

ANNAUL REPORT OF THE NORMAL FARM PRACTICES PROTECTION BOARD  
April 1<sup>st</sup>, 2005 – March 31<sup>st</sup>, 2006

**Introduction**

The Normal Farm Practices Protection Board (“the Board”) is established under *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 be 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 2005-2006 fiscal year, there were seven members on the Board:

Chairperson	Glenn C. Walker	Ridgetown	lawyer
Vice-Chair	Anthony Little	London	lawyer
	Dwayne Acres	Osgoode	cash crop and livestock farmer
	Hélène Blanchard	Embrun	dairy farmer
	John DeBruyn	Salford	swine farmer
	Bill French	Mitchell	dairy farmer
	Gordon Garlough	Williamsburg	cash crop and beef 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, if they wish, retain legal counsel at their own expense. To assist parties who are not represented by legal counsel, the Board developed a *Citizen's Guide to the FFPPA and the NFPPB* in 2005. 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.

Determination of normal farm practice by the NFPPB requires technical knowledge and experience of established and emerging farming practices. At NFPPB hearings, the Board often has to call its own expert witnesses to provide essential evidence not presented by the parties. The Board normally calls upon agricultural engineers in the Environmental Policy & Programs Branch to provide such expert testimony. Expert witnesses may also come from other professional groups related or unrelated to agriculture.

According to the Agricultural Information Contact Centre, approximately 20-30 complaints pertaining to farm practices and/or the FFPPA are received each month, or approximately 240 – 360 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, approximately 4 cases are heard by the Board each year. In February of 2005, the Board established a new policy requiring that it would only hear cases that had gone through an unsuccessful process of conflict resolution.

In 2005-2006, the Board held hearings, pre-hearing conferences and / or teleconferences for two cases. By the end of the fiscal year, the board had issued an interim decision in one case; two cases were awaiting hearings; two cases had been withdrawn; and two cases had been put on hold.

The NFPPB continues to be affected by a Superior Court ruling overturning an NFPPB decision in the case 2002-03: Hill & Hill Farms Ltd. v. Municipality of Bluewater. The Court ruled that the NFPPB has no jurisdiction over municipal zoning by-laws. In March of 2006, the Ministry of the Attorney General participated in the farmer's appeal to the Appeal Court. While the decision is pending, the NFPPB will not be ruling on cases involving municipal zoning by-laws.

Following are the cases to which the preceding paragraphs refer:

<b>Case:</b>	<b><u>2000-01 Garnder et al v. Greenwood Mushroom Farm</u></b>
<b>Address:</b>	Ashburn, R.M. of Durham
<b>Issue:</b>	<b>Odour</b>
<b>Dates of Hearing:</b>	December 5-7, 2005 (3 days); March 27-30, 2006 (4 days); June 20, 2006 (1 day)
<b>Location(s) of Hearing:</b>	Goodwood; Uxbridge
<b>Panel Members:</b>	Glenn C. Walker, Linda O'Neill <i>(The Panel originally consisted of Robert Stephens, Glenn Walker and Linda O'Neill. Mr. Stephens' appointment to the Board ended in July 2004. The Panel continued with the remaining two members.)</i>

### **Description:**

The applicants complained about odours arising from a mushroom composting operation. The mushroom producer was taken to court and assessed to pay damages to his neighbours. The case was appealed to the Court of Appeal and to the Supreme Court. Following their decisions, the matter was returned to the Normal Farm Practices Protection Board. At a hearing held in June 2003, and continued in January 2004, the Board ordered the engagement of consultants to assess technological advances at the mushroom operation, and determine whether odours from the operation were still at an unacceptable level. Odour testing was completed in the summer of 2004, and a hearing was scheduled for October 2004 to hear final arguments. The applicants submitted a series of motions to delay the hearing until a separate charge against GMF was heard by the Courts. The Board denied the motions; the applicants referred the matter to the Courts in a

Judicial Review. This effectively suspended the hearing for over a year until the Judicial Review was dismissed by the Courts in September 2005.

In order to resolve scheduling conflicts, the Board held a Scheduling Conference in November 2005 and established dates in December 2005 and February and March 2006 for continuation of the hearing. The applicants submitted another series of motions to delay or abort the hearing, but these were all denied by the Board.

**STATUS:**

During the hearing session March 27 to 30, 2006, the parties began negotiations towards a settlement. The hearing was adjourned to June 20, 2006. On that date the parties informed the Board that they were still negotiating, and requested a further adjournment to allow time to complete their negotiations. The hearing was adjourned to October/November 2006.

**Case:** 2002-03 Hill & Hill Farms Ltd. v. Municipality of Bluewater

**Address:** Varna, Huron County

**Issue:** **By-law: Minimum Distance Separation (MDS)**

**Dates of Hearing:** October 24-25, 2002 (2 days)

**Location(s) of Hearing:** Varna

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

**Description:**

A farmer claimed that the municipality had built new facilities near his hog operation in 1984 and had 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 the 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 by the municipality to the Superior Court. The Court overturned the Board decision, stating that the NFPPB had no jurisdiction over municipal zoning by-laws. The farmer appealed the Divisional Court ruling to the Appeal Court in March of 2006. The decision of the Appeal Court is pending.

