

March 11, 2022

Shannon Boland, Senior Policy Advisor (Acting)
Compliance and Risk,
Ministry of the Environment, Conservation and Parks
135 St Clair Ave W, 8th Floor,
Toronto, ON M4V 1P5

Submitted via email: envirocompliance@ontario.ca
and submitted online via Environmental Registry of Ontario (ERO)

Dear Shannon Boland,

Re: ERO 019-4108: Expanding administrative penalties for environmental contraventions

The Ontario Federation of Agriculture (OFA) proudly represents more than 38,000 farm family members across the province, supporting our members and the agri-food industry on issues, legislation and regulations governed by all levels of government. OFA works to ensure the agri-food sector and our rural communities are included, consulted and considered in any new and changing legislation that impacts the sustainability of our farm businesses. We are the leading agricultural advocate for Ontario farmers, their businesses and their communities.

OFA appreciates this opportunity to provide input to ERO #019-4108: Expanding administrative penalties for environmental contraventions. OFA's comments reflect our position on the application of Administrative Penalties (AP) on all impacted legislation, unless otherwise stipulated.

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 obtain an advantage over those who do follow the rules. However, there are many different approaches that can be used to hold people accountable. We remain convinced of the Ministry's current practice of cooperative education and awareness abatement programs and the emphasis on assistive compliance, and believe that this needs to continue to be the primary approach to address issues on agricultural operations.

It is our belief that any AP ordered be proportional to the risk to the environment caused by the infraction. We are pleased that our earlier statement in favour of the continued use of MECP's Informed Judgement Matrix and that "Compliance Category 1" infractions are not subject to an AP due to the lack of risk to the environment, was adopted.

OFA has significant concerns in the difference in administrative penalty amounts charged to corporations versus individuals on agricultural operations. Corporations are subject to penalties that are 5 times higher than individuals. Agricultural operations are often structurally significantly different from industrial operations. In the majority of agricultural circumstances, the "individual" is the corporation, unlike industrial operations. Farmers incorporate their businesses for a variety

of reasons, including succession planning and tax reasons. Farm incorporation has very little to do with the size of the business, contradicting the stated assumption made by Ministry staff on the February 23, 2022, Outreach and Engagement session. There are a significant number of family farms and sole proprietorship farms that are incorporated. Farmers should not be placed in the position of having to justify financial hardship during this already stressful and daunting process nor should they have to justify the normal farm practice of incorporating their farming business to be treated as an individual. In light of these facts, which dispel the assumptions made by those who drafted this framework, OFA recommends that agricultural operations be treated as individuals regardless of incorporation status, and the penalty amounts adjusted to reflect this.

Another potentially significant issue in this consultation is the manner in which “penalty reduction” is calculated. Agriculture does not have any “accredited environmental systems” such as ISO standards, which are stated as the means of accessing this 5% of the possible 35% reduction in amount owed under penalty reduction. While we were pleased with the verbal assurances by Ministry staff on the February 23, 2022, Outreach and Engagement session that an accredited environmental system was not the only way to qualify for this 5% penalty reduction, the wording used in the consultation documentation does not provide the same assurance. Both the training of Ministry staff and directors and any guidance documentation must very clearly state that an accredited environmental system is not the only means of accessing this 5% penalty reduction. We also recommend relying on OMAFRA and working with the agricultural community to clearly provide appropriate guidance on this for agricultural operations.

We also believe there needs to be additional guidance provided to provincial officers and directors investigating on agricultural operations. The decision making of if an AP should even be applied needs to take into consideration that, unlike most industrial settings that occur in a controlled, engineered environment, agriculture is subject to forces well beyond their control – such as weather. These unpredictable and uncontrollable natural forces can lead to unintentional and sometime unavoidable contraventions. Farmers can and do take preventative and mitigation precautions on their operations as a good stewardship practice. These precautions pose an added cost that often does not provide any economic return to the farmer and cannot even be cost-recovered by the farmer. The provincial officer and director must have some discretion to waive administrative penalties in circumstances that are clearly beyond the farmers control when a farmer has demonstrated a willingness to address the issue.

OFA believes that APs should only be assessed on a per occurrence basis, not a per day penalty. A per day penalty issued by a Director fails to recognize the reality that correcting a contravention on an agricultural operation can often take some time and will often rely in part on the schedule of a third party or weather conditions, for example. It is not appropriate to have a per day penalty amount when the implementation of the remedy may be beyond the control of the farmer. This must be factor considered by a Director prior to issuing a multi-day penalty.

While we appreciate the inclusion of an appeal process, the timelines for appealing are very short. Consideration should be given to extending the timelines for appeals at all levels. Furthermore, the appeal process and timelines must be very clearly and directly provided by the provincial officer and/or Director, along with appropriate contact information of where to get additional information regarding appeals.

OFA further recommends that money collected from agricultural operations under this framework should be reinvested into the agricultural community, enhancing existing agricultural environmental cost-share programs, instead of the “Ontario Community Environment Fund”.

I trust our opinions and recommendations will be given due consideration in this consultation. OFA remains available to further discuss the issues raised and to provide input towards the supporting guidance material.

Sincerely,

A handwritten signature in black ink that reads "Peggy Brekveld". The signature is written in a cursive style and is positioned to the left of a vertical line.

Peggy Brekveld
President

cc: The Honourable Lisa Thompson, Minister of Agriculture, Food, and Rural Affairs
OFA Board of Directors