

# **A Resource for Farm Businesses: Q & A on Environmental Law (2010)**

Prepared for

Nova Scotia Federation of Agriculture  
332, Willow Street, Suite 201  
Truro, Nova Scotia  
B2N 5A5

Prepared by

LJM Environmental Law & Consulting  
P.O. Box 2279  
Wolfville, N.S.  
B4P 2N5

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## Introduction

Environmental law and land-use planning law are complicated areas that cover a myriad of requirements issued by the federal, provincial and municipal governments. As owner/operators of enterprises that use large tracts of land and interface with the environment on a daily basis, farmers find themselves in the throws of these complicated requirements. Although there are occasions where direct legal advice and communication with a lawyer is essential, there are situations where general information is all the farmer requires.<sup>1</sup>

The Q & A on Environmental Law (formerly, A Resource for Farm Businesses: Concise Answers to Legal Questions on Environment and Land Use) was originally released in May 2002 with the principal goal of providing a resource to allow farm managers to make basic decisions with respect to regulatory issues prior to seeking legal advice.

The Nova Scotia Federation of Agriculture (NSFA) canvassed its membership for questions and areas of interest to be addressed and a lawyer was hired to draft answers to the questions and provide reference material. The first version included 17 questions and answers on topics ranging from requirements for culvert installations to trespass by off-highway vehicles. The Q & A was made available on the NSFA website. The on-line version of the Q & A was updated in 2003 and 2006.

The current version of the Q & A on Environmental Law (2010) updates all of the original questions and answers and includes the addition of 13 new questions and answers. The current version also significantly expands the reference section of the document, including relevant websites.

The Q & A on Environmental Law (2010) is divided into five parts:

Part I	Water and Wetlands
Part II	Pollution
Part III	Neighbors
Part IV	Land-use Planning
Part V	Enforcement/Inspections & Investigations

Given the changing nature of environmental statutes and regulations the Q & A on Environmental Law (2010) is a living document and will require regular updates to remain current. The answers provided are generic and do not eliminate the need to seek legal advice for specific matters, particularly those that may lead to a prosecution or lawsuit. Ultimately, the Q & A is a support tool for farmers trying to understand how environmental law applies to their activities in an effort to demonstrate due diligence and avoid adverse effects to the environment.

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<sup>1</sup> Summarized from Project Application, NSFA, May 30, 2001.

## **Disclaimer**

Every reasonable attempt has been made to ensure that the information in this document, A Resource for Farm Businesses: Q & A on Environmental Law (2010) is accurate.

The legislative provisions in this document and the Reference Guide are for general information purposes only. The document is not legal advice and does not replace official government publications or expert legal advice.

If a discrepancy occurs between government policies, statutes or regulations and this document, the government-authorized documents will apply.

For official legislative provisions, consult the relevant federal and provincial statutes and regulations.

LJM Environmental Law & Consulting and the Nova Scotia Federation of Agriculture assume no responsibility for the currency, accuracy or reliability of the information contained in this document.

The Resource for Farm Businesses: Q & A on Environmental Law (2010) is for use by members of the Nova Scotia Federation of Agriculture only. Any use which a third party makes of this document, or any reliance on or decisions made based on it, are the responsibility of such third parties.

Prepared by  
LJM Environmental Law & Consulting  
P.O. Box 2279  
Wolfville, Nova Scotia  
B4P 2N5

[www.ljmenvironmental.ca](http://www.ljmenvironmental.ca)

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## Question 1

What is a water approval?

### Answer:

The Nova Scotia *Environment Act* (section 103) gives the provincial government the power to regulate watercourses (which includes groundwater) and the power to supervise the use of all other water resources (section 105) in the province.

The *Environment Act* (section 2) defines 'watercourse' as

- (i) the bed and shore of every river, stream, lake, creek, pond, spring, lagoon or other natural body of water, and the water therein, within the jurisdiction of the province, whether it contains water or not, and
- (ii) all ground water.

The definition of watercourse includes groundwater and any natural body of water, whether it contains water or not. For example, a watercourse may completely dry out in the summer and still be a 'watercourse' within the meaning of the *Environment Act*.

The reference to 'natural body of water' indicates that ditches and other artificial holding areas for water are not included in the definition of watercourse. Ponds are included in the definition of watercourse but NSE does not require an approval to dig a pond unless the pond links to a watercourse is in-line with a watercourse.

The *Environment Act* (section 2) defines 'water resource' as all fresh and marine water comprising all surface water, groundwater and coastal water. There is overlap between the definition of 'watercourse' and 'water resource' the intent is to ensure that the provincial government has the authority to regulate activities that affect all water, including brackish and tidal water.

The primary means that the provincial government (through Nova Scotia Environment) regulates and protects water in Nova Scotia is by requiring approvals for activities that may affect water. The activities that require an approval are listed in the *Activities Designation Regulations*.

Under the *Activities Designation Regulations*, a person must obtain an approval to do any of the following:

- Withdraw or divert more than 23 000 L (5000 gal) of water per day from a source of surface water (including a pond) or groundwater (see Question 3);
- Construct or maintain a dam;
- Store water in amounts of 25 000 m<sup>3</sup> or more (see Question 3);
- Construct or maintain a culvert (see Question 5);
- Construct or maintain a bridge (see Question 6);
- Construct or maintain a causeway;
- Construct or maintain a wharf;
- Construct or maintain any in-stream structure;
- Remove material from a surface watercourse (see below);



- Divert a watercourse from its natural channel;
- Install fishing equipment or similar structure in a watercourse;
- Dredge or modify a surface watercourse;
- Install or maintain a pipeline, cable or other equipment in a surface watercourse (see below);
- Place rock or other erosion protection material in a surface watercourse;
- Alter a wetland (see Question 8).
- Alter a surface watercourse or its flow (see Question 5);

Remove material from a surface watercourse

- Removing a beaver dam from a surface watercourse does not trigger the approval requirement.
- Advise from NSE should be sought before removing a foreign object (i.e. abandoned vehicle, appliance, etc) from a watercourse, particularly if the object is embedded in the watercourse.

Install or maintain a pipeline, cable or other equipment in a surface watercourse

- Installing irrigation equipment in a surface watercourse may not trigger the approval requirement, however, withdrawing greater than 23 000 litres per day from the watercourse does trigger the approval requirement and the installation of the irrigation equipment is addressed in the water withdrawal approval.

The *Activities Designation Regulations* specifically state that the following activities do not require an approval:

- A non-recurring use of water from the same watercourse for less than 2 weeks (annually);
- A continuous use of water less than 23 000 L per day;
- Use of seawater;
- Use of brackish water from an intertidal zone of a river estuary;
- Maintenance of lands and structures incorporated by marsh bodies under the *Marshland Reclamation Act*.

**For more information:**

Reference Section:

Environment Act

page 8

For information on how to apply for a water approval, see Question 2.

## Question 2

How do I apply for a water approval?

### Answer:

Question 1 provides general information on water approvals. Questions 3-8 provide information on specific water approvals. If, after reviewing this information, you do not know whether you require an approval for your proposed activity, you should consult your agricultural resource coordinator <http://gov.ns.ca/agri/contactus/reps/arcs.shtml> or the regional office of Nova Scotia Environment (NSE) in your area <http://www.gov.ns.ca/nse/offices/emcoffices.asp>.

NSE provides approval application forms for water approvals. Website information for the application forms can be found below. The application must be completed, signed and returned to your regional or district office of the NSE. The application must be complete and correct and there should be enough information contained in the application to enable an NSE inspector to locate the site where the activity will take place. The NSE will not process an incomplete application.

The *Approvals Procedure Regulations* provide detailed information on what must be contained in the application. Once a completed application has been received, the NSE will provide a written decision within 60 days or will notify the applicant, in writing within 10 days, to let them know that there will be a delay. If the activity is approved the NSE will issue an approval.

If the NSE refuses to grant an approval, the activity cannot be undertaken. Undertaking an activity that requires an approval without first receiving the approval is an offence under the *Environment Act*. The NSE inspectors have a no tolerance policy toward activities undertaken without an approval. In most cases, the NSE inspector will issue a directive requiring the area to be returned to its original state. For example, if a culvert is installed without an approval the NSE may require that the culvert be removed. Failure to follow the direction may result in a charge for the offence. The punishment for this offence may be a fine of up to 1 million dollars, imprisonment for a period of not more than two years, or both a fine and imprisonment.

### For more information:

#### On-line Resources

Water Approval – Watercourse Alteration

<http://www.gov.ns.ca/snsmr/paal/nse/paal181.asp>

Water Approval – Water Allocation

<http://www.gov.ns.ca/nse/water/withdrawalApproval.asp>

<http://www.gov.ns.ca/snsmr/paal/nse/paal182.asp>

Wetland Alteration Approval

<http://www.gov.ns.ca/snsmr/paal/nse/paal586.asp>

Guide to Surface Water Withdrawal Approvals (May 7, 2004)

<http://www.gov.ns.ca/nse/water/docs/guideToSurfaceWaterWithdrawalApprovals.pdf>

Guide to Groundwater Withdrawal Approvals (May 7, 2004)

<http://www.gov.ns.ca/nse/water/docs/guideToGroundwaterWithdrawalApprovals.pdf>

Reference Section:

Environment Act

page 8

Activities Designation Regulations

page 13

### Question 3

If I have a water approval from the province, do I have to obtain an approval from the federal government as well?

**Answer:**

The federal *Fisheries Act* provides the federal government with the power to protect fish and fish habitat. In circumstances where the water-related activity has the potential to harm fish or fish habitat, you may have to obtain permission from the federal government even if you already have a provincial water approval.

