



March 14<sup>th</sup>, 2022

Shannon Boland  
Divisional Compliance Branch  
135 St Clair Avenue West  
Floor 8

Dear Shannon,

*Re: Beef Farmers of Ontario Submission to 019-4108 Expanding administrative penalties for environmental contraventions*

---

Beef Farmers of Ontario (BFO) appreciates the opportunity to comment on *019-4108 Expanding administrative penalties for environmental contraventions*. BFO represents 19,000 beef farmers in Ontario by advocating in the areas of sustainability, animal health and care, environment, food safety, and domestic and export market development.

BFO is very supportive of efforts that protect the environment and that hold individuals and companies accountable under the associated Acts (*Nutrient Management Act (NMA)*, *Environmental Protection Act*, *Ontario Water Resources Act (OWRA)*, *Pesticides Act* and *Safe Drinking Water Act*). We have been engaged in MECP's discussions on administrative penalties since 2019. BFO submitted comments for Bill 132, *Better for People, Smarter for Business Act, 2019* around the use of administrative penalties under the NMA and participated in MECP's stakeholder engagement sessions in spring 2021. We have reviewed the Ministry's proposed changes and have outlined our concerns and recommendations below.

#### Current Compliance and Enforcement Approach for the NMA

We are strongly supportive of the Ministry's current compliance and enforcement approach for the NMA that focuses on education and abatement for issues found through routine inspections and audits as well as issuing fines for serious situations that impact the environment. The current approach provides an opportunity for MECP Agricultural Environmental Officers (AEO) to engage in constructive dialogue with farmers to solve potential issues or concerns without the fear that a farmer will be subject to an administrative penalty. BFO is concerned the proposed change to allow AEOs to issue administrative penalties for type 1, 2, and 3 contraventions will change the dynamics of inspections between farmers and AEOs, and stifle opportunities for education. The overall effectiveness of the current abatement and compliance approach will certainly be undermined. BFO recommends the existing approach of cooperative education, awareness and abatement planning for farmers continue to be the primary approach for minor contraventions. For instances where there is a harmful impact on the environment, utilize compliance and enforcement options under the OWRA or other relevant legislation.



### Process for Issuing Administrative Penalties

We are encouraged to see within the Informed Judgement Matrix the recommendation for Category I contraventions of promoting compliance and compliance plans over administrative penalties. We believe issuing administrative penalties needs to be proportional to the risk to the environment or to human health. Contraventions that have no risk to the environment or to human health should not be subject to an administrative penalty.

Farmers can and do take preventative and mitigative measures to protect the environment and human health. It's important to remember that compared to industrial sectors that operate in more controlled environments, agricultural operations are subject to external forces, such as weather, that are beyond the control of farmers. Therefore, BFO recommends that due diligence and/or mitigation measures must be a significant factor when considering if an administrative penalty is going to be applied to an agricultural operation, and not only after a penalty is already issued. The statement within the consultation guide that penalties are imposed on an absolute liability basis (i.e., there is no "due diligence" defence), is unfair to agricultural operations. An AEO and Director must have some discretion to waive penalties in circumstances that are clearly beyond the farmers' control when a farmer has demonstrated a willingness to address the issue.

As proposed, in instances where administrative penalties are issued, there is an opportunity to request a penalty reduction of up to 35 per cent. We believe the current penalty reduction criteria is geared towards industrial facilities. For instance, a penalty reduction of 5 per cent can be granted for facilities that had an Environmental Management System (EMS) when the contravention took place. EMSs do not apply to agricultural settings; therefore, a farmer who received a penalty would not be eligible for this particular reduction. BFO recommends there be clearly documented guidance as to other agricultural "systems" that could apply for this particular 5 per cent reduction. We also recommend MECP work closely with OMAFRA and the agriculture community to develop appropriate guidance for agricultural operations.

The proposed administrative penalty review and appeal process has also raised concerns. Although we appreciate the inclusion of an appeal process, the proposed process of a farmer having the option to appeal a penalty to the Director with the option to further appeal to the Ontario Land Tribunal (OLT) is concerning. We believe in most circumstances a Director will support the decision of their employee making the appeal process appear biased. The option to appeal the decision of the Director to the OLT would also involve considerable time and cost that most agricultural operations would not have the capacity to support. We would also ask the Ministry to consider extending the timelines for appeals.

BFO also has concerns with the proposal of the 1:5 ratio of lower base penalty amounts for individuals versus corporations. There are many incorporated farms, but an incorporated farm business is substantially different than an industrial corporation. An individual farmer and their family might incorporate their farm business for succession and tax planning purposes or for loan opportunities which has little to do with the size of the farm. For these reasons, BFO recommends the Ministry reconsider the 1:5 base penalty ratio for agricultural operations and treat agricultural operations as "individuals" regardless of incorporation status.

BFO recommends the provision that money paid for administrative penalties goes to the Ontario Community Environment Fund be reconsidered for money that comes from agricultural operations.



Money that comes from agricultural operations should be reinvested into the agricultural community, enhancing existing agricultural environmental cost-share programs.

On behalf of BFO, thank you for the opportunity to provide feedback on the *019-4108 Expanding administrative penalties for environmental contraventions*. We are available to further discuss the above comments.

A handwritten signature in black ink, reading "Jack Chaffe". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Jack Chaffe  
President