**Start Date:** June 6, 2002

**End Date:** April 22, 2003

**Appeal in progress.**

**Case:** 2002-06 Read Farms v. Town of Oakville

**Address:** Oakville, R.M. of Halton

**Issue:** **By-law: Prohibiting Farming Operations**

**Dates of Hearing:** November 24-25, 2003 (2 days) (*Motion*)

**Location(s) of Hearing:** Guelph

**Panel Members:** Glenn C. Walker (*Motion*)

**Description:**

A farmer applied for a hearing to determine whether it constitutes normal farm practice to do farming operations on a farm which is an area zoned residential. The municipal by-law prohibits farming operations. A pre-hearing conference was held on March 12<sup>th</sup>, 2003, in Guelph. The municipality made a Motion challenging the Board's jurisdiction, but the Board rejected the Motion in February 2004. The municipality appealed to the Courts for a Judicial Review; the Court rejected the appeal. However, the Board informed the parties of a subsequent ruling of the Court in regards to the case of Hill & Hill Farms vs. Municipality of Bluewater, which the Board considered to be similar.

**STATUS:**

In July of 2005, the applicant requested that the matter be held in abeyance until the Court of Appeal had ruled in the matter of Hill & Hill Farms Ltd. v. Municipality of Bluewater (2002-03). Thus, the case has not yet reopened.

**Start Date:** January 14, 2003

**Case:** 2004-04 Brunton v. Town of Gravenhurst  
**Address:** Gravenhurst, Muskoka District  
**Issue:** **By-law: Fires for Land Clearing**  
**Dates of Hearing:** December 20-21, 2004 (2 days)  
**Location(s) of Hearing:** Gravenhurst  
**Panel Members:** Glenn C. Walker, John Markus, Gordon Garlough

**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 fire practices constitute normal farm practice and are therefore exempt from the Town's fire by-laws.

**DECISION: In favour 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 designed to implement the 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.

In February of 2005, the applicant appealed the Board's decision to the Divisional Court. The applicant did not pursue the matter, however, and the appeal was dropped on March 13<sup>th</sup>, 2006, on grounds of excessive delay.

**Start Date: July 19, 2004**

**End Date: March 13, 2006**

**Case:** 2005-01 Riva et al v. Stratus Vineyards  
**Address:** Niagara-on-the-Lake, Niagara (RM)  
**Issue:** **Noise**  
**Dates of Hearing:** August 23, 2005 (1 day)  
**Location(s) of Hearing:** [Teleconference]  
**Panel Members:** Glenn C. Walker, Anthony Little, Bill French, Gordon Garlough

**Description:**

A group of nine residents complained about noise generated from anti-frost wind machines at a neighbouring vineyard. Prior to commencement of the NFPPB hearing, the Agricultural Engineer led a conflict resolution session which resulted in an agreement (Minutes of Settlement) drawn up by the lawyer for the vineyard. The parties requested that the Board sanction the Minutes of Settlement. A teleconference hearing was held for that purpose on August 23<sup>rd</sup>, 2005.

**STATUS:**

The Board did not sanction the Minutes of Settlement, because it was based on wind machine technical improvements which were not assured and were uncertain in their effects. The Board issued an interim decision adjourning the hearing one year to September 1, 2006, so as to allow time for the installation and testing of the technical improvements. The vineyard and seven of the applicants did not accept the Board's decision, and those applicants withdrew their case from the Board on September 6, 2005. The other two applicants, however, did not withdraw their case. The case therefore continues for those two applicants and the vineyard, with the hearing adjourned to September 1, 2006.

**Start Date: April 12, 2005**

**Case:** 2005-02 Beckett v. Wright  
**Address:** Shetland, Lambton  
**Issue:** **Dust**  
**Description:**

A resident complained about the amount of "red-dog" (dust) emanating from a neighbouring farm's grain dryers and falling onto his property.

**STATUS:**

The matter was referred to the Agricultural Engineer for conflict resolution. This resulted in an agreement in which the parties agreed to withdraw the case at least until the following year, while the farmer makes remedial changes.

**Start Date: June 7, 2005**

**End Date: July 27, 2005**

**Case:** 2005-04 Britnell v. DeBoer  
**Address:** Stayner, Simcoe  
**Issue:** Noise

**Description:**

Residents complained about the noise emanating from grain bin fans on a neighbouring farm.

**STATUS:**

In September of 2005, it was decided that the Agricultural Engineer who had previously investigated the matter in January would apply the Ministry's Conflict Resolution Process in a further attempt to resolve the dispute. Following a further investigation and site visit in December, the Engineer made recommendations for resolution. The case was withdrawn on June 10, 2006.

**Start Date:** August 5, 2005

**End Date:** June 26, 2006

**Case:** 2005-05 Hutton v. Mater  
**Address:** Caledonia, Haldimand-Norfolk (RM)  
**Issue:** Odour, flies

**Description:**

A resident complained about offensive odours and flies coming from the manure pile of a neighbouring poultry farm.