The most common example is when the activity is going to affect a lake, river, stream, brook, pond, or any other body of water that fish frequent. For example, the installation of a culvert, bridge, wharf, pipes, etc., in a watercourse may damage fish or fish habitat. It is not necessary for fish to be present in the water at the time you wish to undertake the activity as long as fish frequent the water from time to time. If it is not clear whether fish frequent the water it will be up to the person seeking to affect the water body to demonstrate that fish are never there.

In Nova Scotia, the federal Department of Fisheries and Oceans (DFO) Habitat Management Program is responsible for the application of the habitat provisions of the *Fisheries Act* for all marine and freshwater environments. A description of each project that may impact fish or fish habitat must be sent to the Habitat Protection and Sustainable Development (HPSD) Division of DFO.

In order to comply with the Fisheries Act, an authorization from DFO is required for any activity that destroys fish or obstructs or alters a watercourse or otherwise impacts fish habitat. Some examples of activities that may harm fish or fish habitat include:

- Bridge Construction and Maintenance
- Culvert Construction and Maintenance
- Dock Construction and Maintenance
- Pond Construction (if connected to a waterway)
- Maintenance or Removal of Riparian Vegetation

Nova Scotia Environment (NSE) and DFO maintain a Memorandum of Understanding that allows a one-window approach to water approvals for proponents wishing to do work in or around the water. The NSE forwards applications for water approvals that may impact fish habitat to DFO. DFO reviews all applications forwarded by the province and assesses the projects for potential impacts to fish or fish habitat. The assessment may include a review of the details of the project, pictures, baseline information on fish and habitat in the area and a site visit. The extent of the review will reflect the complexity of the project and its potential impacts. In some cases the Province may issue an approval before DFO has completed its review. This does not mean that DFO has no concerns with the project. The proponent should contact HPSD to ensure the activity does not require an authorization under the *Fisheries Act*.

When DFO reviews an application to authorize an impact to fish habitat they are guided by the principle of “no net loss” of fish habitat. If the project will result in unavoidable habitat losses, those losses must be balanced by restoring or creating new or enhanced fish habitat.

An unauthorized activity that adversely impacts fish or fish habitat may be a violation of the *Fisheries Act* and may result in a fine of up to \$1 000 000.00 and imprisonment for up to 3 years. It is important to remember that an area may be considered fish habitat even if there are no fish in the area at the time the activity takes place as long as fish frequent the area at some point in time.

**For more information:**

On-line Resources:

DFO Working in and Around Water

[http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/water-eau/index\\_e.asp](http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/water-eau/index_e.asp)

Reference Section:

Fisheries Act

page 4

## Question 4

Do I need an approval to take water from a surface water source (i.e. lake, pond) or a groundwater source (i.e. well) to water livestock or irrigate my crops?

Do I need an approval to store water on my farm?

### Answer:

You will require an approval from NSE if you are taking greater than 23 000 litres (5000 gallons) of water from a surface or groundwater source, in one day.

The Nova Scotia *Environment Act* gives the provincial government the power to regulate the amount of water taken for any purpose. The *Environment Act* does not prohibit the withdrawal of water, but the *Activities Designation Regulations* made under the Environment Act require an approval to withdraw more than 23 000 L (5000 gal) of water per day. For example, if your farm operation withdrew 12 gallons per minute for 8 hours per day from one source of water the approval requirement would be triggered.

It should be noted that an approval is required to withdraw more than 23 000 L of water per day from a source of water. If you withdraw 22 000 L of water per day an approval is not required. If you withdraw 10 000 L of water per day from a groundwater source and 15 000 L from a surface water source, an approval is not required.

If you have more than one groundwater well on your property and the total water withdrawn from all wells is greater than 23 000 L you may require an approval. You should consult your local NSE regional or district office for more information.

An approval is not required to withdraw water if the withdrawal is non-recurring and lasts for less than 2 weeks (annually). This exception ensures that water is available without an approval for emergency and unforeseen circumstances.

The *Activities Designation Regulations* also require an approval from NSE to store water if you wish to store 25 000 m<sup>3</sup> or more (in one area, i.e. pond), for any purpose.

NSE inspectors have the authority under the *Environment Act* to inspect your farm if they have reasonable grounds to believe that you require an approval for the withdrawal or storage of water. It is an offence under the Act to carry on an activity requiring an approval without the approval in place. If you are not sure whether you require a water withdrawal or water storage approval, you can contact your NSE regional office for assistance. Contact information for each region can be found at <http://www.gov.ns.ca/nse/offices/emcoffices.asp>. You may also wish to contact the regional agricultural resource coordinator <http://gov.ns.ca/agri/contactus/reps/arcs.shtml>.

### For more information:

#### On-line Resources:

Government of Alberta, Agriculture and Rural Development  
Farm Water Supply Requirements  
[http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/agdex1349](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/agdex1349)

Reference Section:

History of Riparian Rights	page	3
Environment Act, section 3	page	8
Activities Designation Regulations, section 5	page	13

## Question 5

Do I need an approval to dig a ditch or a pond on my property?

### Answer:

As described in Question one, the Nova Scotia *Environment Act* provides the provincial government with the authority to regulate water in the province. The definitions of 'watercourse' and 'water resource' are provided in Question 1.

Although the definition of 'watercourse' includes the word 'pond' it also refers to a 'natural body of water'. Ditches and ponds are not specifically named in the list of activities that require an approval under the *Activities Designation Regulations*. However, where a ditch or pond alters the flow of a surface watercourse or affects a wetland an approval will be required.

For example, a ditch dug in the middle of a stream or one that results in the damming of a watercourse or alteration of a wetland will require an approval. Nova Scotia Environment does not require an approval for the construction of a pond that intercepts groundwater or collects surface water.

Ponds that are created to store water will require an approval if the pond holds 25 000 m<sup>3</sup> or more of water (see Question 4). If the pond is used to withdraw water and 23 000 litres or more of water are withdrawn in one day, an approval is required (see Question 4).

Any activity that takes place in or near water frequented by fish may also require permission from the federal government (see Question 3).

### For more information:

#### Reference Section:

History of Riparian Rights	page	3
Environment Act, section 3	page	8
Activities Designation Regulations, section 5	page	13



## Question 6

Do I need an approval to construct a culvert across a watercourse on my own land?

### Answer:

The provincial *Environment Act* and the federal *Fisheries Act* apply to the construction of culverts.

An approval from the NSE will be required if:

- the culvert is to be constructed between October 1 and May 30<sup>2</sup>; or
- the culvert is 1.8 metres (6 feet) or more in diameter and 18 metres (60 feet) or more in length.

Although an approval is not required for culvert construction between June 1 and September 30, Nova Scotia Environment (NSE) must be notified before an installation takes place. The approval application form may be used to notify the NSE of a culvert installation between June 1 and September 30. The form must be completed, signed and forwarded to the NSE before construction of the culvert begins. Once the notification is sent there is no need to wait for comment or decision from the NSE. The work can begin immediately. When the work is completed a Completion of Work Form must be submitted to NSE.

For information on how to apply for a provincial approval, see Question 2.

For information on the requirements under the federal *Fisheries Act*, see Question 3.

### For more information:

#### Reference Section:

History of Riparian Rights	page	3
Fisheries Act, section 35	page	4
Environment Act, section 3	page	8
Activities Designation Regulations, section 5	page	13

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<sup>2</sup> The federal Department of Fisheries and Oceans has determined that the period between October 1 and May 30 is the most sensitive time for fish and fish habitat.

## Question 7

Do I need an approval to construct a bridge across a watercourse on my property?

### **Answer:**

Under the *Activities Designation Regulations*, any activity that is designated requires an approval from Nova Scotia Environment (general information on water approvals can be found in Question 1).

The construction or maintenance of a bridge is a designated activity and requires an approval if

- (i) a portion of the structure of the bridge is in a watercourse, or
- (ii) use of equipment in the watercourse or 3 metres from the edge of the watercourse is required.

If the watercourse is frequented by fish the federal *Fisheries Act* may also apply (see Question 3)

For information on how to apply for a provincial approval, see Question 2.

For information on the requirements under the federal *Fisheries Act*, see Question 3.

## Question 8

Do I need an approval to alter a wetland on my property?

### Answer:

The Nova Scotia *Environment Act* regulates the alteration of wetlands. The Act defines wetland as,

...land commonly referred to as a marsh, swamp, fen or bog that either periodically or permanently has a water table at, near or above the land's surface or that is saturated with water, and sustains aquatic processes as indicated by the presence of poorly drained soils, hydrophytic vegetation and biological activities adapted to wet conditions (section 2).

Generally, wetlands include land that is regularly covered or soaked with water for part or all of the year and has a presence of wet-adapted species. They are neither land nor water but transition zones that combine features of both.<sup>3</sup>

The *Environmental Assessment Regulations* require any undertaking that may disrupt two or more hectares of a wetland to be registered with Nova Scotia Environment.

The *Activities Designation Regulations* require an approval to alter any wetland, including a salt marsh.

The *Environment Act* and Regulations do not define “alteration” however, a definition is included in *A Proponent’s Guide to Wetland Conservation – Draft for Consultation* (September 2009).

*Alterations* – Actions that have the potential to negatively affect wetland function, services and habitat. Alterations may include, but are not limited to, filling, draining, flooding, excavating and road building in any wetland.

There is no guidance material specifically addressing farm-related activities and wetland alterations. Nova Scotia Environment (NSE) has indicated that fording a wetland with farm machinery, creating a crossing (i.e. road, driveway, bridge, etc) through a wetland, bringing abandoned agricultural land that is a wetland back into production or allowing livestock to graze in a wetland could result in a wetland alteration.

In July 2009 the government introduced the draft Nova Scotia Wetland Conservation Policy. The goal of the draft Policy is to prevent the net loss of wetland in Nova Scotia.

