

Submission by the  
Canadian Environmental Law Association  
to the Ministries of  
Agriculture, Food, and Rural Affairs and Environment  
on the  
Discussion Paper on Intensive Agricultural  
Operations in Ontario



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**Submission by the Canadian Environmental Law Association  
to the Ministries of Agriculture, Food, and Rural Affairs and Environment on the  
Discussion Paper on Intensive Agricultural Operations in Ontario**<sup>1</sup>

This submission is a response to a letter from The Honourable Ernie Hardeman, Minister of Agriculture, Food, and Rural Affairs (OMAFRA), requesting comments on the Discussion Paper on Intensive Agricultural Operations in Rural Ontario. The Canadian Environmental Law Association (CELA) fully supports provincial initiative to resolve the increasing conflicts over intensive<sup>2</sup> livestock production and welcomes the opportunity to comment on the Discussion Paper.

**Summary of Recommendations**

CELA recommends:

1. The legislative changes of the past 12 years which claimed to protect farmers be reversed, including:
  - The ability to launch civil suits in nuisance for genuine problems caused by agricultural operations should be restored.
  - The potential exemption from municipal by-laws for farmers should be repealed.
2. An immediate moratorium on the building of new industrial livestock facilities until appropriate legislative changes can be made.
3. Immediate direction from the Minister of Agriculture, Food, and Rural Affairs to the Farm Practices Protection Board that industrial livestock facilities are not to be included in the definition of “normal farm practices”.
4. A comprehensive environmental study of industrial livestock operations should be undertaken to inform new regulatory controls.
5. New legislation must be passed to address the specific problem of intensive livestock operations. This legislation should clearly state that industrial facilities are not farms and that they pose grave environmental hazards. Industrial operations should be carefully regulated in the same way that other industries are regulated to protect other residents, farms, and the health of the rural environment.
6. Sufficient staff and resources should be allocated to ensure that monitoring and enforcement of standards takes place.

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<sup>2</sup> It should be noted that we use the terms "intensive" and "industrial" interchangeably throughout the document. Both terms serve to differentiate large scale operations from smaller scale family farms. We address the definition of the term "intensive" specifically in our answer to the Discussion Paper question on that topic.

## **CELA's Background and Experience**

CELA is a public interest organization founded in 1970 for the purpose of using and improving laws to protect human and environmental health and conserve natural resources. CELA has a long history of participation in the development of agricultural law and policy. In December 1988, CELA submitted comments to the Standing Committee on Resource Development regarding Bill 83, *An Act Respecting the Protection of Farm Practices*.<sup>3</sup> CELA staff participated actively in recent land use planning reform initiatives, including Bill 163, which led to the passage of the *Planning and Municipal Statute Law Amendment Act, 1994* and, more recently, Bill 20, which led to the passage of the *Land Use Planning and Protection Act, 1996*. In February 1997, CELA submitted a brief to OMAFRA in regard to a Draft Discussion Paper on the *Farm Practices Protection Act*.<sup>4</sup> In February of the following year, CELA submitted comments to the Standing Committee on Resource Development regarding Bill 146, *An Act to Protect Farming and Food Production*.<sup>5</sup>

CELA is also a legal aid clinic representing low income people and citizens' groups in a wide variety of environmental cases. Many of CELA's clients, past and present, are farmers. CELA has helped farmers to fight polluters and to strengthen the protection of agricultural lands and specialty crop lands in Ontario. For example, CELA represented organic farmers who successfully used the common law of nuisance to close a landfill site which was harming their agricultural operations.<sup>6</sup> CELA is currently representing farmers whose land is being contaminated by an illegal tire dump and another whose land was contaminated by a highway construction project. CELA also provides summary legal advice to many rural residents, from all walks of life, who contact us with environmental concerns. Over the past few years, this has included a substantial number with concerns about industrial agricultural operations, and particularly industrial hog barns.

## **Scope of Submissions**

CELA has prepared two responses to the Discussion Paper. One specifically addresses the problem of mushroom composting.<sup>7</sup> This submission addresses the broader issue of intensive farming and nutrient management, with a focus on the intensive livestock facilities which are creating conflict in rural Ontario. There are serious environmental problems associated with other intensive agricultural practices, including the application of paper mill sludge, biosolids, and commercial fertilizers, among others. Each of these

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<sup>3</sup> Mandelker, Barry, *Submission by the Canadian Environmental Law Association to the Standing Committee on Resource Development Regarding Bill 83*, December 1988.

