means the Natural Resources Conservation Board;
- ...
- (b.8) “generally accepted agricultural practice” means a practice that is conducted in a manner consistent with appropriate and accepted customs and standards as

established and followed by similar agricultural operations under similar circumstances, and without restricting the generality of the foregoing includes the use of innovative technology used with advanced management practices;

- (c) “land use bylaw” means a land use bylaw as defined in Part 17 of the *Municipal Government Act* or a bylaw respecting land use that is in effect in a Metis settlement;
- (c.1) “livestock” means poultry, horses, cattle, sheep, swine, goats, bison, fur-bearing animals raised in captivity and domestic cervids within the meaning of the *Livestock Industry Diversification Act*;
...
- (d.2) “municipal development plan” means a municipal development plan within the meaning of the *Municipal Government Act*;
...
- (e) “nuisance” includes an activity that
 - (i) arises from unreasonable, unwarranted or unlawful use by a person of the person’s own property that causes obstruction or injury to the right of another person or to the public and produces such material annoyance, inconvenience and discomfort that damage will result,
 - (ii) creates smoke, odour, noise or vibration that interferes with the reasonable and comfortable use of a person’s property, or
 - (iii) is found to be a nuisance at common law;
- (f) “owner or operator”, when used with reference to an agricultural operation, means
 - (i) the owner and previous owner of an agricultural operation or the land where it is or was situated,
 - (ii) every person who has or has had charge, management or control of an agricultural operation or the land where it is or was situated,
 - (iii) any successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subclause (i) or (ii), and
 - (iv) a person who acts as the principal or agent of a person referred to in subclause (i), (ii) or (iii);
- (h) “registration” means a registration under Part 2;....

Part 1 Nuisance

Nuisance claims

2(1) A person who carries on an agricultural operation and who, in respect of that operation, does not contravene

- (a) the land use bylaw of the municipality or Metis settlement in which the agricultural operation is carried on,
- (b) the regulations or an approval, registration or authorization, or

- (c) the generally accepted agricultural practice

is not liable to any person in an action in nuisance resulting from the agricultural operation and is not to be prevented by injunction or other order of a court from carrying on the agricultural operation because it causes or creates a nuisance.

(1.1) If subsection (1)(a) is contravened but the contravention is authorized by an approval, authorization or registration; the approval, authorization or registration prevails over the land use bylaw with which it conflicts.

(2) Subsection (1) continues to apply notwithstanding that one or more of the following occur:

- (a) the land use bylaw of the municipality or Metis settlement in which the agricultural operation is carried on changes;
- (b) the ownership of the agricultural land on which the agricultural operation is carried on changes;
- (c) the agricultural operation is carried on by other persons;
- (d) the use of land adjacent to the land on which the agricultural operation is carried on changes.

(3) Where a plaintiff or claimant in a proceeding against a person who carries on an agricultural operation

- (a) claims damages in nuisance resulting from the agricultural operation, or
- (b) applies for an injunction or other order of a court preventing or restricting the carrying on of the agricultural operation because it causes or creates a nuisance,

the onus of proving that the defendant contravened the land use bylaw, regulation, approval, registration, authorization or practice referred to in subsection (1) is on the plaintiff or claimant, as the case may be.

(4) In an action in nuisance against a person who carries on an agricultural operation, a court may

- (a) order the party that commenced the action to furnish security for costs in any amount the court considers proper;
- (b) award party and party costs and solicitor and client costs or either of them.

RSA 2000 cA-7 s2;2001 c16 s4

Application re disturbance

3(1) A person who is aggrieved by, or an owner or operator who is aware that a person is aggrieved by, any odour, noise, dust, smoke or other disturbance resulting from an agricultural operation may apply in writing to the Minister to request consideration of whether the disturbance results from a generally accepted agricultural practice.

(2) An application under subsection (1) 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 address of the owner or operator, if known, the name and address of the person who is aggrieved and the steps taken by the applicant, if any, to resolve the disturbance.

(3) The parties to an application are the applicant, the owner or operator or the person aggrieved and any other person the Minister considers appropriate.

(4) A person shall not commence an action in nuisance for any odour, noise, dust, smoke or other disturbance resulting from an agricultural operation unless an application has been made under this section with respect to the disturbance at least 90 working days previously.
2001 c16 s5

Referral

4 The parties to a referral to the Minister under section 38.1 are the Board, the owner or operator about whom the referral is made and any other person the practice review committee considers to be directly affected.

2001 c16 s5;2004 c14 s3

Practice review committee

5(1) On receipt of an application under section 3 or a referral under section 38.1 the Minister may

- (a) refuse to consider the application or referral if, in the Minister's opinion,
 - (i) the subject-matter of the application or referral is without merit, frivolous or vexatious,
 - (i.1) the subject-matter of the application or referral has already been considered by a practice review committee,
 - (i.2) the subject-matter of the application or referral is the subject-matter of an enforcement order under section 39, a review being held by the Board under section 41 or an emergency order under section 42.1,
 - (ii) the application or referral is not made in good faith, or
 - (iii) the applicant or person aggrieved does not have a sufficient connection to the subject-matter of the application,
- or
- (b) appoint 3 persons as an agricultural practice review committee to consider the application or referral, 2 of whom must have experience in the type of farming operation to which the application or referral relates.

(2) One or more practice review committees may exist and consider applications and referrals and mediate at the same time.

(3) The Minister may appoint from among the members of a practice review committee the chair of the practice review committee.

(4) The members of a practice review committee may be paid remuneration for the performance of their duties as members of the practice review committee and travelling and living expenses while absent from their ordinary places of residence in the course of their duties as members of the practice review committee at the rates prescribed by the Minister.

2001 c16 s5;2004 c14 s4

Powers, immunity

6(1) The members of a practice review committee have the same powers and privileges as a commissioner under the *Public Inquiries Act*.

(2) No action or proceeding may be brought against a member of a practice review committee in respect of any act or thing done in good faith under this Act.

2001 c16 s5

Procedure

7(1) The Minister may determine the practice and procedures of a practice review committee, but a practice review committee must give opportunity to the parties to present information and make representations.

(2) The *Regulations Act* does not apply to the practices and procedures.

(3) On being assigned consideration of an application or referral, a practice review committee must notify the parties of the assignment and any other matters the practice review committee considers necessary.

2001 c16 s5

Investigation, mediation

8(1) A practice review committee, when acting as a mediator, may assist the parties in reaching their own mutually acceptable settlement by structuring negotiations, facilitating communication and identifying the issues and interests of the parties.

(2) The practice review committee may inquire into and assist the parties in resolving the dispute and, if the matter is not resolved, may recommend to the Minister what should constitute a generally accepted agricultural practice in respect of that agricultural operation.

2001 c16 s5

Committee recommendation

9(1) If the parties enter into an agreement to resolve the dispute or if a practice review committee makes recommendations, the practice review committee must provide a written copy of the agreement or of its recommendations to the Minister, to each of the parties and to any other person or organization the Minister directs.

(2) In any proceeding arising out of a matter giving rise to an application under this Part, a certificate purporting to be signed by a person authorized by the Minister to issue such a certificate stating that the document attached to the certificate is a true copy of an agreement entered into by the parties, or of recommendations issued under subsection (1) by a practice review committee, may be admitted into evidence, in the absence of evidence to the contrary, of the agreement or recommendations without proof of the signature or official character of the person signing it, the parties to the agreement or the practice review committee members and, if admitted into evidence, must be considered in the proceeding.

2001 c16 s5;2004 c14 s5