The draft Policy applies to all wetlands in Nova Scotia with certain exceptions. Following is a list of exceptions relevant to agriculture:

- Wetlands less than 100m<sup>2</sup> in total area
- Former salt marshes designated under the *Agricultural Marshland Conservation Act* as agricultural land;
- Wetlands constructed specifically for the purpose of wastewater or stormwater treatment;
- Wetlands constructed on upland habitats not for the purpose of compensation;

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<sup>3</sup> Taken from a power point presentation by Kathleen Johnson, P.Eng., Regional Offices, Nova Scotia Environment

- Wetlands that develop within constructed and maintained agricultural drainage ditches, as well as any agricultural lands that are regularly saturated in spring with sheet water;
- Wetlands that develop from construction projects or other human activities that have taken place since January 1, 1990.

The Nova Scotia Federation of Agriculture has prepared a response to the draft Policy. The current Policy together with the regulatory requirement to obtain an approval for all wetland alterations may create a number of challenges for farmers who farm or wish to farm in wet areas.

The process to apply for a wetland alteration approval is complicated. The “no net loss” policy means that the NSE will only grant approvals in limited circumstances and compensation for lost wetland will be required.

**For more information:**

On-line Resources:

Wetland Alteration Approval

<http://www.gov.ns.ca/snsmr/paal/nse/paal586.asp>

Wetlands and Coastal Habitat Program

<http://www.gov.ns.ca/natr/wildlife/wetlands/wet.htm>

Nova Scotia Wetland Inventory

<http://www.gov.ns.ca/natr/wildlife/wetlands/nswi.htm>

Nova Scotia Wetland Conservation Policy – Draft for Consultation

<http://www.gov.ns.ca/nse/wetland/conservation.policy.asp>

A Proponent’s Guide to Wetland Conservation – Draft for Consultation

<http://www.gov.ns.ca/nse/wetland/conservation.policy.asp>

Reference Section:

Environment Act, section 3(bg)	page	8
Activities Designation Regulations, section 5(na)	page	13
EGSPA, sections 2(e) and 4(1)(n)	page	18

## Question 9

Is it necessary to fence my livestock out of streams that run through my property?

### Answer:

There is no federal or provincial law that states that livestock must be fenced out of watercourses. However, allowing livestock to wade into a watercourse may cause damage to fish habitat or result in the deposit of a substance that will adversely affect fish. The *Fisheries Act* prohibits damage to fish habitat and the deposit of deleterious substances into water frequented by fish.

#### Damage to fish habitat

An authorization from Fisheries and Oceans (DFO) Canada is required for any activity that results in the harmful alteration, disruption or destruction (HADD) of fish habitat. According to the DFO Policy for the Management of Fish Habitat, the long-term management objective is the overall 'Net Gain' of the productive capacity of Canada's fish habitats. When an application to authorize a HADD to fish habitat is reviewed by DFO they are guided by the principle of "no net loss". If the project will result in unavoidable habitat losses, those losses must be balanced by restored, newly created or enhanced habitat. If unacceptable losses of fish habitat cannot be prevented by these measures, the Policy calls for an authorization not to be issued. According to the Hierarchy of Preferences in the Policy it is preferable to mitigate any damage to fish habitat when possible before considering the issuance of an authorization. It is unlikely that DFO would issue an authorization to allow livestock to damage fish habitat when the damage could be mitigated by preventing access to the water body through fencing or alternate watering techniques. For more information see Question 3.

#### Deposit of a deleterious substance

Under the federal *Fisheries Act*, it is an offence to deposit or permit the deposit of any deleterious substance into water frequented by fish. A *deleterious substance* is any substance that when added to water would degrade or alter the quality of the water making it deleterious (harmful) to fish, fish habitat or the use of fish by humans. The *Fisheries Act* applies to all "Canadian Fisheries Waters", which include all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada. The *Fisheries Act* also applies to any other water 'frequented by fish.' Fish are not required to be in the water at all times for the Act to apply.

Allowing livestock access to watercourses may result in the deposit of feces into the watercourse. Animal feces are a deleterious substance containing ammonia, nitrates and fecal coliform bacteria. The presence of fecal coliform bacteria may result in the closure of shellfish growing areas in the estuary, downstream of a watercourse that has been contaminated with fecal coliform bacteria. Further, livestock wading in or passing through a watercourse may stir up sediment in the watercourse resulting in adverse effects to fish and fish habitat. In cases where livestock do not have direct access to watercourses, but are near the watercourse, there is the potential for runoff from the land contaminating the watercourse with livestock feces.

Environment Canada administers the provision of the *Fisheries Act* that address deposit of a deleterious substance into water frequented by fish. Compliance with these provisions is

mandatory. Cases involving the unintentional release of deleterious substances into water frequented by fish have resulted in fines averaging between \$25 000 and \$50 000.

To prevent violation of the *Fisheries Act*, Environment Canada has made some recommendations regarding the access of livestock to watercourses. It is important to recognize that these are suggestions only. These measures may not be adequate in all cases and it is the responsibility of the farmer to ensure they are complying with the law.

- Exclusion fencing placed to restrict movement of the livestock to outside 6 metres on both sides of a waterway.
- Properly constructed stream crossings that prohibit livestock from coming in direct contact with watercourses, and built in such a fashion that animal wastes do not reach the watercourse.
- Watering or feeding devices be located not less than 20 metres from the watercourse and designed in such a way that wastes will accumulate and be collected and removed to prevent leaching or runoff into watercourses.
- Site specific surface water control measures to prevent erosion and leaching of deleterious substances into waterways, such as buffer zones, vegetated filter strips, grassed waterways, etc.
- Locating of chemical and fuel storage and dispensing equipment as well as adequate containment in the event of a spill or leak to minimize the risk of spillage into waterways.

**For more information:**

On-line Resources:

DFO Policy for the Management of Fish Habitat

[http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/management-gestion\\_e.asp](http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/management-gestion_e.asp)

Reference Section:

Fisheries Act

page 4

## Question 10

What is a water designation?

### Answer:

Under the *Environment Act*, the Minister has the power to designate an area surrounding any source or future source of municipal or industrial water supply as a protected water area. A waterworks operator (i.e. municipal or town employee) makes a request to the Minister for a designation after the operator has provided opportunities for public consultation on the proposed designation. Once a protected water area designation is in place, the Minister may make regulations to control activities that could impair the quality of the water.

Once the Minister designates an area, the operator of the water works (municipal water utility) must ensure the area remains protected. This would include monitoring the water and enforcing the regulations.

Some examples of activities that may be restricted in a protected water area include:

- application of a pest control product;
- discharge of any substance that may cause an adverse effect to a watercourse, such as manure;
- any activity that might cause soil erosion resulting in sedimentation of a watercourse;
- fishing;
- establishing a dump, landfill or waste disposal site;
- open burning; and
- use of petroleum products.

These restrictions continue even where the owner of the land sells or transfers the land to another person. There are currently 25 water designations under the *Environment Act*.

The *Environment Act* also provides the Minister with the power to cancel all or part of a designation when requested by the operator of a water works. In April 2002, the Minister cancelled a portion of a designation of an area surrounding Snides Lake in Hants County.

Prior to the introduction of the *Environment Act* in 1995, protected water area designations were regulated by the *Water Act*. Under that Act, any person who felt their property was injuriously affected by the designation had a right to file a claim for compensation (injurious affection) against the operator of the water works. The *Environment Act* removed this right in 1995. The *Water Act* has been repealed (no longer in force) and all protected water area designation regulations have been moved to the *Environment Act*. The *Environment Act* specifically states that no claim for injurious affections lies against any person as a result of a designation of a protected water area.

Municipal governments also have the power to create water designations under the *Municipal Government Act*. A municipal council has the authority to create by-laws that designate lands owned by the municipality as protected water supply areas. If an area is designated as a protected water supply area, there are a number of restrictions that apply to activities in and around the designated area. For example, it is a violation of the *Municipal Government Act* to allow any

matter that may impair the quality of the water for domestic purposes to escape on to the designated area, and in this respect is similar to designation under the *Environment Act*.

**For more information:**

On-line Resources:

Information on Designation of Protected Water Areas

<http://www.gov.ns.ca/nse/water/protectedwaterarea.asp>

A Guide to Recommended Agricultural Practices in Municipal Drinking Water Supply Areas

<http://gov.ns.ca/nse/surface.water/surfacewater.protection.asp>

The protected water area designations can be found in the list of regulations under the Environment Act

<http://www.gov.ns.ca/just/regulations/rxaa-1.htm#env>

Reference Section:

Environment Act, section 106	page	8
Municipal Government Act, section 180	page	28
Municipal Government Act, section 220(4)(o)	page	28



## Question 11

What should I do when faced with a municipal official seeking to establish a “test well” on my property?

### **Answer:**

A municipal official may wish to place a “test well” on your property in order to assess the potential groundwater sources that exist under your land. The municipal official may be testing the quality and/or the availability of water.

The Nova Scotia *Environment Act* vests all watercourses, including ground water in the provincial government. To that end, provincial government officials would have a right to come on to your property if they had a reasonable belief that activities on your property were adversely affecting groundwater. However, there is no provision in the *Environment Act* that appears to provide municipal officials with the right to enter private property to test groundwater sources, unless the source has been designated as a protected water area under the *Environment Act*.

The *Municipal Government Act* provides authority to any person designated by the Minister (which may include a municipal official) to enter and inspect any property in order to administer an order, land-use by-law, development agreement, regulation or statement of provincial interest. There is a statement of provincial interest on drinking water. It is not clear if this statement would provide municipal officials with the authority to test groundwater on properties that are not designated as water protected areas.

