

Agricultural Operation Practices Act

Protection from Liability in Nuisance to N.B. Farmers

An Opportunity for Neighbours to Resolve Farm Related Nuisance Disputes

WHAT IS THE PURPOSE OF THIS ACT?

Farms are unique businesses. During specific seasons, farm activities may occur day and night. Nuisance disturbances such as odour, noise, dust, vibration, light, and smoke may only be manageable to a certain degree. In many situations a reasonable activity may still result in a nuisance disturbance that inconveniences others. Agricultural operations in New Brunswick had limited and inadequate protection from liability in nuisance prior to the proclamation of the [Agricultural Operation Practices Act](#) (AOPA) in 2003.

The *Agricultural Operation Practices Act* (AOPA) provides protection from liability in nuisance to a person using acceptable agricultural practices. It establishes a quick, low-cost, non-confrontational mechanism to resolve nuisance complaints between farmers and their neighbours. It provides an incentive to farmers to improve agricultural practices where needed.

WHAT IS AN “ACCEPTABLE FARM PRACTICE”?

An acceptable farm practice is defined in the AOPA as a practice that is carried on “in a manner consistent with proper and accepted customs and standards as established and followed by similar farms under similar circumstances”.

WHO DETERMINES WHAT IS ACCEPTABLE?

The Farm Practices Review Board (Board) is responsible for determining what practices are acceptable. It was created under the AOPA and the first members were appointed in 2003. The Board also manages the dispute resolution mechanism. The Board is comprised of members recommended by farm organizations and members who do not carry on agricultural operations.

WHAT ACTIVITIES DOES THE BOARD UNDERTAKE?

The Board considers all applications, manages the dispute resolution process, and makes determinations as to whether or not the disturbance resulted from a farm practice that is acceptable.

WILL THE BOARD ADDRESS ALL COMPLAINTS REGARDING FARMS?

No. The Board will only address complaints related to odour, noise, dust, vibration, light, smoke or other disturbances originating from an agricultural operation. It will not address complaints related to pollution. Pollution complaints, for example related to potential contamination of watercourses or drinking water, are covered by other legislation.

WHEN CAN THE BOARD REFUSE TO CONSIDER AN APPLICATION OR MAKE A DETERMINATION?

There are a number of situations in which the Board may decide not to consider an application or refuse to make a determination. These are:

- The subject matter is trivial;
- The application is frivolous or vexatious or not in good faith;
- The complaint has already been dealt with by the Board; or
- The Applicant has insufficient personal interest in the matter.

WHAT IS “INSUFFICIENT PERSONAL INTEREST”?

Insufficient personal interest means that the person is not directly affected by the disturbance (e.g. the person is not a neighbour) and is not in the position to launch a civil action in nuisance against the agricultural operation.

WHO CAN APPLY TO THE BOARD?

A person who is aggrieved by any odour, noise, dust, vibration, light, smoke or other disturbance resulting from an agricultural operation can apply to the Board. The Applicant must be directly affected by the disturbance and be in a position to launch a civil action in nuisance against the agricultural operation.

HOW DO I APPLY TO THE BOARD?

Application forms are available through the Sector Specialist Services Branch, Department of Agriculture, Aquaculture and Fisheries by contacting (506) 453-2108.

HOW DOES THE PROCESS WORK?

Once a completed application form has been submitted and received by the Board, the Board reviews the submitted information and decides whether or not to accept the application. If accepted, the Board may then offer the Applicant and Farmer the opportunity to participate in mediation. Successful mediation may resolve the dispute. If mediation is not offered, the offer of mediation is not accepted, or if mediation is unsuccessful, the Board can then decide to hold a hearing. All parties to the application are invited to the hearing to present their information as to what happened. The purpose of a hearing is for the Board to be able to ask questions of all parties about the information provided and about the specifics of the situation, and gather sufficient knowledge to be able to come to a conclusion and make a determination as to whether or not the disturbance resulted from an acceptable farm practice.

ARE BOARD DECISIONS FINAL?

Yes. There is no appeal process for decisions of the Board. The Applicant can, however, always proceed with a civil action in nuisance. The AOPA requires a person to make an application to the Board and wait 90 days (to allow the Board to consider the application) before proceeding with such a civil action.

CAN A PERSON COMPLAIN MORE THAN ONCE ABOUT THE SAME DISTURBANCE?

The Board may refuse to accept an application if it has already made a determination regarding the complaint in question.

CAN A FARMER STILL BE SUED?

Yes. However since the AOPA came into force in January 2003, a person must first make an application to the Board and wait 90 days (to allow the Board to consider the application) before proceeding with civil action. In a nuisance lawsuit about that particular disturbance, the Court is required to consider the determination made by the Board about that same disturbance.

HOW DOES OTHER LEGISLATION RELATE TO THIS ACT?

The AOPA deals only with nuisance type disturbances. Agricultural operations still have to follow all other legislation and regulations related to the environment, health issues, land use and municipal planning, etc. It does not provide immunity from compliance with such legislation.

IS THERE AN APPLICATION FEE?

Yes. An application fee of \$50.00 (plus HST) must accompany the completed application. This fee is returned if:

- Mediation is successful;
- The Board refuses to consider an application or make a determination; or
- The Board determines that the disturbance results from a farm practice that is not an acceptable farm practice.

WHERE CAN I RECEIVE MORE INFORMATION?

For more information please contact the Sector Specialist Services Branch, Department of Agriculture, Aquaculture and Fisheries, P.O. Box 6000, Fredericton, NB, E3B 5H1, at (506) 453-2108 or your local agriculture office at 1-888-NBAGRIC (1-888-622-4742).