<sup>4</sup> Bigelow, Donna, *Submission by the Canadian Environmental Law Association to the Ministry of Agriculture, Food, and Rural Affairs on the Draft Discussion Paper on the Farm Practices Protection Act*, February 1997.

<sup>5</sup> McCulloch, Paul, *Submission by the Canadian Environmental Law Association to the Standing Committee on Resources Development Regarding Bill 146, An Act to Protect Farming and Food Production*, February 1998.

<sup>6</sup> *Nippa v. C.H.Lewis (Lucan) Limited* (1991), 7 C.E.L.R. (N.S.) 149 (Ont. Ct. Gen. Div.).

<sup>7</sup> Letter to Dr. Doug Galt from Ramani Nadarajah, CELA counsel, dated February 14, 2000.

deserves specific attention and we encourage the province to address these in the near future.

The debate over the intensification of livestock production is a complex one. We do not propose to address every element of that debate. Other organizations, including the National Farmers Union, are well placed to address the impact of intensive livestock facilities on smaller scale farms and on the long term economies and well being of rural communities. CELA's comments are therefore confined to the serious environmental risk posed by intensive livestock facilities and offer suggestions for positive regulatory action to protect the health of the environment and of residents of rural Ontario.

### **What is the problem?**

CELA is witnessing a crisis in rural Ontario. With every passing year, we receive more and more calls from desperate rural residents who have discovered that an intensive livestock operation is to be built in their community. The large majority are facing an industrial hog barn. These callers describe fears about odour, leaching of nutrients into water sources, plummeting property values, the undermining of existing small scale farmers, impacts on small local businesses and tourism, and the danger of a major disaster resulting in devastating contamination in their communities.

These residents, many of them farmers themselves, recognize that these intensive livestock facilities are not farms, they are industrial facilities. It has been their experience that they are frequently owned by corporations or absentee owners. In some instances, these parties have no ties to the community and no interest in the community's long term viability.

The callers' fears of environmental harm are valid. There is substantial documentation of the environmental impacts of industrial livestock operations.<sup>8</sup> Intensive livestock facilities produce enormous quantities of manure which is highly toxic in large quantities. For example, Ontario's 4 million hogs produce as much raw sewage as the entire human population of the province. A single hog will produce two tons of manure per year.<sup>9</sup> The environmental impacts of the production and management of this waste include:

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<sup>8</sup> Some studies include: Canada – Alberta Environmentally Sustainable Agriculture Water Quality Committee, *Agricultural Impacts on Water Quality in Alberta: An Initial Assessment*, Lethbridge: Alberta Agriculture, Food, and Rural Development, 1998; Senate Committee on Agriculture, Nutrition, and Forestry, *Animal Waste Pollution in America: An Emerging National Problem, Environmental Risks of Livestock and Poultry Production*, 1997. Environment Canada, *Livestock and Poultry Waste in the Great Lakes Basin: Environmental Concerns and Management Issues*, Social Science Series No.15, 1976; International Joint Commission, *Pollution Potential of Cattle Feedlots and Manure Storages in the Canadian Great Lakes Basin*, 1978 (both of these last indicate that concerns existed as early as the late 1970's). See also "What are the Environmental Problems with Hog Waste Discharges?" in *The Gallon Environment Letter Special*, Vol. 3, No. 30, 1999.

<sup>9</sup> "A Factory of 3 700 Hogs Produce 38 480 Lbs. of Urine and Feces Daily", in *Gallon Environment Letter Special*, Vol. 3, No. 35, 1999.

**Odour:** As acknowledged in the Discussion Paper, the odour associated with intensive livestock facilities, and particularly hog facilities, is significantly worse than that associated with smaller scale farming and a normal rural environment. The odour may affect residents far beyond adjoining farms, engulfing entire communities. While pervasive odour seriously impacts quality of life and property values, the odour may also impact health. Residents living near intensive livestock facilities report headaches, nausea, and the exacerbation of asthma and respiratory problems.<sup>10</sup> Odour problems and health concerns are intensified when liquid manure is spread or sprayed on fields. Spraying of manure releases over 150 gaseous compounds, including hydrogen sulfide, ammonia, carbon dioxide, and methane.<sup>11</sup>

**Water contamination** - Studies have shown that the impact of intensive livestock operations on water quality is significant.<sup>12</sup> Manure can impact water supplies through runoff or leaching from fields where the manure has been sprayed and/or through leakage or major spillage from storage tanks.