If a municipal official seeks your permission to place a test well on your property, you may refuse that permission. However, the official may return with an order under the *Environment Act* or the *Municipal Government Act* requiring you to allow the test to take place. If this is the case you should not attempt to obstruct the official from carrying out their duties. If you continue to be concerned you should contact your lawyer.

### **For more information:**

#### Reference Section:

Environment Act, section 106	page	8
Municipal Government Act, section 180	page	28
Municipal Government Act, section 267	page	28

## Question 12

What is the Water Resource Management Strategy?

### Answer:

The Nova Scotia *Environment Act*, section 105 states that the Minister shall establish a water-resource management strategy for the Province. The *Environmental Goals and Sustainable Prosperity Act* includes as one of the Provinces goals, the creation of a comprehensive water-resource management strategy by the year 2010. In March 2007, the Minister of Environment announced that his Department would take the lead on developing a water-resource management strategy over the next 3 years.

An Interdepartmental Water Management Committee oversees development of the water strategy. The Committee is chaired by the Deputy Minister of Environment. The following departments participate on the Committee: Agriculture, Energy, Environment, Fisheries and Aquaculture, Health Promotion and Protection, Natural Resources, Economic Development, Service Nova Scotia and Municipal Relations, Transportation & Public Works, Tourism, Culture and Heritage.

The government released a discussion paper entitled, *Towards a Water Resources Management Strategy for Nova Scotia* and held public consultations between January 31, 2008 and June 1, 2008. The information gathered during the public consultation will be used to prepare a draft Water Resources Management Strategy.

The discussion paper noted that agriculture in the Annapolis Valley has experienced water shortages in four of the six summers between 1996 and 2002, and estimated that the need for water in the Valley will increase by 45 per cent in the next two decades. The discussion paper goes on to describe agriculture as one of several economic activities that can negatively affect aquatic ecosystems, through direct impacts as well as run-off from pesticides, fertilizers and manure.

The draft Strategy, anticipated in early 2010 will be followed by a second round of public consultations.

### For more information:

#### On-line Resources:

Nova Scotia Water Resources Management Strategy  
<http://www.gov.ns.ca/nse/water/WaterStrategyHow.asp>

#### Reference Section:

Environment Act, section 105	page	8
EGSPA, section 4(1)(k)	page	18

**A Resource for Farm Businesses:  
Q & A on Environmental Law (2010)**

**PART II  
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### Question 13

What, under the law, is considered to be pollution?

**Answer:**

The primary law governing pollution in Nova Scotia is the *Environment Act*. Although the *Environment Act* does not use the word 'pollution' it does prohibit the release of any substance into the environment if it will cause an 'adverse effect.' The term 'substance' is defined very broadly, and includes any matter that can be dispersed in the environment, including sound, vibration, heat, radiation or another form of energy. The term 'adverse effect' is also defined broadly and includes harm to the environment or human health or an interference with a person's ability to enjoy their life or property.

Virtually any substance used on a farm, including manure, fertilizer, pesticides, compost, petroleum products, etc., has the potential to cause an adverse effect. The NSE inspector must be satisfied that an adverse effect has or may occur before any action will be taken under the *Environment Act*. A charge under the Act will only be laid if the inspector has a reasonable belief that there is or could be an adverse effect. To make this determination the NSE inspector may consider some of the following:

- What is the nature of the substance that has been released?
- What is magnitude of the effect (how severe is it)?
- Are the effects local only or do they cover a wide geographic area?
- How frequent are the effects and how long do they last?
- Can the effects be reversed if practices are modified?
- Is an ecologically sensitive area being affected?

In order to control the substances that are released into the environment, Nova Scotia Environment (NSE) requires many activities to be approved. A list of the activities that must be approved can be found in the *Activities Designation Regulations*. For example, an approval is required to

- apply a pesticide to a surface watercourse;
- operate a composting facility which processes more than 60 m<sup>3</sup> of solid wastes per year;
- operate a petroleum storage tank system consisting of one or more petroleum tanks and associated piping;
- apply non-livestock generated wastes to land, i.e. biosolids (see Question 17);
- construct and operate a vegetable processing plant;
- construct and operate a fruit processing plant.

The *Environment Act* regulates many other potentially polluting activities such as the open burning of certain materials including tires, used oil and materials containing rubber or plastic. The Act regulates the handling and use of dangerous goods, including pesticides to ensure that practices do not result in unnecessary pollution of the environment.

There are federal laws that also seek to prevent pollution. The *Canadian Environmental Protection Act* regulates the use of substances that the federal government identifies as "toxic". The *Fisheries Act* regulates the release of substances that are considered to be "deleterious" to fish and fish habitat (for more information on the *Fisheries Act* see Questions 3 & 9). The *Pest*

*Control Products Act*, prohibits the handling, storage, use and disposal of pesticides in any way that may endanger human health or safety or the environment.

In all cases, the government (federal and provincial) is attempting to control the amount of pollution by regulating substances that are or may be released into the environment. To that end, it is important to be careful in the use of any substance that may cause pollution to the environment. Some of these substances are specifically restricted (i.e. pesticides) while others (i.e. manure) are generally not regulated but may result in a violation of the law if their application or release cause an adverse effect to the environment.

**For more information:**

Reference Section:

Environment Act, section 3(c) and 3(au)	page	8
Environment Act, section, 67	page	8
Activities Designation Regulations	page	13
Fisheries Act	page	4

## Question 14

What should I do if there is a spill of manure, fuel, pesticide or commercial fertilizer on my farm?

**Answer:**

**To report a spill call: 1 800 565 1633**

The two key requirements that must be met following a spill are (1) reporting and (2) clean up. In Nova Scotia these requirements are set out in the *Environment Act* and the *Emergency Spill Regulations*. If the spill reaches water frequented by fish, the federal *Fisheries Act* will also apply.

The unintentional release of manure, fuel or pesticide could result in an adverse effect to the environment, particularly if the release seeps into a surface watercourse or ground water. The *Environment Act* requires any release that may cause an adverse effect to the environment be reported to the following:

- Department of Environment,
- the owner of the substance (if known),
- the person having care, management and control of the substance (if known), and
- any other person who may be directly affected by the release.

The *Fisheries Act* requires that the release of any deleterious substance (i.e. a substance that may be harmful or damaging to fish or fish habitat) into water frequented by fish be reported to a fisheries inspector or officer. All of the substances described below, manure, petroleum products (including used oil), pesticides and commercial fertilizers, would have the potential to cause harm or damage to fish and fish habitat.

### Manure

Manure is not specifically regulated by the *Environment Act*. An unintentional release of manure, such as a breach of a manure storage facility, becomes a concern if the amount and location of the spill are such that surface water or ground water could be adversely affected. A spill that flows into a stream, creek, wetland or other body of water may cause an adverse effect to the environment and lead to a charge under the *Environment Act* and the *Fisheries Act*. As well, a spill that has the potential to leach into groundwater and contaminate well water is a serious concern. Spills of this nature should be reported to the persons described above.

### Petroleum Products

Petroleum products including gas, diesel oil, kerosene, naphtha, aviation fuel, lubricating oil, fuel oil, engine oil and hydraulic fluid are flammable liquids and considered dangerous goods under the *Environment Act*. The *Dangerous Goods Management Regulations* state that a petroleum product that has a flashpoint of greater than 61° C and is liquid at ambient conditions or during handling is a designated dangerous good (Schedule B). It is an offence under the *Dangerous Goods Management Regulations* to dump, discharge, etc, any dangerous good in a manner that may cause an adverse effect unless you have prior written approval from the Minister.

The *Petroleum Management Regulations* require all underground tanks and aboveground tanks (=>4000 L) to be installed by a certified installer. Tank installation must comply with the *Nova Scotia Construction, Installation and Operation Standards for Petroleum Storage Tank Systems*. All underground storage tanks and aboveground storage tanks in a storage tank system that have a combined nominal capacity of 2000 L or greater, in the case of underground storage tanks; or 4000 L or greater, in the case of aboveground storage tanks must be registered with NSE. Each registered tank will receive a tank registration number from the NSE.

The *Emergency Spill Regulations* require that a spill of 100 L or more of any flammable liquid must be immediately reported to the Canadian Coast Guard Regional Operations Center Environmental Emergency Number at 1-800-565-1633.

The *Domestic Fuel Oil Spill Policy* lays out the roles and responsibilities of the property owner, cleanup contractor and site professional in a domestic fuel oil spill. A “domestic fuel oil spill” is defined as the release of fuel oil on a residential land use property with three or less units, from a petroleum storage tank with a capacity of less than or equal to 500 imperial gallons (2270 liters). The Policy includes soil and water remediation criteria for domestic sites.

### Used Oil

There are four types of used oil: lubrication oils, hydraulic fluids, metal working fluids and insulating fluids. To become used oil, the oil product must no longer be suitable for its original purpose.

Schedule A of the *Emergency Spill Regulations* require a spill of 100 L or more of used oil to be immediately reported to the Canadian Coast Guard Regional Operations Center Environmental Emergency Number at 1-800-565-1633. If the used oil is contaminated, any spill of 5 L or more must be immediately reported.

Used oil is considered to be contaminated used oil if it has a flash point of 38°C or contains any of the following:

- greater than 5 mg per kg of PCBs;
- greater than 1000 mg per kg of chlorine;
- greater than 2 mg per kg of cadmium;
- greater than 10 mg per kg of chromium; or
- greater than 100 mg per kg of lead.

### Pesticides

Pesticides are regulated by the *Pesticide Regulation*. However, Schedule A of the *Emergency Spill Regulations* requires a spill of 5L/5Kg of pesticide in a concentrated form must be immediately reported to the Canadian Coast Guard Regional Operations Center Environmental Emergency Number at 1-800-565-1633. A spill of 70 L or more of a pesticide in a diluted form must be immediately reported.

