ANNUAL REPORT OF THE NORMAL FARM PRACTICES PROTECTION BOARD
April 1st, 2007 – March 31st, 2008

Introduction

The Normal Farm Practices Protection Board ("the board") is established under The Farming and Food Production Protection Act (FFPPA) to rule on issues pertaining to farm practices.

The act protects farmers from nuisance complaints, provided the farmers are following normal farm practices. Nuisances covered are those arising from odour, dust, flies, light, smoke, noise and vibration. The act also protects farmers from municipal by-laws which restrict their normal farm practices.

The act defines "normal farm practice" as a farm practice that:

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:

1. is a normal farm practice
2. is not a normal farm practice, or
3. 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 it in spite of the nuisance complaint or the restrictive by-law. If the practice is ruled not normal, the farmer would have to stop it or follow 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 at least 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 2007-2008 fiscal year, board membership was increased from seven to ten, to provide better representation from the range of commodity groups affected by the FFPPA. New members appointed were Mr. Marty Byl, a grape grower from Niagara-on-the-Lake, Mr. Roger Pelissero, a poultry farmer from St. Anns and Mr. Maxwell Kaiser, a poultry farmer from Napanee. Here is the present membership list:

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
	Marty Byl	Niagara-on-the-Lake	grape grower
	Roger Pelissero	St Anns	poultry farmer
	P. Maxwell Kaiser	Napanee	poultry farmer

Hearings – Assisting Clients

The board tries to make it easier for farmers and residents to attend hearings:

- It holds the hearing 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 help parties who do not have 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
- the hearing process.

OMAFRA has also published two brochures to give residents and farmers a brief overview of the act and the board.
- *So you're moving to the Country* tells new residents what to expect when moving into agricultural areas.
- *Are you preparing for a Normal Farm Practices Protection Board hearing* gives a brief overview of board hearings.

In addition to the *Citizen's Guide*, the board has also published its *Rules of Practice and Procedure*. Lawyers refer to this document to help them prepare for board hearings. The Citizen's Guide, Rules of Practice and other information on the act and the board are available online at http://www.omafra.gov.on.ca/english/engineer/nfppb/nfppb.htm. People can also obtain them from the Agricultural Information Contact Centre at 1-877-424-1300.