*Run-off or leaching of manure into water sources* – Runoff or leaching from fields spread with manure is a serious threat to water systems. Runoff becomes a problem when soil is not capable of absorbing the manure. This can happen when soil is frozen or oversaturated. When an operator of an intensive livestock facility has insufficient land to spread his or her manure or insufficient holding facilities, the likelihood of overapplication or inappropriate application is high. Leaching can take place where hydrogeological conditions are unsuitable for manure spreading and allow the nutrients sprayed on fields to enter into groundwater or local water bodies.

The manure which runs off or leaches into the water supply will cause significant contamination with nitrates and phosphate. Water can also become contaminated by parasites, such as *Giardia lamblia*, *Cryptosporidium parvum*, and bacteria, such as *E. coli*, *Campylobacter*, *Pfiesteria piscicida*, and *Salmonella*.<sup>13</sup>

- The fears of impacts through run off or leaching have already materialized for many communities. Alberta communities located near intensive livestock operations have been ordered to boil water for fear of these health threats.<sup>14</sup> A

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<sup>10</sup> Hasselback, Paul, "Intensive Livestock Operations and Health Problems", *Encompass*, Vol.2, No.2, December 1997.

<sup>11</sup> *Ibid.*

<sup>12</sup> See studies listed at note 8. See also "Hog Production has become Industrial Chemical Farming", in *The Gallon Environment Letter Special*, Vol. 3, No. 30, 1999.

<sup>13</sup> Hasselback, *supra* at note 10. See also "Hog Pollution in Minnesota, Iowa, and Missouri and *Pfiesteria Piscicida*", in *The Gallon Environment Letter Special*, Vol. 3, No. 35, 1999.

<sup>14</sup> *Ibid.*

family in Port Hope was forced to drink bottled water after their well was contaminated by the runoff of manure from nearby fields.<sup>15</sup>

*Manure spills* – The danger of a manure spill, caused by human error or weather conditions, is another serious environmental concern associated with intensive livestock facilities. In the United States, where livestock facilities have grown almost without regulation, massive spills have taken place. A number of these spills have taken place in North Carolina where, in the Fall of 1999, Hurricane Floyd swept through the hog belt and caused the spill of hundreds of thousands of gallons of manure. Wells throughout the eastern part of the state were contaminated. The contamination which spread down the rivers to the coast resulted in a 200 square mile area of ocean described by biologists as a “dead zone”.<sup>16</sup>

Serious manure spills have already taken place in Ontario. In Ashfield Township, leaks from underground manure storage tanks of two separate hog facilities within two weeks fouled the water and beaches of nearby Lake Huron.<sup>17</sup> Similar leaks have taken place in Chatham<sup>18</sup> and Hay Bay,<sup>19</sup>. In Alberta and Quebec, where intensive livestock operations are also proliferating, spills have also taken place.<sup>20</sup>

### **Context of the Problem**

Concerned rural residents who contact CELA about intensive livestock operations find that they have no protection and almost no rights. Legislative changes over the past 12 years have eliminated long standing protections for rural residents. Since 1988, with the passage of *The Protection of Farm Practices Act*, operators of intensive livestock operations have been shielded from common law suits in nuisance for noise, odour, and dust, caused by “normal farm practices”. Normal farm practices are undefined and are assessed on a case by case basis by the Farm Practices Protection Board. In 1998, Bill 146, *Farming and Food Production Protection Act*, was passed which extended the exemption from the common law of nuisance to light, vibration, smoke, rodents, and

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<sup>15</sup> Dadds, Lana, “Clean water supply give neighbours fresh start”, article in *Port Hope Evening Guide*, May 7, 1999. “Hog farm nightmare in Hope Twp. Ontario” *The Gallon Environment Letter Special*, Vol. 3, No. 36, 1999.

<sup>16</sup> Bowie, Phil, “No act of God”, *Amicus Journal*, Vol.21, No.4, Winter 2000. See also Stith, Pat, and Jody Warrick, “Boss Hog: North Carolina’s Pork Revolution”, *Amicus Journal*, Vol.18, No.1, Spring 1996.