### Commercial Fertilizers

The *Emergency Spills Regulations* do not specifically address commercial fertilizers. The Regulations do include a “catch-all” category for miscellaneous substances that could cause an adverse environmental effect. A spill of 50 L or 50 kg of a miscellaneous product should be reported to NSE.

#### Clean up

Under the *Environment Act* any time a substance is released into the environment that may cause an adverse effect, the person responsible for the release must take all reasonable measures to prevent, reduce and remedy the adverse effect. These steps must be taken as soon as the person becomes aware of the release.

#### **For more information:**

##### On-line Resources:

Domestic Fuel Oil Spill Policy

<http://www.gov.ns.ca/nse/contaminatedsites/docs/DomesticFuelOilSpillPolicy.pdf>

##### Reference Section:

Environment Act, sections 69 and 71	page	8
Emergency Spill Regulations, sections 6, 7 and Schedule A	page	15
Dangerous Goods Management Regulations, section 12	page	15
Petroleum Management Regulations, sections 10 and 11	page	16
Used Oil Regulations, section 2	page	17
Pesticide Regulation, section 14	page	16
Fisheries Act	page	4



## Question 15

What is the *Environmental Goals and Sustainable Prosperity Act* and how does it affect farmers?

### **Answer:**

The *Environmental Goals and Sustainable Prosperity Act* (EGSPA) became law in 2007. The purpose of the Act is to set specific goals to make Nova Scotia one of the cleanest and most sustainable environments in the world by the year 2020. The Act contains 23 goals and requires the government to report on progress meeting those goals annually. The EGSPA will be reviewed, including an opportunity for public comment, in 2012.

On August 25, 2009 the government provided a second progress report on achievements under EGSPA. The following information is taken from that report and focuses on the goals that are most closely related to agricultural activities.

### **Goal: A comprehensive water resources management strategy will be developed by the year 2010**

A discussion paper on water resources management was written to inform the broad public and consultations took place between January and June 2008. Government is now reviewing its own programs and policies. A second public consultation was anticipated in late 2009; however as of January 2010 no such consultation has taken place. For more information see <http://www.gov.ns.ca/nse/water.strategy/>.

The government has also made coastal management a priority. The state of Nova Scotia's Coast Report was released in 2008 and a Coastal Strategy is expected in 2010. For more information see <http://www.gov.ns.ca/coast/>.

### **Goal: A policy of preventing net loss of wetlands will be established by the year 2009**

The EGSPA defines "net loss of wetlands" to mean net loss of wetland area and function, including habitat. The Nova Scotia Environment Act requires an approval for any alteration of a wetland (see question 8). It is anticipated that the implementation of the Policy will tighten the restrictions for wetland alteration. The Nova Scotia Wetlands Conservation Policy – Draft for Consultation was released in the Fall of 2009. A committee of the Nova Scotia Federation of Agriculture met with a government representative during the consultation period and the NSFA has submitted comments on the draft Policy. For more information see <http://www.gov.ns.ca/nse/wetland/conservation.policy.asp>.

### **Goal: The solid-waste disposal rate will be no greater than three hundred kilograms per person per year by the year 2015 through measures that include the development of new programs and product stewardship regulations**

This target was originally set in amendments to the *Environment Act* in 2006. A disposal rate of 300 kilograms per person per year represents an approximate 30 per cent decrease from our current rate. The government held produced a consultation paper entitled *Thinking Outside the Landfill* and held consultations in 2009. A summary report of the consultations was released in late 2009. A renewed Solid Waste Resource Management Strategy is expected in the Spring of 2010. For more information see <http://www.gov.ns.ca/nse/waste/strategy.asp>.

**Goal: Greenhouse gas emissions will be at least ten per cent below the levels that were emitted in the year 1990 by the year 2020, as outlined in the New England Governors and Eastern Canadian Premiers Climate Change Action Plan of 2001**

In January 2009, the government released the Climate Change Action Plan (CCAP), which focuses on reducing greenhouse gases from all sources; and the 2009 Energy Strategy. The CCAP gives guidance to industries, businesses, government and individuals about what they must do to meet the 2020 target. On August 14, 2009 the government passed the Greenhouse Gas Emission and Air Pollutant Regulations. The Regulations set specific caps on greenhouse gas emissions from the electricity sector over a multi-year period between 2010 and 2020. For more information see <http://www.climatechange.gov.ns.ca/>.

**Goal: The Province will adopt emissions standards for greenhouse gases and air pollutants from new motor vehicles, such as the standards adopted by the State of California by the year 2010**

The greenhouse gas component of the California vehicle emission standards took effect in that state in 2009 and will reduce greenhouse gas emissions by 23 per cent in 2012 and 30 per cent in 2016. It has been estimated that a similar standard in Nova Scotia would save drivers between \$3,500 and \$5,000 in fuel costs over the lifetime of a vehicle. In addition to increasing greenhouse gases, vehicles also emit air pollutants, such as nitrogen oxide and particulate matter, which are harmful to human and environmental health. Like the California standards, the Nova Scotia government is committing to adopting vehicle standards that limit both greenhouse gas and air pollutant emissions. The provinces and federal government must agree on one national standard in order for manufacturers to make the changes. The federal government announced in April 2009 that it will use the federal Canadian Environmental Protection Act to regulate light duty vehicle emissions beginning with 2011 models.

**Goal: Eighteen and one-half per cent of the total electricity needs of the Province will be obtained from renewable energy sources by the year 2013**

Prior to 2001, approximately 8.5 per cent of Nova Scotia's electricity was generated from a renewable supply. The *Renewable Energy Standard Regulations* require, by 2013, an additional 10 per cent of the electricity supply to come from renewable generation facilities built in Nova Scotia after 2001 (5 per cent more by 2010, another 5 per cent by 2013). This includes hydro, wind, solar, tidal, and biomass sources. For more information see <http://www.gov.ns.ca/energy/renewables/>. As of January 2010 the Nova Scotia Power Inc. website states that 12% of Nova Scotia's electricity is generated by renewable sources (<http://www.nspower.ca/en/home/environment/renewableenergy/default.aspx>).

**Goal: All new residential dwelling units constructed in the Province will be required to achieve an EnerGuide rating of 80, or meet energy conservation measures adopted in the Nova Scotia Building Code Regulations made under the Building Code Act after January 1, 2011**

In 2011 all new construction will meet either EnerGuide 80 or comparable prescriptive requirements. Labour and Workforce Development and Conserve Nova Scotia are currently working with the Nova Scotia Building Advisory Council to develop energy efficiency requirements for insertion in the *Building Code Act* for new single-family, multi-unit residential and all commercial buildings. This will be a significant advance over the goal established in the

Act, which applies only to residential units. Work on the Building Code changes is on schedule for implementation on January 1, 2011, as required by the Act.

**For more information:**

On-line Resources:

Environmental Goals and Sustainable Prosperity Progress Report 2009

<http://www.gov.ns.ca/nse/egspa/docs/EGSPA.2009.Annual.Report.pdf>

<http://www.gov.ns.ca/nse/egspa/>

Reference Section:

EGSPA

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## Question 16

Am I required to reduce greenhouse gas emissions on my farm?

### Answer:

To date, there are no federal or provincial regulations in place that specifically require farmers to reduce GHG emissions that result from agricultural activities.

Studies indicate that farming contributes approximately 10 percent of Canada's total GHG emissions; however 50% of nitrous oxide emissions and 30 % of methane emissions result from agricultural activities.

The primary sources of GHG emissions from agricultural activities are as follows:

- Methane gas (CH<sub>4</sub>) emissions from farm animals, the anaerobic decomposition of manure and from soils.
- Nitrous Oxide (N<sub>2</sub>O) emissions from agricultural field production (i.e. the application of mineral and manure fertilizers, production of crop residues and the cultivation of organic soils), the collection and storage of manure and the direct deposit of manure on pasture by grazing animals.
- Carbon dioxide (CO<sub>2</sub>) emission from soils and during fossil fuel combustion by farm machinery.

### Federal Canadian Environmental Protection Act

The federal government has committed to reducing Canada's total emissions of greenhouse gases, relative to 2006 levels, by 20% by 2020 and by 60% to 70% by 2050. On April 26, 2007, the Government of Canada released *Turning the Corner: An Action Plan to Reduce Greenhouse Gases and Air Pollution*. The *Action Plan* included a *Regulatory Framework for Industrial Greenhouse Gas Emissions*, which set reductions in emission intensity from 2006 levels that will come into force in 2010. Agriculture is not included in the sectors directly affected by the *Regulatory Framework*.

Carbon dioxide, methane and nitrous oxide have all been added to the List of Toxic Substances under the *Canadian Environmental Protection Act* (CEPA). This means that the federal government can require companies to submit information on these gases and can put regulations in place to control emissions. In February 2008 the federal government issued a notice requiring any company that releases 100 000 tonnes of "carbon dioxide equivalent" or more of GHGs in the 2008 calendar year to report the releases to the government. A "carbon dioxide equivalent (CO<sub>2</sub> eq.)" is a unit of measure used to allow the addition of or the comparison between gases that have different global warming potentials. For example, methane has 12x the global warming potential than carbon dioxide and nitrous oxide has 120x the global warming potential.

The federal reporting requirements set out in CEPA do not currently impact agriculture directly.

## **Provincial Environmental Goals and Sustainable Prosperity Act**

Nova Scotia's *Environmental Goals and Sustainable Prosperity Act* states that greenhouse gas emissions will be at least ten per cent below the levels that were emitted in the year 1990 by the year 2020. To meet this goal the government has produced a Renewed Energy Strategy and Climate Change Action Plan. The Background paper supporting the Climate Change Action Plan recognized that agriculture can play a significant role in capturing and managing GHG emissions. The Climate Change Action Plan commits to the creation of a Chair in Farm Energy Conservation at the Nova Scotia Agricultural College.