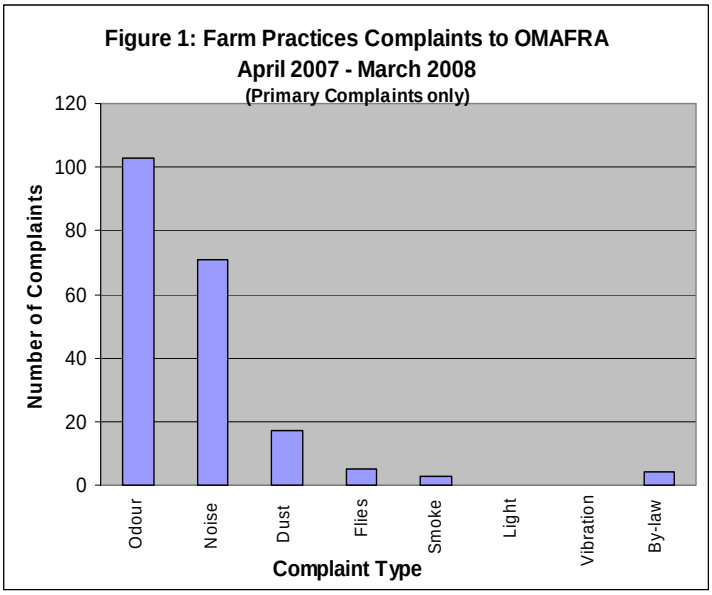
Farm Practices Complaints

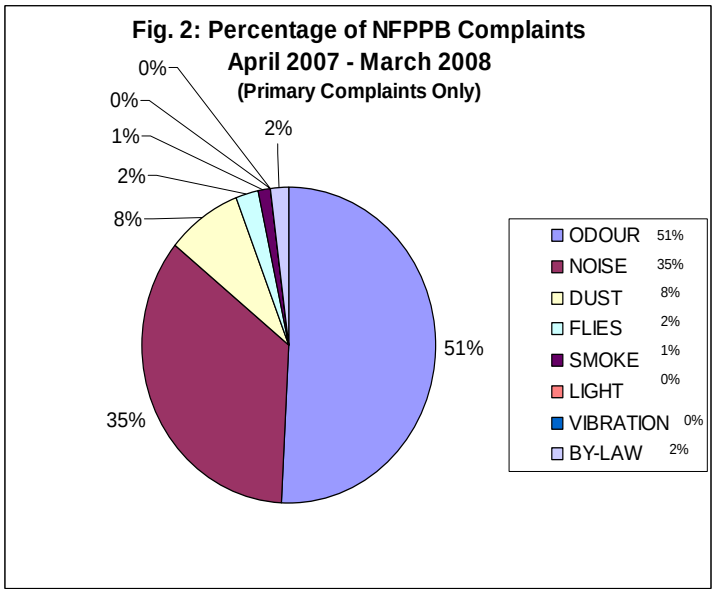
OMAFRA received 203 complaints regarding farm practices in 2007-08. Table 1 shows the distribution of these complaints by nuisance type and by month. Half of all complaints (51 percent) were about odour; 35 percent were about noise and 8 percent were about dust. Odour, noise and dust constituted 94 percent of all complaints during the year. Complaints about municipal by-laws amounted to only two percent last fiscal year. Corresponding figures for the previous year (2006-07) were: odour, 62 percent, noise, 25 percent; dust, 3 percent; for a combined total of 90 percent; by-laws were at 4 percent.

As can be expected, Table 1 shows that most odour complaints occurred in the spring (April to June) and fall (September to November), when farmers are spreading manure. Noise complaints were predominant in the fall, mainly from bird cannons and other equipment used to protect vineyards and other horticultural crops. (Bird cannons make a booming noise to scare birds away.)

Table 1: Farm Practice Complaints to OMAFRA April 2007-March 2008

MONTH	ODOUR	NOISE	DUST	FLIES	SMOKE	LIGHT	VIBRATION	BY-LAW	TOTAL	PERCENTAGE
April /07	5	0	0	0	0	0	0	0	5	2%
May /07	23	4	2	0	1	0	0	0	30	15%
June /07	9	2	4	0	0	0	0	1	16	8%
July /07	1	0	0	0	0	0	0	1	2	1%
August /07	0	0	0	0	0	0	0	0	0	0%
September /07	11	15	1	5	0	0	0	1	33	16%
October /07	45	30	4	0	1	0	0	0	80	39%
November /07	2	13	4	0	0	0	0	1	20	10%
December / 07	2	3	0	0	0	0	0	0	5	2%
January /08	3	3	1	0	0	0	0	0	7	3%
February /08	0	1	0	0	1	0	0	0	2	1%
March /08	2	0	1	0	0	0	0	0	3	1%
Total	103	71	17	5	3	0	0	4	203	100%
Percentage	51%	35%	8%	2%	1%	0%	0%	2%	100%	





The distribution of complaints shown in Table 1 is illustrated in a bar graph in Figure 1 and a pie chart in Figure 2. Many cases include complaints about multiple nuisances. For example, a complaint about noise from tractors working at night may also name light and vibration; a complaint about odour from a manure pile may include flies. When the case involves multiple nuisances, the main nuisance is identified as a Primary Complaint; the others are Secondary Complaints.

Through conflict resolution, OMAFRA agricultural engineers resolve the vast majority of farm practices complaints. On average, the Board hears four cases each year. Board rules establish that complaints must go through OMAFRA's conflict resolution process before coming to a hearing.

NFPPB Decisions - Historical

In its Preamble, the FFPPA states:

> 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.

Table 2 demonstrates the board's effectiveness in supporting these principles.

Table 2 (a and b) shows the disposition of all cases brought to the Board (after conflict resolution by the engineers) since its inception in 1990. At that time, the act covered only odour, noise and dust. The other nuisances (flies, light, smoke and vibration) were added when the act was amended in 1998. Table 2 is divided into the periods under the original and amended acts.