<sup>17</sup> Livingston, Pat, “Leak under barn found as cause for discharge on beach”, article in *Lucknow Sentinel*, Wednesday, May 12, 1999; “Engineering assessment ordered on Acre T Farms”, article in *Lucknow Sentinel*, May 19, 1999; “Concern over large hog factories in Ontario”, *The Gallon Environment Letter Special*, Vol. 3, No. 30, 1999.

<sup>18</sup> Walkom, Thomas, “The whole hog: Intensive pig farms create a big stink wherever they are. Now they are coming to Ontario”, article in *The Toronto Star*, May 9, 1998.

<sup>19</sup> “Ontario Charges Hog Operation with Pollution”, in *The Gallon Environment Letter Special*, Vol. 3, No. 30, 1999.

<sup>20</sup> Laghi, Brian, “Beef brewing in cattle country”, article in *The Globe and Mail*, March 17, 1998; “Residents raise stink over feedlots”, article in *The Sun Times*, May 6, 1998. *The Gallon Environment Letter Special*, Vol. 3, No. 30, 1999.

flies. In addition, the Bill allowed farmers to seek exemption from municipal by-laws which interfere with their operations.

CELA commented on these legislative changes at the time they were proposed,<sup>21</sup> pointing out that nuisance suits against farmers were rare and unlikely to be successful where a farmer was operating in a reasonable manner. Nuisance suits were likely to be leveled not at small scale farmers, but at industrial operators causing genuine problems. CELA pointed out that municipal by-laws were important tools for people to have a say in the comprehensive planning of their communities. Passing these legislative changes would leave residents without basic common law and democratic rights and would allow for the proliferation of environmentally dangerous industrial facilities while doing little for the small scale farmers the legislations purported to protect.

Unfortunately, CELA's predictions have materialized. The rural residents and small scale farmers who contact us to find out their rights find that they have almost none. It is in this context that the problem of intensive livestock operations must be addressed. The legislative changes of the past 12 years must be reversed and additional legislation must be passed to protect the rural environment from industrial livestock facilities.

### **Responses to Discussion Paper Questions**

#### **What is the scope of the problem?**

##### **1. Do farmers have a right to farm in areas designated agriculture? Should there be any restrictions?**

Farmers do have the right to farm in areas designated agriculture. There should however be restrictions. Those restrictions should take two primary forms, restrictions geared to the concern of environmental impacts by small scale farmers and restrictions geared to the major threat of impacts by industrial facilities.

First, the changes to rural residents' rights to sue in nuisance and to pass, through their councils, by-laws to control land usage, should be restored. Small scale farmers ability to farm will therefore be restricted by a need to ensure their practices do not impact on their neighbours in an unreasonable manner. Such farmers will also be restricted by local council decisions about the appropriate development of rural communities.

Second, industrial facilities should be recognized as such. Specific zoning by-laws should be necessary to control the location of intensive livestock facilities and comprehensive regulation should be implemented to permit and monitor practices on

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<sup>21</sup> See citations at notes 3, 4, and 5.

site. As with any industry which impacts the environment, those who wish to build and operate such a facility must be required to seek appropriate permits, (similar to those required for water taking or waste disposal sites), work within clear provincial guidelines, and be subject to monitoring and enforcement measures if they fail to operate within the law.

For further discussion, see *Suggestions for Making Things Better*, below.

**2. Should all type of agricultural operations e.g. livestock, cash crop, greenhouses, mushroom growing, composting facilities, etc. be regulated?**

Agricultural operations which may cause adverse impacts to the environment should be regulated to prevent pollution. That said, among the most severe and widespread problems are those caused by the proliferation of intensive livestock operations. Attention should not be diverted from the problems associated with these facilities by making comparison to other practices which also pose environmental concerns. The specific problem of industrial livestock facilities which threaten the rural environment must be addressed immediately.

**3. Should municipalities have a right to regulate livestock/poultry manure management practice?**

See response under *Right to Control Land Use* below.