On August 14, 2009 the government passed the Greenhouse Gas Emission and Air Pollutant Regulations. The Regulations set specific caps on greenhouse gas emissions from the electricity sector over a multi-year period between 2010 and 2020. The Regulations do not have a direct impact on agriculture.

## **Agricultural Initiatives**

Farmers all over Canada are engaged in projects to help reduce and capture greenhouse gases. Examples include: better practices in the application of nitrogen fertilizers to reduce nitrous oxide emissions; low-till and no-till farming techniques to minimize soil disturbance and reduce the release of emissions from the soil; and tree-growing projects on marginal land to sequester carbon. The Nova Scotia Federation of Agriculture currently has a pilot project underway that will identify case study farms that will be audited for GHG emissions and carbon offset creation potential.

## **For more information:**

### On-line Resources:

Turning the Corner: Regulatory Framework for Industrial Greenhouse Gas Emissions  
[http://www.ec.gc.ca/doc/virage-corner/2008-03/541\\_eng.htm](http://www.ec.gc.ca/doc/virage-corner/2008-03/541_eng.htm)

Climate Change Action Plan Background Paper  
<http://www.gov.ns.ca/energy/resources/spps/energy-strategy-2008/Climate-Change-2007.pdf>

Climate Change Action Plan  
<http://climatechange.gov.ns.ca/doc/ccap.pdf>

### Reference Section:

EGSPA

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## Question 17

What are biosolids, and can I use them to fertilize crops on my land?

**Answer:**

### **What is a biosolid?**

The provincial Department of Environment (NSE) has three documents that address the application of 'biosolids' to land. The documents are: Guidelines for Land Application and Storage of Municipal Biosolids in Nova Scotia (Revised), July 2009; Codes of Practice for the Application of Non-agricultural Organic Wastes (NAOW) on Agricultural Land, 2005; and The Guidelines For Land Application and Storage of Biosolids in Nova Scotia, 2004.

Each of these documents define biosolids in a slightly different way, so I have selected the most current definition taken from the July 2009 Guidelines.

“Municipal Biosolids” refers to an organic, stabilized material produced during the treatment of domestic sewage and septage sludge which have undergone secondary treatment to reduce pathogen content.

Biosolids exist as a result of improved waste management practices. Areas that do not have wastewater treatment facilities generally flush untreated (raw) sewage into a freshwater or marine environment. As communities in Nova Scotia treat their wastewater the sewage sludge that remains after the treatment must be addressed. To dispose of this sludge the community must send it to a landfill, incinerate it or stabilize it to create municipal biosolids.

Biosolids have been used in land application for agriculture, land reclamation, topsoil manufacture and landfill cover. The use of biosolids for these purposes, and particularly for land application in agriculture, is controversial in Nova Scotia.

Those who support the land application of biosolids argue that it is the most efficient and environmentally benign means of disposing of sewage sludge. It provides a safe and effective low-cost fertilizer for farmers and turns waste into a useful product.

Those who oppose the land application of biosolids argue that the product contains contaminants that could prove harmful to human health and the environment. There is no comprehensive, independent, third party testing of the biosolids to ensure safety and efficacy.

Table 17.1 Supporters v. Detractors

In favour of land application of biosolids.	Against land application of biosolids.
Testing is comprehensive and includes all contaminants of concern.	Testing includes only a small percentage of contaminants. Many contaminants that could be harmful to the environment or human health are not tested.
Testing is undertaken in accordance with a strict protocol set out by the provincial government.	Testing is not conducted by a neutral third party; it is undertaken by individuals who are employed by the company producing the product.
Testing parameters and allowable limits are set using a rigorous scientific approach.	There is scientific uncertainty around the future impacts of allowing certain contaminants to be spread on agricultural land.

### How are biosolids regulated?

#### Provincial

The Nova Scotia *Environment Act* and Regulations require that the application to land of non-livestock generated wastes, wastewater and wastewater sludges only take place with an approval from NSE.

The 2009 Guidelines for Land Application and Storage of Municipal Biosolids in Nova Scotia create two classes of municipal biosolids, Class A and Class B. The biosolids are classified based on the pathogen and metal content, the wastewater characteristics and the type of treatment they receive.

NSE has indicated that municipal biosolids that meet the Class A criteria in the 2009 Guideline do not require an Environment Act approval for land application as long as the facility (i.e. wastewater treatment plant) producing the Class A municipal biosolids holds an approval from NSE.

Municipal biosolids that meet the Class B criteria do require an approval for land application and must follow the 2009 Guidelines.

All biosolids, regardless of classification can only be applied to agricultural land when done so in accordance with the Codes of Practice for the Application of Non-agricultural Organic Wastes (NAOW) on Agricultural Land, 2005.

#### Federal

The Canadian Food Inspection Agency (CFIA) regulates fertilizers and soil supplements through the *Fertilizers Act* and the Fertilizer Regulations. Products sold or imported into Canada must be registered and comply with federal labeling and safety standards.

The term biosolid is not defined in the *Fertilizers Act* however the Act does refer to ‘processed sewage’. Processed sewage includes products made from sewage, freed from grit and coarse solids, that are dried, ground and screened. These products are exempt from registration under the Act but must comply with other requirements in the Act and Regulations.

Section 11 of the Act prohibits any fertilizer or supplement from containing any substance in quantities likely to be generally detrimental or seriously injurious to vegetation (except weeds),

domestic animals, public health or the environment when used according to directions. The CFIA undertake routine market place monitoring on a regional basis to ensure that regulated products are in compliance.

### **Can I apply biosolids to my land as fertilizer?**

According to the 2009 Guidelines for Land Application and Storage of Municipal Biosolids in Nova Scotia, Class A municipal biosolids from an approved facility can be land applied. Farmers who wish to use Class A municipal biosolids are not required to apply for an approval or engage in monitoring or reporting of the product use.

Farmers who wish to use Class B municipal biosolids must first obtain an approval from NSE and must follow the 2009 Guidelines. The Guidelines include soil and siting requirements, signage requirements, monitoring, reporting and recordkeeping.

Governments, universities and private companies continue to research and test biosolids to determine the long-term safety as an agricultural soil amendment. Public perception of the application of biosolids on agricultural land continues to be in a state of flux. As mentioned above, there are opposing views on the safe and acceptable uses for biosolids.

Some of the uncertainties expressed by members of the public include:

- Lack of clarification on what is a biosolid (sludge, treated, non-treated, composted, etc)
- Lack of clarification on what a biosolid may or may not contain.
  - human waste only
  - industrial waste
  - medical waste
  - motor oil
  - chemicals
- Lack of agreement on appropriate sampling and testing requirements.
- Scientific uncertainty regarding acceptable levels of contaminants in agricultural soil.
- Conflicting expert opinions reflected in the media.
- Differing opinions on the characterization of biosolids as waste or beneficial product.

The Nova Scotia Federation of Agriculture (NSFA) has expressed the following policy objective around the land application of biosolids:

The Federation recognizes that the use of non-livestock generated waste, for example, wood ash, bio-solids and sludge on agricultural land can create public perceptions that may not be conducive to the industry's focus on food safety; therefore the Federation does not encourage the use of non livestock generated waste as a soil amendment on agricultural land until there are recommendations based on sound science and food safety protocols (NSFA Policy Initiatives 2010).

### **For more information:**

#### On-line Resources:

- Guidelines For Land Application and Storage of Biosolids in Nova Scotia, NSE, 2004



- Codes of Practice for the Application of Non-agricultural Organic Wastes (NAOW) on Agricultural Land, 2005
- Guidelines for Land Application and Storage of Municipal Biosolids in Nova Scotia (revised), 2009 <http://www.gov.ns.ca/nse/water/docs/BiosolidGuidelines.pdf>
- NSFA Policy Initiatives for 2010 <http://www.nsfafane.ca/files/images/file/Policy%20Paper%20-2010.pdf>

Reference Section:

Environment Act, section 50(2)

page

Activities Designation Regulations, section 23

page

**A Resource for Farm Businesses:  
Q & A on Environmental Law (2010)**

**PART III  
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## Question 18

Is the smell of manure or the noise from farm equipment an environmental issue?

### **Answer:**

The *Environment Act* does not require farmers to obtain an approval to manage the smell of manure or the noise of farm equipment.

The smell of manure or the noise from farm equipment may be an environmental issue, if the Minister of the Environment determines that the smell or noise is causing an adverse effect to the environment. Section 67 of the *Environment Act* prohibits the release of any substance into the environment if it is in an amount that may cause an adverse effect. The definition of “substance” is very broad and could include smell or noise. The definition of “adverse effect” is also broad and includes an effect that impairs or damages the environment, including an adverse effect respecting the health of humans or the reasonable enjoyment of life or property. Given these broad definitions, a farmer could be prosecuted for causing an adverse effect where the smell or noise has resulted only in a disturbance to a person’s reasonable enjoyment of life or property.

As a result of the broad scope of the *Environment Act*, the Departments of Environment and Agriculture have a Memorandum of Understanding in place which provides for a joint investigation process. When a complaint relating to agriculture is made under the *Environment Act*, staff of both departments will investigate. If the activity appears to be causing an adverse environmental effect, it will be handled by the NSE staff. If the activity is not causing an adverse effect to the environment but maybe a nuisance, it will be handled by the DOA staff. The DOA staff will work directly with the farmer to try and solve the problem. If a resolution is not easily reached the complaint may be addressed under the *Farm Practices Act* (see Question 19).

### **For more information:**

#### Reference Section:

Environment Act, section 3(c) and 3(au)	page	8
Environment Act, section, 67	page	8

## Question 19

What should I do if someone complains about my farm practices?