KEY

CAPITAL LETTER: Main category of complaint **small letter:** Secondary category of complaint	
F	In favour of farmer
X	Against farmer
A	Agreement
W	Withdrawn
P	Pending
C	Closed: no action by applicant
L	Litigation
D	Referred to another jurisdiction

TABLE 2a. NFPPB CASE DISPOSITION, 1998 - 2008

YEAR	ODOUR	NOISE	DUST	FLIES	SMOKE	LIGHT	VIBRATION	BY-LAW	TOTAL
2007-08	X,x,A	X,F	P	x		x	x	F	6
2006-07	x,p,P	F,X,W,A			C	x	x	X,P	8
2005-06	W,P	W,A	C,A	w				P	7
2004-05	X,F,X,P	f						X,P	6
2003-04	X,F,P	W,X	A,w			w		X,X,X,X,P	11
2002-03	P	F,W	w			f,w	f	F,W,X,P	7
2001-02	F,F,C,X,P	X,X		f				X,X	9
2000-01	C,W,C,D,P	W,F						F,X,A,W, W,C,X,L	15
1999-00	F								1
1998-99	X	F						F	3

TABLE 2b. NFPPB CASE DISPOSITION 1990 – 1998

YEAR	ODOUR	NOISE	DUST	FLIES	SMOKE	LIGHT	VIBRATION	BY-LAW	TOTAL
1997-98	X,F	X,f	F,x						4
1996-97									
1995-96		X	X						2
1994-95	X,X			x	x				2
1993-94		x	X						1
1992-93	F	F							2
1991-92		F,F							2
1990-91		X	X						2

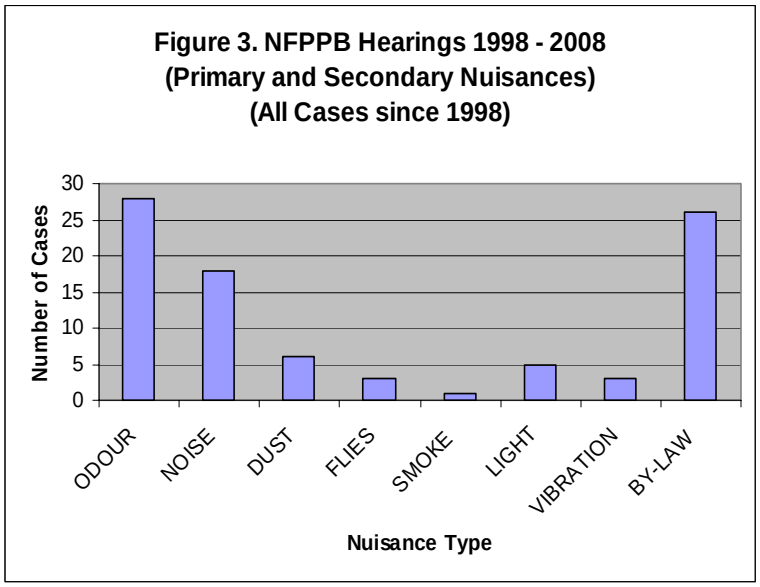
In Table 2 (a and b), primary complaints are identified by capital letters, secondary complaints by lower case letters.

Below is a summary of the disposition of all cases handled by the Board since the Act was amended in 1998, during the record year 2000-01, and in the most recent years 2006-07 and 2007-08:

1998-2008	61 cases	14 decisions in favour of farmer (F) 22 decisions against farmer (X) 6 agreements between parties (A) 10 withdrawn by applicant (W) 6 closed due to inaction by applicant (C) 1 was referred to other legislation (D) 1 went to litigation (L) 1 pending; continued into 2008-09 (P) *(all other pendings resolved)*
2000-01	15 cases	2 decisions in favour of farmer (F) 2 decisions supporting by-law (X) 1 agreement reached between parties (A) 4 cases withdrawn by applicant (W) 3 closed due to inaction by applicant (C) 1 referred to other legislation (D) 1 went to litigation (L) 1 pending; continued into 2001-02 (P)
2006-07	8 cases	1 decision in favour of farmer (F) 2 decisions against farmer (X) 1 agreement between parties (A) 1 withdrawn by applicant (W) 1 closed due to inaction by applicant (C) 2 pending; continued into 2007-08 (P)
2007-08	6 cases	2 decisions in favour of farmer (F) 2 decisions against farmer (X) 1 agreement between parties (A) 1 pending; continued into 2008-09 (P)

