

Response to Better for People, Smarter for Business Act (Bill 132), specifically proposed changes under the Nutrient Management Act (NMA)



ONTARIO PORK

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The following provides Ontario Pork's response to proposed changes to Bill 132, Better for People, Smarter for Business Act, 2019, specifically proposed changes under the Nutrient Management Act (NMA).

Recommendations:

1. Ontario Pork is pleased that there is some discretion regarding the dollar amount Administrative Monetary Penalty (AMP) charged, up to a determined maximum.
 - a. We recommend that any AMP ordered be proportional to the risk to the environment caused by the infraction.
 - b. We encourage the continued use of MECP's Informed Judgement Matrix along with case specific considerations for agricultural operations and that "Compliance Category 1" infractions are not subject to an AMP, due to the lack of risk to the environment.
2. Ontario Pork requests the proposed expansion of authority to issue AMPs to both the Director and Provincial Officers (PO) remain consistent with the *current* Section 40(1) of the *Nutrient Management Act* which limits the authority to issue AMPs to *the Director only*.
 - a. We do not believe that POs should be given the power to impose an AMP on an agricultural operation as it makes for an inappropriate appeals process for the decision of a PO to be challenged to the Director who is ultimately responsible for the PO.
 - b. We believe that in most circumstances, the Director will support the decision of his/her employee, making the appeal process appear biased and potential for appellants to feel they did not receive a fair or legitimate review.
3. The absolute liability clause establishes the requirement that a person pay an administrative penalty even if they took all reasonable steps to prevent the contravention or had an honest belief that no contravention occurred.
 - a. It is Ontario Pork's belief that the consideration of due diligence and/or mitigation measures should be a significant factor in considering if an AMP is even going to be applied to an agricultural operation. Agricultural operations are subject to many external forces, such as weather, that are beyond the control of the farmer. Failing to recognize the due diligence a farmer takes to mitigate their risk of these variable factors outside of their control is unacceptable.
 - b. We also firmly believe that monetary penalties should only be used in a situation where there is a wilful contravention occurring and an unwillingness to implement a corrective action in a timely manner. In reviewing contraventions, due diligence with respect to ensuring all reasonable steps were taken to prevent a contravention should be considered and reflected in any kind of order or monetary penalty on the party.
4. Ontario Pork is in favour of the Total Penalty provisions that establish the maximum AMP for each contravention. This recognizes the reality that correcting a contravention can often take some time and may rely in part on the schedule of a third party or weather conditions, for example.
 - a. The sector would also benefit from more uniform enforcement of statutes. It is often found that enforcement officers are being subjective when interpreting the requirements of the legislation,

sometimes leading to unreasonable requests to meet compliance, or unwarranted penalties on farmers. Increased training of enforcement officers on how to consistently apply the statutes is recommended to address this. Additionally, the development of a transparent and truly third-party appeals process will increase the integrity of the entire compliance system.

- b. We would also like to ensure that monetary penalties are ultimately put back into environmental improvements related to the environmental contravention. This could come in the form of project(s) that help prevent future contraventions or identify innovative ways to reduce the cost of complying.
 - c. It is understood that the details of the monetary penalties and how they are implemented will come through when the specific regulations are posted for consultation. Ontario Pork looks forward to being engaged as this regulatory process continues.
5. Ontario Pork recognizes that it is possible that the proposed changes to the *Nutrient Management Act* (Section 40) will have no impact on the current day-to-day approach for Nutrient Management enforcement and compliance. If there is intent to develop specific AMPs under Section 40 (11) we request the following:
- a. Early consultation to discuss and ensure the benefits of the current approach to Nutrient Management Act,
 - b. Compliance and enforcement should be considered and evaluated before implementation of alternative approaches,
 - c. The amount of the AMPs should be proportional to the direct risk to the environment; AMPs should not apply to Compliance Category I situations as defined in the Informed Judgment Matrix, and
 - d. There should be clear Operational and Implementation Guidelines including the option of negotiated solutions before the AMP is issued.
6. Ontario Pork is not opposed to appropriate compliance and enforcement tools to encourage compliance with the *Nutrient Management Act* and to respond to situations where nutrient management results in an impact on neighboring surface water or groundwater and /or a producer fails to follow a Provincial Officers order.
7. Ontario Pork also recognizes and acknowledges the current Informed Judgement Matrix decision making tool utilized by MECP.

Consulting on Proposed Amendments to the Drainage Act

Ontario Pork understands that proposed changes to the *Drainage Act* will be communicated soon and wishes to be engaged during the anticipated consultation.

Environmental Protection Act: Streamlining approvals for combined heat and power systems

It is understood that a more detailed proposal for consultation is forthcoming regarding approvals for combined heat and power systems for biomass and natural gas fuels. Ontario Pork would like to request that we are included are consulted on this proposal when the details can be released.