### Answer:

Public complaints about agricultural activities are often jointly investigated by staff from the Nova Scotia Department of Agriculture and NSE. Question 18 provides an overview of the broad application of the *Environment Act* and the role of the joint investigation.

The NSE will look into all complaints that fall within the regulatory authority of the Nova Scotia *Environment Act*. In some instances, the inspector may decide that the complaint concerns a nuisance issue, such as smell or noise, and it may be addressed by the *Farm Practices Act*. The *Farm Practices Act* protects farmers who are engaged in “normal farm practices” from actions by their neighbors and others. The Act defines a “normal farm practice” as a practice that is conducted as part of an agricultural operation:

- (i) in accordance with an approved code of practice,
- (ii) in accordance with a directive, guideline or policy statement set by the Minister of Agriculture with respect to an agricultural operation or normal farm practice, or
- (iii) in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations under similar circumstances, including the use of innovative technology used with advanced management practices.

The *Farm Practices Act* prevents a complainant from suing a farmer in nuisance unless the Farm Practices Board determines that the farmer is not using ‘normal farm practices’ or the farmer has failed to comply with an order from the Board. An application to the Farm Practices Board costs \$250.00. The Board will hear the concerns of the complainant and the farmer before making a decision regarding the farm practice. The Board may choose to hold public hearings on the application. Ultimately, the Board will determine whether the activity complained of is a ‘normal farm practice’.

The Board may decide that:

- the farm is following normal practices and take no further action;
- the farmer must make changes in order to follow normal farm practices and if so, issue an order to the farmer explaining the modifications necessary; or
- the farm activity is unacceptable and orders it to cease.

Failure to comply with an order of the Board is an offence under the Act and may lead to a fine of up to \$2000.00. Failure to pay a fine can lead to a prison term of up to 6 months. The decision of the Farm Practices Board can be appealed to the Supreme Court of Nova Scotia on a question of fact or law.

Whether the complaint is addressed by the NSE or the Farm Practices Board, communication with the complainant and efforts directed at resolving the concerns are often the best means of preventing future problems.

Codes of Practice: Under the *Farm Practices Act*, any person may ask the Minister to develop a code of practice, related to a farm activity. The Minister may refer this to the Board for an opinion. If the Board recommends the code of practice the Minister must take the steps necessary to develop a code of practice.

Restriction on application of by-laws: The *Farm Practices Act* requires that municipal by-laws that address nuisance, including odour, noise, dust, vibration, light, smoke or other disturbance cannot restrict a normal farm practice carried on as part of an agricultural operation.

**For more information:**

Reference Section:

Farm Practices Act	page	21
Farm Practices Board Regulations	page	23

## Question 20

Can I stop someone from hunting or fishing on my land?

### Answer:

#### Civil Action for Trespass

A person who comes on to your land without your permission or some legal authority is trespassing. There is no law in Nova Scotia that provides hunters with a legal right to hunt on private property. To ensure that hunters are aware of your property boundaries and your wish to prohibit hunting on your property, you may choose to post signs indicating “Private Property – No Trespassing or Hunting”. If you have given a person permission to hunt on your property and you wish to withdraw that permission you must inform them and give them a reasonable time to leave the property.

If a person trespasses on to your property, you have a right to take legal action against them through a lawsuit.

#### Protection of Property Act

The *Protection of Property Act* provides owners and occupiers of property with certain rights to protect their property. This law does not replace a property owner’s right to sue someone who trespasses. The *Protection of Property Act* makes it an offence for any person without legal justification or permission of the occupier to:

- enter on premises that is a lawn, garden, orchard, vineyard, golf course or acreage managed for agricultural crops;
- enter on premises that are apparently a tree plantation area or a Christmas tree management area;
- enter on premises that are enclosed in a manner that indicates the occupier’s intention to keep persons off the premises or to keep animals on the premises;
- dump or deposits material of any kind or causes, suffers or permits material to be dumped or deposited on premises;
- enter on premises where entry is prohibited by notice (i.e. no trespass sign); or
- engage in an activity that is prohibited on the premises by notice (i.e. no hunting sign).

If your property falls into one of the categories listed above, the *Protection of Property Act* prohibits trespass and a police officer could arrest and detain someone who refuses to leave the property. The person can be fined up to \$500.00. If the property owner asks the person to leave the premises and they refuse, they may receive a further \$500.00 fine. It may be difficult for the police officer to respond if the person has already left the property.

Signs to prohibit trespass on the property must be clearly visible in daylight under normal conditions from the approach to each usual point of access to the premises.

The *Protection of Property Act* does allow certain activities to take place on forested land, as long as the forested land is not a tree plantation, a forestry study area, woodland being harvested or a

commercial berry growing area. The Act states that on forest land a person cannot be prosecuted for failing to comply with a notice (i.e. no trespassing sign) if they are hunting (in accordance with the *Wildlife Act*) fishing, picnicking, camping, hiking, skiing or engaged in another recreational activity. This does not prevent the property owner from taking an action (via a lawsuit) it only means that the person will not be prosecuted under the *Protection of Property Act*.

### Fishing

The *Angling Act* permits residents of Nova Scotia to go on foot along the banks of any river, stream or lake, and to cross uncultivated or Crown lands, for the purpose of lawfully fishing with rod and line in rivers, streams and lakes. The owner of the property cannot interfere with the angler's right of entry. This law does not permit anglers to camp or drive vehicles over another person's property. The right is strictly limited to travel on foot. The *Angling Act* only applies to individuals who are fishing with a rod and line. It would not apply to clam digging or other similar recreational activities.

### Legal Justification

Other provincial laws, such as the *Land Surveyors Act*, *Mineral Resources Act*, *Endangered Species Act* and *Wildlife Act* provide certain government officials or classes of individuals the right to enter private land. Their right to enter private land is restricted to carrying out the activities under the law. For example, a land surveyor does not have the right to enter private property to hunt.

### Right of Way

A person may gain legal access to private property through a right of way. For example, a person who owns property behind yours may have a right to cross your property to access their land. A "right of way" runs with the land. In other words, if you grant a right of way to a neighbor, the right of way continues even if you sell the land to someone else. Under the *Private Ways Act*, the government has the power to issue a right of way in special circumstances.

### **For more information:**

#### Reference Section:

Protection of Property Act, sections 3, 7, 15	page	36
Angling Act, section 3	page	6
Land Surveyors Act, section 15	page	27
Endangered Species Act, section 7(6)	page	7
Wildlife Act, section 96	page	39

## Question 21

How can I prevent all terrain vehicles (ATV's) from driving on my property? Are there restrictions on the operation of an off-highway vehicle for farm use?

### Answer:

The Nova Scotia *Off-Highway Vehicles Act* provides that no person can operate an off-highway vehicle on a sidewalk, walkway, school grounds, utility service lane, cultivated land, private forest land, campground, golf course, park, playground or any private property, without the written permission of the owner or occupier. The Act further prohibits the operation of an off-highway vehicle in or on a wetland, swamp, marsh, watercourse (unless frozen), a sand dune, a coastal or highland barren or a designated sensitive area.<sup>4</sup>

The Act defines 'off-highway vehicle' to include a snow vehicle, all-terrain vehicle, motorcycle, mini bike, four-wheel-drive or low-tire-pressure vehicle or a dune buggy.

The owner, operator or passenger of an off-highway vehicle who is traveling on private land assumes all risks related to the use of the off-highway vehicle, except a deliberate danger created by the owner/occupier of the land intended to do harm. The assumption of risk exists even where permission to enter onto the land has been granted. Furthermore, a person operating an off-highway vehicle cannot annoy or worry a domestic or farm animal or wildlife and they cannot increase the original noise level of the machine. Any person who violates the *Off-Highway Vehicles Act* may be charged with an offence and fined not less than \$250.00 and not more than \$2000.00.

Although there are no restrictions that specifically relate to the use of ATVs on farms (for farming purposes), the Act does require any person who operates an off-highway vehicle to have a permit and the owner of the vehicle to be in possession of an identification number for that vehicle. As well, the operator must complete safety training and be certified. The Act prohibits a child under the age of 14 from operating an all terrain vehicle.<sup>5</sup> A young person between the ages of 14 and 16 can operate an off-highway vehicle under the direct supervision of a parent. The parent and the child must be certified to operate the vehicle.

The *Protection of Property Act* states that every person who disturbs an occupier of premises by the unreasonable operation for recreational purposes of a motor vehicle, or in the vicinity of the premises is guilty of an offence and liable of a fine of up to \$500.00.

The use of an ATV on private property without the owner's permission is trespass. The property owner has the right to take legal action (lawsuit) against the trespasser. For more information on trespass, see Question 20.

### For more information:

#### Reference Section:

Off-Highway Vehicles Act, sections 2, 12-16	page 34
Protection of Property Act, section 7	page 36

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<sup>4</sup> There are some limited exceptions to these prohibitions in section 12A (2)-(4).

<sup>5</sup> Children under the age of 14 can operate snowmobiles, motorcycles, mini-bikes and dune buggies in restricted circumstances.



## Question 22

If someone enters my property uninvited am I responsible for any accidental injury to that person?

### Answer:

The Nova Scotia *Occupiers' Liability Act* requires occupier's of property to exercise a certain level of care to protect any person who enters their property, even where that person is uninvited.

In general, an occupier must ensure that their property is reasonably safe. This duty applies to the (1) condition of the property, (2) activities on the premises, and (3) conduct of third parties on the premises.

A judge would consider the following to determine whether the occupier of the property has discharged their duty to protect persons who enter their property:

- the knowledge that the occupier has or ought to have of the likelihood of persons or property being on the premises;
- the circumstances of the entry into the premises;
- the age of the person entering the premises;
- the ability of the person entering the premises to appreciate the danger;
- the effort made by the occupier to give warning of the danger concerned or to discourage persons from incurring the risk; and
- whether the risk is one against which, in all the circumstances of the case, the occupier may reasonably be expected to offer some protection.