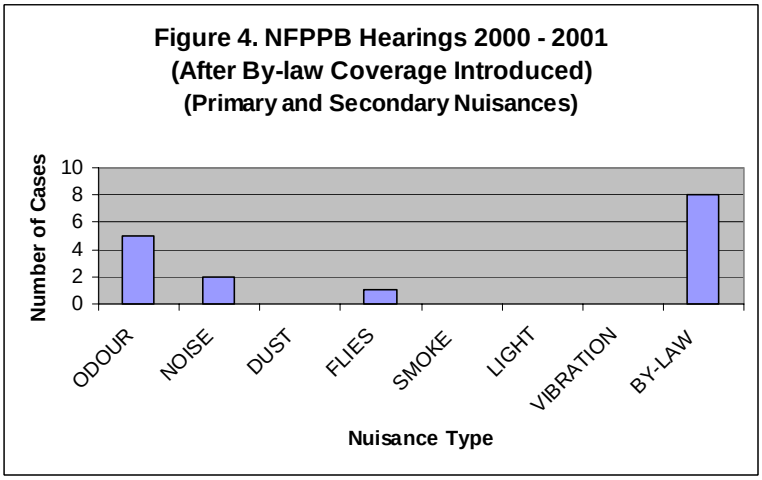
Figures 3 to 6 show the distribution of cases brought to the board in specific years during the period 1998 to 2008. These figures include both primary and secondary complaints.

Figure 3 shows the distribution of all cases brought to the board since 1998.



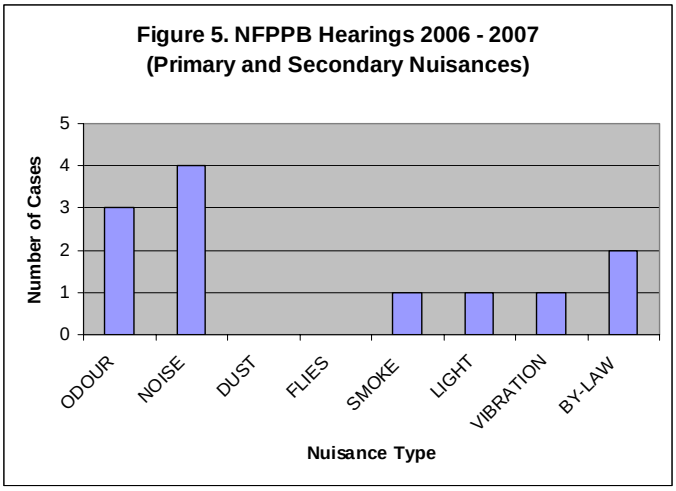
The biggest change brought in by the 1998 amendments was the inclusion of municipal by-laws. Farmers now had recourse to the board if they felt that a municipal by-law was restricting their normal farm practice. To help deal with by-laws, OMAFRA expanded the board membership to include lawyers.

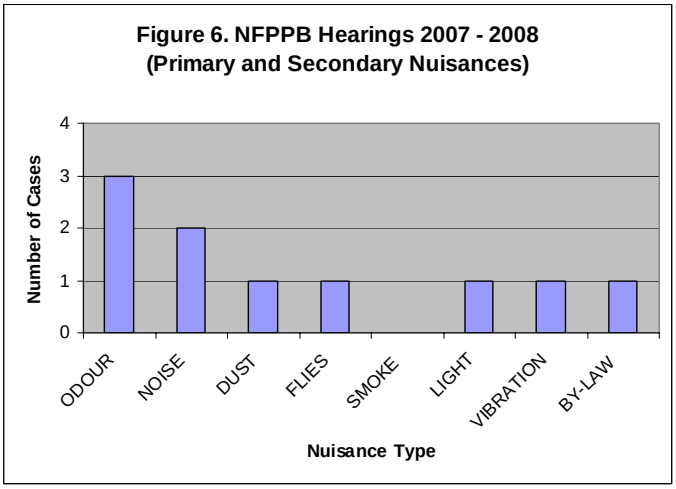
The effect of by-law coverage was most noticeable in 2000-01, when the board handled eight by-law cases (shown in table 2 and figure 4). The board heard several by-law cases in subsequent years up to 2004. Out of ten by-law cases heard during this period, municipalities won seven; farmers won two and one was withdrawn. Since 2004 farmers have brought only two new by-law cases to the board, indicating that farmers and municipalities understand better the relationship between the act and municipal by-laws. New legislation such as the Clean Water Act is expected to grant new by-law powers to municipalities which may raise by-law complaints in the future.



The year 2000-01 was exceptionally busy for the board. In addition to the by-law cases, there were five odour and two noise cases, amounting to a record total of 15 cases (figure 4). Most of those arose from negative public reaction to the expansion of hog and poultry barns in the wake of the Walkerton tragedy of May 2000. The results of those cases can be seen in Table 2.

