Environmental Legislation, Farm Animals and Enforcement

Farm Animals and the Law, October 14, 2014

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Overview

- Legislation
  - Nutrient Management Act
  - Other environmental legislation
    - Ontario Water Resources Act
    - Environmental Protection Act
    - Fisheries Act
    - Others…
- Enforcement
  - MOE Policy
  - Selected cases

Photo credits - OMAFRA

"The purpose of this Act is to provide for the management of materials containing nutrients in ways that will enhance protection of the natural environment and provide a sustainable future for agricultural operations and rural development."

NUTRIENT MANAGEMENT ACT

Scope

- What are "nutrients"?
  - Agricultural source material (ASM)
  - Non-agricultural source material (NASM)

Nutrient Management Strategy

- How nutrients will be managed at an agricultural operation
- Required if agricultural operation:
  - Produces >300 NU/year
  - Building to house farm animals or
  - Building to store manure

Nutrient Management Plan

- How nutrients will be applied to the land
- Required if agricultural operation:
  - Produces >300 NU units/year
  - Lies within 100m of municipal well

What is an "agricultural operation"?

- Only agricultural operations are subject to NMA requirements
- Not every operation with animals is an agricultural operation:
  - Zoos
  - Racetracks
  - Equestrian parks

African Lion Safari and Game Farm Ltd. v. Director, OMAFRA

ERT: Not an agricultural operation

- The animals were not "farm animals"
- The animals were not "farmed"
- Animals were primarily exotic animals that were raised and kept in captivity for exhibition, education and conservation
- Not required to obtain NMS

Not based on environmental concerns

- Evidence
  - No material difference from conventional manure
  - No evidence of environmental harm
  - ERT: Outside our jurisdiction
- Under appeal to Minister

Enforcement

- Individuals
  - First offence = max $5,000
  - Subsequent offences = max $10,000
- Corporations
  - First offence = $10,000
  - Subsequent offence = $25,000

NMA, s. 52: "This Act does not affect the application of the *Environmental Protection Act*, the *Ontario Water Resources Act* or the *Pesticides Act* in any situation where any of those Acts applies."

OTHER ENVIRONMENTAL LEGISLATION

Hierarchy of Environmental Laws

- *Environmental Protection Act* – natural environment (s. 179)
- *Pesticides Act* – pesticides or control of pests (s. 53)
- *Clean Water Act* – quality or quantity of drinking water – higher standard prevails (s. 105)
  - Explicitly trumps NMA.
- *Safe Drinking Water Act* – prevails over any other Act (s. 166)

Farming and Food Production Protection Act

- Protects "normal farm practices" from liability in nuisance (s. 2(1))
- "Normal farm practice"
  - Customs and standards
  - Innovative technology in manner consistent with advanced farm management practices
- Not consistent with NMA = not a normal farm practice

When things go wrong...

- Cause or permit discharge/deposit
  - OWRA
  - EPA
  - Fisheries Act

Reporting Obligation

- A discharge must be reported "forthwith"
  - OWRA
  - EPA
  - Fisheries Act

D&O liability if...

- Failed to take all reasonable care to prevent corporation from:
  - Discharging contaminant/ polluting material
  - Failing to report
  - EPA, s. 194; OWRA, s. 116
- Directed, authorized, assented to, acquiesced or participated in commission of offence
  - *Fisheries Act*, s. 78.2

EPA and OWRA Fines

Defendant	Prior Convictions?	Penalty
Corporation	First	Min. $25,000 Max. $6,000,000
Corporation	Second	Min. $50,000 Max. $10,000,000
Corporation	Subsequent	Min. $100,000 Max. $10,000,000
Individual	First	Min. $5,000 Max. $4,000,000
Individual	Second	Min. $10,000 Max. $6,000,000
Individual	Subsequent	Min. $20,000 Max. $6,000,000 Imprisonment - 5 years less a day.