**Managing the Environmental Risks of Farming**

**1. Should farmers voluntarily follow farming practices that respect the environment and will sustain agriculture in the long term? Or should farmers be legislated to do this?**

Intensive livestock operations pose significant environmental risks. Voluntary measures do not achieve the level of environment protection needed. Empirical data obtained from surveys of environmental management systems shows that voluntary programs do not achieve the level of compliance which is achieved by-law.<sup>22</sup> The provincial government must take a leadership role to ensure that operators take the action needed to protect rural environments and communities. The most effective

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<sup>22</sup> In 1996, KPMG Management Consultants conducted a poll of Canadian companies, municipalities, school boards and hospitals concerning their motivations for having an environmental management system in place. Of those that had such a system, 93 per cent said their primary motivation was to ensure compliance with regulations. Voluntary programs ranked near the bottom of the list of motivators. See KPMG Environmental Risk Services Inc., *Canadian Environmental Management Survey* (Toronto KPMG, 1996).

means of achieving this goal is through the imposition of clear and reasonable legislative requirements.

**2. If the regulatory approach is taken which nutrients should be regulated?**

- a) **Manure only;**
- b) **Commercial fertilizers;**
- c) **Plow down crops and crop residue;**
- d) **Composts;**
- e) **Biosolids, sewage sludge, paper mill wastes, septage?**

All nutrients which are capable of causing adverse environmental impacts should be regulated. Agricultural operations which involve the use of these nutrients should be required to take reasonable and necessary steps to prevent environmental degradation.

That said, the problem of massive manure production and disposal is unique to intensive livestock operations. The problem of severe odour from these facilities, leaching of manure from fields, and the risk of major spills should not be diluted by comparison with other environmental hazards which may be associated with other agricultural activities. The problem of intensive livestock operations and the management and disposal of manure must be addressed without delay.

**The right to control land use**

**Should communities/municipalities have a right to dictate what farming activities are acceptable in given areas?**

Municipalities should have the ability to engage in comprehensive local land use planning, including determining the location of industrial activities, within the confines of appropriate provincial policy. The current legislative provisions of the *Farming and Food Production Protection Act* which allow farmers to apply for exemption from municipal by-laws should be repealed. In those municipalities which choose to allow intensive livestock farming in certain areas, those municipalities should, of course, continue to be responsible for addressing site specific issues, such as location of facilities and providing building permits.

While municipalities determine where intensive livestock operations may be located, the provincial government must be responsible for setting province-wide standards for the practices at those facilities and for ensuring compliance with those standards. In light of the province's responsibility for the oversight of agriculture and the protection of the broader environment, it is appropriate that clear and comprehensive rules are established at the provincial level. The provincial ministries must take on the role of establishing appropriate practices, administering a permitting system, and

monitoring and enforcing standards. Provincial permitting and oversight will, of course, assist municipalities in their land use planning activities as well as avoiding the danger of certain municipalities becoming pollution havens.

### **What is intensive?**

#### **1. Should intensive be defined?**

The term “intensive” must be defined. Our society widely supports farmers, and rightly so. However, intensive livestock producers have reaped the benefit of this support despite the fact that they in no way resemble a farming operation as society understands these operations to exist. Worse, legislative changes intended to assist farmers have benefited these industrial facilities while leaving small scale farmers and other rural residents with no tools with which to combat the significant environmental risk to their communities.

A clear statement is needed which differentiates farming from intensive industrial facilities. While there may be occasions in which a small scale farmer inappropriately disposes of farm waste or otherwise impacts the environment in an unreasonable way, the overwhelming majority of environmental problems and environmental risk are caused by intensive operations.

#### **2. If intensive is defined could one of the following be used. A farm is intensive when it:**

- a) is part of a company/corporation**
- b) is not a family farm**
- c) has a barn with capacity to house certain number of animals e.g. a barn to house over 10 000 pigs or 1 500 cows**

The options listed above are problematic. While frequently owned by absent corporations, intensive facilities may be also owned by a resident family. While the trend in ownership is important in analysing the impacts of these facilities on rural communities, it does not provide a useful tool for distinguishing one kind of facility from another. Ownership does not determine the threat a facility poses to the environment.

The third option of identifying a cut off line at a certain number of animal units may also appear problematic. The line between a large farm and a small industrial facility is difficult to draw. As CELA points out in our submission on mushroom composting, if the cap is 1000 pigs, an operator may chose to keep 999. Furthermore, a facility with 1000 animals properly housed and with significant land to absorb manure may pose less of a threat than a facility with 500 animals with no land base.