Between 2000 and 2008, the number of odour hearings decreased from five to three (Figures 5,6). This decrease may be caused by fewer new hog barns were being built, because of a contraction in the hog industry. By contrast, the board has experienced an increase in noise-related cases, reflecting greater use of equipment protecting grapes and tender fruit from birds. Changes in weather patterns have increased the need to protect these crops from frost damage and while wind machines provide this protection, they are very noisy.





NFPPB Decisions – 2007-08

In 2007-08, the board held hearings, pre-hearing conferences and/or teleconferences for five cases. These cases are presented below:

Case: **<u>2000-01 Gardner et al v. Greenwood Mushroom Farm</u>**
Address: Ashburn, R.M. of Durham
Issue: **Odour**
Dates of Hearing: Several dates from August 2000 to January 2008.
Location(s) of Hearing: Ashburn, Goodwood, Uxbridge; Guelph
Panel Members: Glenn C. Walker, Linda O'Neill
(The panel originally consisted of Robert Stephens, Glenn Walker and Linda O'Neill. Mr. Stephens' appointment to the board ended in July 2004 and for personal reasons, he decided that he could not continue to sit on this panel. The panel continued with the remaining two members.)

Description:
In 1995 a group of residents took Greenwood Mushroom Farm (GMF) to court because of odours. In August 1999, the court ruled that the operation causing the odours did not constitute normal farm practice. The court awarded damages to the applicants, but did not grant their request for an injunction against GMF. GMF appealed, but the Appeal Court upheld the Divisional Court decision. An application to the Supreme Court for leave to appeal was denied.

In 2000 a similar group of residents applied to the NFPPB, on the basis of the court decision, for a ruling that the mushroom composting operation is not a normal farm practice. GMF was in the process of installing expensive technological measures to reduce odour. Therefore the board agreed with both parties (in June, 2003) to the following procedure:

- allow time for completion of the technological improvements
- do odour measurements at the applicants' properties
- compare the results against normal farm odours in the area (odours equivalent to a hog farm which existed in the community before the mushroom operation)
- resume the hearing and issue a decision.

The technological improvements were completed and consultants tested odours as scheduled. The consultant's report was sent to the parties before the board resumed hearings in October 2004. Since then, legal battles between the parties have taken the case through several appearances before the board. In 2005 the parties began working on a settlement.

STATUS:

The parties agreed on Minutes of Settlement. The case ended on January 17, 2008 with an Order from the Board implementing the Minutes of Settlement.

Start Date: August 20, 2000 **End Date: January 17, 2008**

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 and 25, 2003; July 16-20, 2007
Location(s) of Hearing: Guelph
Panel Members: Glenn C. Walker; Tony Little; Gordon Garlough
Description:

A farmer applied for a ruling allowing him to farm on land in an area zoned residential and commercial. The municipal by-law prohibited farming operations in this zone. After a pre-hearing conference in March 2003, the municipality made a Motion challenging the Board's jurisdiction. The Board dismissed the Motion. The municipality appealed to the Divisional Court for a Judicial Review; the Court dismissed the appeal. The Board suspended further hearings on this case, pending an appeal of its decision on the similar case of Hill & Hill Farms vs. Municipality of Bluewater.

In the Bluewater appeal the Court upheld the Board's jurisdiction over municipal by-laws. The Board resumed hearings of the Read Farms case on July 16, 2007, continuing on October 16, 2007.

STATUS:

The Board issued a decision January 23, 2008, in favour of the farmer.

Start Date: January 14, 2003 **End Date: January 23, 2008**

Case: **2007-02: Britnell v. DeBoer**
Address: Stayner, County of Dufferin
Issue: **Noise**
Dates of Hearing: August 28 and 29, 2007
Location(s) of Hearing: Wasaga Beach
Panel Members: Glenn Walker, Bill French, John DeBruyn
Description:

A resident complained about noise from fans installed in two grain bins on the neighbouring farm. In the conflict resolution process, the OMAFRA engineer recommended hay bales to muffle the sound. This was not satisfactory to the

resident, so the OMAFRA noise engineer measured noise levels at the resident's home. The measurements indicated that the noise levels inside the home were lower than regular rural noise levels.
Decision: The Board ruled in favour of the farmer.
Start Date: January 25, 2007 End Date: October 12, 2007