Fisheries Act Fines

Defendant	Type of Offence	Prior convictions?	Penalty
Individual	Indictable	First	Min. $15,000 Max. $1,000,000
	Indictable	Subsequent	Min. $30,000 Max. $2M Imprisonment up to 3 years
Corporation	Indictable	First	Min. $500,000 Max. $6 M
	Indictable	Subsequent	Min. $1M Max. $12M
Small Revenue Corp	Indictable	First	Min. $75,000 Max. $4M
	Indictable	Subsequent	Min. $150,000 Max.$8M

Fisheries Act Fines

Defendant	Type of Offence	Prior convictions?	Penalty
Individual	Summary	First	Min. $5,000 Max. $300,000
	Summary	Subsequent	Min. $10,000 Max. $600,000 Imprisonment up to 6 mths
Corporation	Summary	First	Min. $100,000 Max. $4 M
	Summary	Subsequent	Min. $200,000 Max. $8M
Small Revenue Corp	Summary	First	Min. $25,000 Max. $2M
	Summary	Subsequent	Min. $50,000 Max. $4M

"The Ministry's approach to compliance and enforcement… seeks to safeguard the public interest by ensuring that the Ministry's response to an incident is proportionate to the severity of the incident."

Compliance Policy Applying Abatement and Enforcement Tools, May 2007

ENFORCEMENT

Referral to investigation and enforcement branch

- Severity of the violation
  - Real or potential adverse health consequences?
  - Environmental impacts?
- Compliance History
  - Ongoing contravention
- Obstruction or false information?

Cont'd

- Deterrent effect?
- Necessary to maintain integrity of regulatory process?
- Would failure to enforce bring law into disrepute?

"Discharges of raw untreated silage and manure are a threat to the environment and public health. In addition to degrading and destroying aquatic habitat, these materials are toxic to aquatic life."

R. v. Compass Dairy Farms

SELECTED CASES

R. v. Van Boekel

- Hog farming business
- Large pig barn near Thames river
- Main water pipe in barn burst, flooded barn – flowed to river
- Also, manure spread on field reached creek via tile drain
- Charges under EPA, OWRA, O. Reg. 267/03

Trial

Defendant	Fine	Jail
Eric von Boekel (Director)	$125,000	**30 days**
Yvonne von Boekel	$15,000	
Van Boekel Hog Farms	$155,000	
Van Boekel Holdings	$50,000	
Total	**$345,000**	

Appeal

- Director and companies plead guilty to discharge
- Director also plead guilty to failing to take reasonable care
- Director fined $20,000
- Companies fined $50,000 each

R. v. Thames Sales Yard Ltd

- Cattle farm, >300 NU/year

Statute	Offence	Penalty
O. Reg. 267/03, s. 11.1	Constructed building without NMS	TS Yard - $5,000
OWRA, s. 107(2)	Failure to comply with POO re well inspection	TS Yard - $4,000 T. Vanrabaeys - $2,000
NMA, s. 43(1)(c)	Failure to comply with POO re design for runoff management and storage	TS Yard - $5,000

R. v. Gillette Farms

- 400,000-600,000 L liquid manure discharged from lagoon to river via tile drain
- Dairy Farm (Gilette) and Construction company(AL Blair) charged

Statute	Offence	Penalty
OWRA, s. 30(1)	Discharge to waters + impairment	AL Blair - $30,000
O. Reg. 267/03, s. 71(1)(a)	Failed to have nutrient storage facility designed by engineer	Gilette - $5,000
O. Reg. 267/03, s. 71(1)(e)	Failed to have nutrient storage facility inspected by engineer	Gilette - $5,000

R. v. Ron Martin and O & E Farms Ltd.

- 100,000 Gallons pig manure spilled, entered creek
- Individual and corp. charged under s. 30(1) of OWRA
- Individual plead guilty, fined $15,000, charge against corp. withdrawn
  - Corp. had prior conviction.

R. v. Compass Dairy Farms Ltd.

- Corn silage and manure runoff
  - Lethal conditions in municipal drain and creek
- President plead guilty to OWRA offence – fined $48,000
  - President and corp. charged under EPA, s. 14(1) and OWRA, s. 30(1)
  - Charges under EPA and against corp. withdrawn
  - No prior convictions

R. v. Gemtec

- *Fisheries Act*
- Role of engineer
- "cause or permit"
- Officially induced error

Trends?

- Substantial fines
- Charges against individuals
- Charges against directors and officers
- Charges against engineers and contractors

Questions?

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