**STATUS:**

By February of 2006, the conflict resolution process had been unsuccessful in resolving this case. The applicant, however, withdrew his application because he was dissatisfied with the enforcement powers of the Board.

**Start Date:** November 14, 2005

**End Date:** February 22, 2006

### **Annual Meeting of the Normal Farm Practices Protection Board**

The Annual Meeting of the NFPPB was held on February 13<sup>th</sup> of 2006 at the Government of Ontario Building at 1 Stone Road West in Guelph. All Board members attended, along with Finbar Desir (Acting Secretary) and Susan Motkaluk (Manager of the Engineering & Technical Unit). Charles Lalonde (Director of Environmental Policy & Programs Branch), Marianne Orr (OMAFRA Legal Counsel), and Robert Chambers (Agricultural Engineer) also participated.

Marianne Orr spoke about intervention in appeals of NFPPB decisions. She said that tribunals (e.g., NFPPB) are not normally allowed to explain their decisions to the Court during an appeal, and ministries do not normally appear at appeals on behalf of tribunals. The ministry would consider intervention at an appeal only if the matter were of vital importance to the work of the tribunal or if it involved a strong public policy issue. In regards to the 2002-03: Hill & Hill Farms Ltd. v. Municipality of Bluewater appeal, Marianne stated that the Ministry of the Attorney General was intervening on behalf of the government during the Appeal Court hearing in March of 2006.

The publication "*Citizen's Guide to the FFPPA and the NFPPB*" had been completed and is presently in circulation. It is designed primarily to assist people preparing for a hearing before the Board, by explaining hearing processes. It is also a general guide to all individuals and organizations with interest in normal farm practices and rural/urban conflicts. It explains the FFPPA, the processes of the NFPPB, and the concept of "normal farm practice".

Major issues discussed included awarding costs at hearings, recording of hearings, and a policy on managing the loss of Panel members during a hearing. It was decided that the Board would ask Legal Counsel to look into the matter of awarding costs, with consideration about the practice in other boards. On the matter of recording hearings, the ministry will provide for recordings for cases as requested by the Chair. Regarding loss of Panel members, a Rule will be added to the Board's Rules of Practice and Procedure after the completion of a particular case presently before the Board in which this is an issue.

## Internet Access

Summaries of all NFPPB decisions are available on the NFPPB website, accessible through the OMAFRA website <[http://www.omafra.gov.on.ca/english/engineer/nfppb/nfppb\\_decisions.htm](http://www.omafra.gov.on.ca/english/engineer/nfppb/nfppb_decisions.htm)>. Full decisions are available electronically or in hard copy by contacting the Agricultural Information Contact Centre at 1-877-424-1300, or by e-mail at [ag.info@omaf.gov.on.ca](mailto:ag.info@omaf.gov.on.ca).

## Performance Measurement

The following is a report on Board Performance Measures, required by the Management Board of Cabinet, set in the Business Plan for 2005-2008. Because of the nature of hearings, the Board cannot ask hearing participants to rate its performance and so, instead, must rely on the incidence of complaints received in specific areas of service.

1. *Respect and consideration for participants.* No complaints were to be received.  
Results: No complaints were received.
2. *Quality of hearing process information provided to participants.* No quality complaints were to be received.  
Results: No quality complaints were received.
3. *Fairness in the processing of applications.* No fairness complaints were to be received.  
Results: No fairness complaints were received.
4. *Consideration of participants in the selection of the hearing date.* No complaints were to be received.  
Results: No complaints were received.
5. *Convenience to participants of the hearing location.* No convenience complaints were to be received.  
Results: No convenience complaints were received.
6. *Appropriateness of the hearing room set-up.* No complaints were to be received.  
Results: No complaints were received.
7. *Fairness in the conduction of the hearing.* No fairness complaints were to be received.  
Results: No fairness complaints were received.
8. *Adequate opportunity for participants to present evidence.* No complaints were to be received.  
Results: No complaints were received.
9. *Adequate opportunity for participants to respond to the evidence of the opposing party.* No complaints were to be received.  
Results: No complaints were received.
10. *Satisfaction that the decision reflected the evidence presented at the hearing.* No complaints were to be received.  
Results: No complaints were received; however, parties were dissatisfied with the Board's interim decision in the case of Riva et al v. Stratus Vineyards.
11. *Clarity of the reasons why the Board reached its particular decision, as presented in the written Decision.* No clarity complaints were to be received.  
Results: No clarity complaints were received; however, parties were dissatisfied with the Board's interim decision in the case of Riva et al v. Stratus Vineyards.

12. *Timing of the release of the decision.* No timing complaints were to be received.  
Results: No timing complaints were received.
13. *The plain language used in the decision.* No language complaints were to be received.  
Results: No language complaints were received.
14. *Absence of bias.* No bias complaints were to be received.  
Results: In the case of 2000-01 Gardner et al v. Greenwood Mushroom Farm, there was a Motion submitted by the applicants for the Chair to recuse himself because of the perception of bias. The Motion was dismissed.

Submitted this 17<sup>th</sup> day of July, 2006.

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Glenn C. Walker,  
NFPPB Chair