Case: **2007-04: Kaeppner v. Maisonneuve**
Address: St. Pascal, County of Prescott & Russell
Issue: **Odour, Flies**
Dates of Hearing: November 21 and 22, 2007
Location(s) of Hearing: Clarence Creek
Panel Members: Tony Little, Hélène Blanchard, Max Kaiser
Description:
The applicant complained that the neighbouring farmer placed a row of rotting hay bales at the property line close to her house. She said the farmer was retaliating because she had reported a manure spill on his farm. She said the rotting bales caused odour and flies, which affected her quality of life at home. This hearing was held in English and French.
Decision: The Board ruled that the farmer must not store hay or straw within 100 meters of the applicant's home. The decision was published in English and French.
Start Date: January 25, 2007 End Date: March 7, 2008

Case: **2007-05: Sault Farm v. Young Sod Farms Inc.**
Address: Wainfleet, R.M. of Niagara
Issue: **Dust**
Dates of Hearing: April 2 and 3, 2008
Location(s) of Hearing: Fonthill, Town of Pelham
Panel Members: Glenn Walker, Marty Byl, Roger Pelissero
Description:
The applicant grew cabbages in a field beside the road. He said that the owners of the neighbouring sod farm removed windbreaks from their fields. The applicant complained that the sod farmers tilled the soil and planted grass seed during an extremely dry and windy summer. The applicant said this caused dust and sand storms that destroyed his five acres of cabbages.
Status: A hearing is scheduled for April 2 and 3, 2008**.**
Start Date: January 25, 2007

Annual Meeting of the Normal Farm Practices Protection Board

The NFPPB held its Annual Meeting on March 4, 2008 at the Government of Ontario building at 1 Stone Road West in Guelph. The meeting discussed the new Public Service of Ontario Act, Conflict of Interest Rules, and the Accessibility for Ontarians with Disabilities Act. The Normal Farm Practices Protection Board is taking action to ensure it complies with all requirements arising from these statutes.

Access to Board Decisions

Summaries of all NFPPB decisions can be found on the NFPPB website http://www.omafra.gov.on.ca/english/engineer/nfppb/nfppb.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.omafra@ontario.ca.

Performance Measurement

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

1. *Respect and consideration for participants*. Goal: No complaints were to be received.
   Results: No complaints were received.

2. *Quality of hearing process information provided to participants*. Goal: No quality complaints were to be received.
   Results: No quality complaints were received.

3. *Fairness in the processing of applications*. Goal: No fairness complaints were to be received.
   Results: No fairness complaints were received.

4. *Consideration of participants in the selection of the hearing date*. Goal: No complaints were to be received.
   Results: No complaints were received.

5. *Convenience to participants of the hearing location*. Goal: No convenience complaints were to be received.
   Results: No convenience complaints were received.

6. *Appropriateness of the hearing room set-up.* Goal: No complaints were to be received.
   Results: No complaints were received regarding the hearing room.

7. *Fairness in the conduction of the hearing*. Goal: No fairness complaints were to be received.
   Results: No complaints were received regarding fairness in the conduction of the hearing.

8. *Adequate opportunity for participants to present evidence*. Goal: No complaints were to be received.
   Results: No complaints were received regarding presentation of evidence.

9. *Adequate opportunity for participants to respond to the evidence of the opposing party*. Goal: No complaints were to be received.
   Results: No complaints were received.

10. *Satisfaction that the decision reflected the evidence presented at the hearing*. Goal: No complaints were to be received.
    Results: No complaints were received. However, there are indications that the Board decision in the case of 2007-05: Sault Farms v. Young Sod Farms Inc. is being appealed to the Divisional Court.

11. *Clarity of the reasons why the Board reached its particular decision, as presented in the written Decision*. Goal: No clarity complaints were to be received.
    Results: No complaints were received. However, there are indications that the Board decision in the case of 2007-05: Sault Farms v. Young Sod Farms Inc. is being appealed to the Divisional Court.

12. *Timing of the release of the decision*. Goal: No complaints were to be received about timing of the decision.
    Results: No timing complaints were received.

13. *The plain language used in the decision*. Goal: No language complaints were to be received.
    Results: No language complaints were received.

14. *Absence of bias*. Goal: No bias complaints were to be received.
Results: No bias complaints were received.

15. *Performance standard for replying to applicant on acceptance of an application:* Goal: The performance standard was set at 20 days. Results: The average period lag for a reply to the applicant was 18.5 days for this reporting period.

16. *Performance standard for issuing a hearing decision.* Goal: The performance standard was set at 60 working days. Results: For this reporting period, it took on average 89 working days for the decisions to be issued. The Board is making every effort to shorten this time in the new fiscal year.

Submitted this 27th day of June, 2008.

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Glenn C. Walker, NFPPB Chair