That said, there are many legislative structures where a number has been chosen in order to draw a line *somewhere*. In the context of farming, we point to the cut-off of 50 000 liters of water per day beyond which a farmer, or any other party, is required to apply for a water taking permit under s.34 of the *Ontario Water Resources Act*. It is our understanding that this limit was established to allow small scale farmers to take water, while requiring industrial producers to obtain a permit and show their activities will not unreasonably harm the environment.

A similar cap on numbers of animal units should be chosen to determine when a livestock facility is intensive. The numbers suggested above, 10 000 pigs or 1 500 dairy cows are astronomical and we would advise that the number be dramatically lower. CELA does not, of course, have the expertise to suggest an exact number. We defer to the greater experience of other organizations, including the National Farmers Union.

Setting a clear limit to differentiate industrial facilities from small scale farms will provide the necessary groundwork for clear new legislation. Repeal of past legislative provisions, which themselves benefited primarily large producers, will of course ensure that small scale farmers also have incentive to protect the environment. Ultimately, the goal is to ensure that all negative impacts to the environment are avoided to the greatest extent possible while not unduly interfering with small scale family farming operations.

### **3. Does the Nutrient Management Plan go far enough to safely utilize manure?**

Nutrient management plans are one piece of a larger puzzle. While helpful tools, alone they are insufficient to ensure that manure is safely stored and disposed of. While the Best Management Practices are available as “educational tools”, there are no provincial requirements for the contents of nutrient management plans or standards for the evaluation of those plans. Some municipalities may lack the staff or expertise to assess the adequacy of plans. Once submitted, there is no requirement for operators to follow the details of their plans and no repercussions for an operator who abandons a plan once a building permit is obtained.

Ontario is in need of a broad re-evaluation of its regulation of industrial livestock facilities and the implementation of new provincial controls. The use of nutrient management plans should certainly have a place in the final framework, but should by no means be seen as an alternative to positive and comprehensive regulatory action to address intensive livestock operations.

## **Earning Societal Acceptance**

### **1. What does society consider to be acceptable for intensive agricultural operations?**

CELA receives numerous telephone calls from individuals and groups from across the province concerned about intensive livestock operations. CELA also monitors media coverage of the growing debate of these facilities. It is clear from both of these that our society is not supportive of the increase in numbers and size of intensive agricultural operations. Society is able to accept that farmers must achieve some economies of scale and take advantage of new technologies in order to continue to make their living. This does not however extend to intensive operations operating with little to no regulatory oversight. Society will be far more accepting of this industry when there is a clear provincial regulatory structure in place to ensure that the integrity of the environment and the health of rural residents are not at serious risk.

### **2. Are building codes adequate to provide structural integrity of livestock barns and manure storage?**

Building codes are important guides for municipal management of land use. However, as with nutrient management plans, building codes are a small piece of a larger and more complex puzzle. The establishment of appropriate standards for livestock barns and manure storage must wait until a comprehensive environmental study of intensive livestock operations has been undertaken. Once the risk is better understood, the expertise of provincial staff should be turned to establishing new and stringent building standards as a part of a larger provincial regulatory framework for the permitting and monitoring of intensive livestock operations.

### **3. Whose role should it be to do third party review?**

The third party review of intensive livestock should be handled by a provincial agency or ministry branch to ensure that standards are uniformly applied throughout the industry. The industry should *not* be allowed to regulate itself. As with voluntary measures, self regulation is unlikely to ensure sufficient protection for the environment and will certainly do little to bolster the already weakened confidence of rural communities. A third party review should also be conducted by an impartial reviewer to ensure there is no conflict of interest and to ensure fairness in the review process. Finally, it is imperative that the provincial government ensure that there is adequate staff and resources to conduct this review.

## **Suggestions for making things better**

### **1. Would new legislation focusing on intensive agricultural operations solve these issues?**

New legislation is crucial to solving the problems described above. There is no reason why intensive livestock operations should not be regulated by the province in the same manner as any other industry which poses environmental risks.

In order to pass appropriate legislation, the first step is to undertake a comprehensive environmental study of industrial livestock operations to inform new regulatory controls.

The legislation which is put in place should clearly define intensive operations, establish standards and a provincial permitting system, and provide for monitoring and enforcement for all facilities. CELA does not propose to suggest a detailed outline of the legislation, but the province should establish at least:

- a. Clear density levels. Establishing a level of density of animals in barns and for surrounding land will ensure that animals are kept in humane conditions and that the surrounding land base is adequate to absorb the resulting manure.
- b. Strict standards for barns and manure storage and transport structures to ensure that there is no risk of leakage.
- c. Strict standards for manure spreading including the proximity of water sources, hydrogeological conditions, weather conditions, and quantity.
- d. Odour levels.

