

November 27, 2019

André Martin
Compliance, Planning and Spills Action Centre
135 St. Clair Ave. West
8th Floor
Toronto, ON M4V 1P5
andre.martin@ontario.ca

Dear Mr. Martin,

Re: ERO # 019-0750: Holding polluters accountable by expanding the use of administrative monetary penalties for environmental contraventions

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 38,000 farm family businesses across Ontario. These farm businesses form the backbone of a robust food system and rural communities with the potential to drive the Ontario economy forward.

Ontario's farmers are true stewards of our environment. They rely on the air, soil and water to not only conduct their business, but they also raise generations of their families in the same place. As such, they have both a professional and personal interest in the sustainability of these resources. Ontario's farmers have taken great initiative to adapt their practice to reflect the changing scientific knowledge of the environment while still providing safe, high quality food and fibre.

The OFA agrees with the need to hold the people of Ontario accountable to the rules. No one should profit from contravention of the laws and obtaining an advantage over those who do follow the rules. However, there are many different approaches that can be used to hold people accountable. OFA's comments reflect our position on the application of Administrative Monetary Penalties on all impacted legislation, unless otherwise stipulated.

OFA is pleased that there is some discretion regarding the dollar amount Administrative Monetary Penalty (AMP) charged, up to a determined maximum. It is our belief that **the any AMP ordered be proportional to the risk to the environment caused by the infraction**. OFA encourages the continued use of MECP's Informed Judgement Matrix along with case specific considerations for agricultural operations and furthermore that "Compliance Category 1" infractions are not subject to an AMP, due to the lack of risk to the environment.

Ordering an AMP should be the decision of the Director. **OFA does not believe that Provincial Officers (PO) should be given the power to impose an AMP on an agricultural operation.** There is potential for discrepancy in application across the Province if PO's have the authority to

make these charges. It also makes for an inappropriate appeals process for the decision of a Provincial Officer to be challenged to the Director who is ultimately responsible for the PO. 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.

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. **It is OFA'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 (i.e. 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.

OFA 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.

OFA recognizes that much of this proposal is enabling, with details being contained within regulation. It is essential that the agricultural industry be consulted in early discussions if the decision is made to develop corresponding regulations.

I trust our opinions and recommendations will be given due consideration in this consultation.

Sincerely,



Keith Currie
President

cc: OFA Board of Directors