The legislation must clearly assign responsibility to a provincial agency or ministry branch to administer the permitting system and to monitor and enforce standards. To that end, it is imperative that the province allot sufficient staff and resources to ensure that the regulatory system established is enforced in an adequate fashion.

As the legislation which is passed will have as one of its primary goals the protection of the health of rural residents and the environment, it should be made subject to the provisions of the *Environmental Bill of Rights*. Applications and approvals of permits should be posted on the Environmental Registry and citizens should have the right to seek leave to appeal permits for facilities which will impact the environment or their quality of life.

Until new legislation can be put into place, there should be an immediate moratorium on the building of new industrial livestock facilities. In addition, there should be immediate direction from the Minister of Agriculture, Food, and Rural Affairs to the

Farm Practices Protection Board that industrial livestock facilities are not to be included in the definition of “normal farm practices”.

## **2. How can we strengthen existing provincial legislation to accomplish the same goal?**

In addition to enacting new legislation to control the proliferation of industrial livestock operations, significant changes need to be made to existing legislation.

*The Act to Protect Farming and Food Production* should be repealed. The Act creates a context in which the operators of intensive livestock facilities function with almost no regulation or government oversight. The primary focus of the Act, to insulate farmers from nuisance suits, is unnecessary as reasonable farming practices do not create actionable nuisances or endanger the environment. Those who benefit from the protection of the Act are those who mismanage large scale facilities. While operators must still abide by the provisions of the *Environmental Protection Act*, the staff and budget cuts at the Ministry of Environment make this an uncertain safety net.

The Act also creates a disturbing exemption from municipal by-laws for farming engaged in “normal farm practices”. As noted above, municipalities are well placed to engage in comprehensive land use planning which reflects their communities’ goals and vision. Exempting operations from this planning process prevents communities from determining whether intensive livestock operations are appropriate for their communities in light of the concerns of other residents, farmers, economic activities, and the health of the rural environment.

In the alternative, the following change should be made. The definition of normal farm practices should be amended. Industrial livestock operations should be specifically excluded. Furthermore the broader definition should focus not on a questionable notion of normalcy, but on whether a farming practice is necessary or reasonable.

### **Conclusion**

The Canadian Environmental Law Association (CELA) is witnessing a crisis in rural Ontario. With every passing year, we receive more and more calls from desperate rural residents who have discovered that an intensive livestock operation is to be built in their community. These callers describe valid fears about odour, run off and leaching of nutrients into water sources, plummeting property values, impacts on small local businesses and tourism, and the danger of a major disaster resulting in devastating contamination of their communities.

Provincial action is desperately needed to resolve this problem. While the Discussion Paper describes the problem as one of seeking the appropriate balance between

agriculture and the interests of other rural residents, in fact, this is somewhat misleading. The small scale farmers and rural residents who call CELA are in agreement. Industrial livestock operations are not farms. They are industries. They should not be afforded protections which are intended for farmers and they should be regulated in the same manner as any other industry which impacts the environment.

To that end, CELA recommends

1. The legislative changes of the past 12 years which claimed to protect farmers but in fact bolstered the proliferation of industrial livestock facilities should be reversed.
2. A moratorium on new industrial facilities until legislative changes can be made.
3. Direction from the Minister of Agriculture, Food, and Rural Affairs to the Farm Practices Protection Board that industrial facilities are not to be included within the scope of “normal farm practices”.
4. A comprehensive environmental study of industrial livestock operations should be undertaken to inform new regulatory controls.
5. New legislation must be passed to address the specific problem of intensive livestock operations. These operations should be carefully regulated in the same way that other industrial operations are regulated to protect other residents, farms, and the health of the rural environment. A permitting mechanism, monitoring, and enforcement provisions should be enacted.
6. Sufficient staff and resources should be allocated to ensure that that the legislative provisions are practical.

The province has a responsibility to the residents of rural Ontario to protect their environment, to promote farming, and to provide for sustainable economic activities. All of these are placed at risk by industrial livestock facilities. The province must take positive regulatory action now.