Generally, a greater responsibility exists to protect persons who are invited on to your property, particularly if they have paid to be there.

### Persons engaged in criminal activity

If a person is trespassing and is engaged in criminal activity, such as theft, the only duty required is the duty not to create a danger with the deliberate intent of doing harm or damage to the person; and not to act with reckless disregard of the presence of the person.

### Persons on off-highway vehicles

If a person is operating an off-highway vehicle or is a passenger on an off-highway vehicle, the *Off-highway Vehicles Act* limits the duty of the landowner or occupier to a duty not to create a danger with the deliberate intent of doing harm. This limited duty applies even where permission has been granted to enter the property (see Question 21).

### Limited duty on certain types of property

The duty to provide protection on certain types of property is also limited. For example:

- land used primarily for agricultural or forestry purposes;
- vacant or undeveloped rural land;
- forested or wilderness land;

- private roads situated on lands referred to above;
- other private roads that are reasonably marked by notice as private, where persons are physically restricted from access by a gate or other structure; and
- recreational trails reasonably marked by notice as such.

For these properties, any person who enters the premises is deemed to have willingly assumed all the risks and the only duty created is to not create a danger with the deliberate intent of doing harm or damage to the person or property of that person; and not to act with reckless disregard of the presence of the person or property of that person.

The *Trails Act* limits liability for owners or occupiers of property that have a designated trail running through the property. The property owner or occupier is only liable if they create a danger with deliberate intent of doing harm or damage to the person using the trail or the person's property.

**For more information:**

Reference Section:

Occupiers Liability Act, sections 2, 4-6	page	32
Off-Highway Vehicles Act, section 14A	page	34
Trails Act, section 18	page	38

## Question 23

Am I required to maintain a particular type of fence for my livestock?

### Answer:

#### Fences and Impounding of Animals Act

Yes. The Nova Scotia *Fences and Impounding of Animals Act* requires all fences of enclosed lands to be built of stones, pickets, boards, logs, poles, brush, posts and rails, or posts and wires, barbed or plain, unless the lands are bounded by unfordable ponds, rivers or the sea or surrounded by sufficient hedges.

The *Fences and Impounding of Animals Act* only applies to municipalities that are not designated under the *Fences and Detention of Stray Livestock Act*. See the list of municipalities in the Reference Section.

#### Fences and Detention of Stray Livestock Act

The Nova Scotia *Fences and Detention of Stray Livestock Act* provides that the owner of a livestock farm must build and maintain fences adequate to prevent his livestock from escaping from his farm. Under this Act if any person believes that a livestock fence is not adequate, he may notify the clerk of the municipality in which the land is located and the clerk will refer the matter to the chair of the fences arbitration committee for that municipality. The fences arbitration committee will convene within 7 days of receiving the referral and the appropriate fee, to address the issue of concern. Following consultation with the affected parties the committee may issue an order to:

- determine the location, height and materials of construction of any fence;
- determine the manner of maintenance of a fence;
- direct the owner of a farm to construct or maintain any fence in accordance with this Act;
- determine the proportion of costs of building and maintaining any fences and common boundaries to be borne by each of the adjoining livestock farm owners pursuant to this Act;
- take any immediate action necessary including, the removal and boarding of livestock if it is determined there is a risk to the public, the livestock or property.

If livestock stray onto another person's land and that person does not know who owns the livestock, they can detain the livestock. If the livestock remains unclaimed (after advertisements, etc.) the fences arbitration committee for the municipality can sell the livestock. If your livestock causes damage you must pay the injured person compensation.

Not all municipalities have a designation under the *Fences and Detention of Stray Livestock Act*. A list of the designated municipalities can be found in the Reference Section. Municipalities not designated operate under the authority of the *Fences and Impounding of Animals Act* in handling livestock fencing disputes.

#### Deer and Game Farm Animal Sites

The *Deer Farming and Marketing of Deer Products Regulations* under the *Wildlife Act* regulated deer farming in Nova Scotia. The Regulations require a deer farm license to operate a deer farm or hold a deer farm animal in captivity. Appropriate fencing is a condition of a license. If a deer farm animal escapes the license holder must notify the Minister of Natural Resources within 24 hours of the escape and provide a full report to the Minister within fifteen days. If the animal is not recovered within fifteen days of the date of notification, it becomes the property of the Crown.

**For more information:**

Reference Section:

Fences and Impounding of Animals Act, sections 3-5	page	26
Fences and Detention of Stray Livestock Act, sections 5, 6, 9	page	24
Municipalities Designated under the Act	page	25
Deer Farming and Marketing of Deer Products Regulations, Sections 2, 4, 11	page	39

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## Question 24

Can municipal planning strategies and by-laws affect the use of my land?

### **Answer:**

The *Municipal Government Act* is a provincial law that provides extensive authority to municipalities to control land use and development. The Act allows municipalities to develop municipal planning strategies and land-use by-laws respecting the development of land in their jurisdiction. In setting these strategies the municipal government has broad discretion to consider social, environmental and financial effects of development. Once a municipal planning strategy is in place, new development that is inconsistent with the planning strategy is not permitted.

As an example, Kings County Land Use By-law # 75 identifies an Agricultural (A1) Zone to provide for agriculture as a dominant use which is to have priority over all other uses. The identification of the A1 Zone is based on the soil type found on the Agricultural Land Use Information Maps. Land Use By-law # 75 enables the municipality to restrict non-farming activities on these lands. The land use by-law is addressed in the Kings County Municipal Planning Strategy, the Strategy states:

By examining trends, it is thought that, without intervention, there would be a significant amount of non-farm development on prime agricultural land. For this reason, Municipal Council has defined an Agricultural District where an expansion of farming activities is promoted and new non-farm uses are discouraged. The District is to be the 'home' for agricultural development with few limitations on farming activities.

Municipal governments also have authority to regulate a variety of activities including fencing, outdoor storage of goods, machinery, vehicles, building materials, waste materials, etc., and the location of disposal sites for any waste material.

The *Municipal Government Act* provides municipalities with the authority to impose by-laws to address nuisance concerns (i.e. noise, weeds, burning, odours, fumes and vibrations); however, the *Farm Practices Act* prevents a municipal nuisance by-law from restricting a normal farm practice carried on as part of an agricultural operation.

Municipal by-laws like any law may be enforced once they are in place. There are however, opportunities for members of the public and concerned citizens to have their views considered before the by-law is passed. The *Municipal Government Act* requires that all municipal planning strategies and land use by-laws be made available for public consultation before they are finalized. In most instances a public hearing is required.

If a municipality passes a land-use by-law that you sincerely believe will adversely affect the value, or reasonable enjoyment, of your property or property you occupy it may be possible to appeal the by-law to the Nova Scotia Utility and Review Board. The circumstances in which an aggrieved person can appeal are limited and advice should be sought prior to launching an appeal.

### **For more information:**

#### On-line Resources:

Nova Scotia Utility and Review Board  
<http://www.nsuarb.ca/functions/adjudicative/planning/index.html>

Reference Section:

Municipal Government Act, sections 168, 172, 174, 203, 205, 212, 213, 220	page 28
Farm Practices Act, section 12	page 21

## Question 25

What is the “provincial interest statement on agriculture”?

### Answer:

In designing municipal planning strategies and land-use by-laws documents, municipal governments are required to ensure that the documents are reasonably consistent with provincial statements of interest. The “provincial statements of interest” are contained in Schedule B of the *Municipal Government Act*.

The *Municipal Government Act* includes a provincial statement of interest on agriculture that has as its goal, to protect agricultural land for the development of a viable and sustainable agriculture and food industry.

The statement of interest on agriculture includes the following provisions:

1. Planning documents must identify agricultural lands within the planning area.
2. Planning documents must address the protection of agricultural land. Measures that should be considered include:
  - (a) Giving priority to uses such as agricultural, agricultural related and uses which do not eliminate the possibility of using the land for agricultural purposes in the future. Non-agricultural uses should be balanced against the need to preserve agricultural land.
  - (b) Limiting the number of lots. Too many lots may encourage non-agricultural development. The minimum size of lots and density of development should be balanced against the need to preserve agricultural land.
  - (c) Setting out separation distances between agricultural and new non-agricultural development to reduce land-use conflicts.
  - (d) Measures to reduce topsoil removal on lands with the highest agricultural value.
3. Existing land-use patterns, economic conditions and the location and size of agricultural holdings means not all areas can be protected for food production, e.g., when agricultural land is located within an urban area. In these cases, planning documents must address the reasons why agriculture lands cannot be protected for agricultural use. Where possible, non-agricultural development should be directed to the lands with the lowest agricultural value.

Although governments are not required to comply with the provincial interest statements, they do serve to guide provincial government departments, municipalities and individuals in making decisions regarding land use. They are supportive of the principles of sustainable development. The Act states that development undertaken by the Province and municipalities should be reasonably consistent with the statements.



**For more information:**

On-line Resources:

Provincial Interest Statements

<http://www.gov.ns.ca/snsmr/muns/plan/provint/default.asp>

Reference Section:

Municipal Government Act, section 198, Schedule B

page 28

## Question 26

What can I do if the government tries to expropriate my land?

### Answer:

Expropriation in Nova Scotia is regulated by the *Expropriation Act*. Expropriation is the taking of land without the consent of the owner by an expropriating authority given the power to expropriate under a statute.

Under the *Expropriation Act* the province is authorized to expropriate land for the following reasons:

- Any purpose for which a minister is authorized under a specific Act.
- To carry out an agreement between the province and the federal government or a city, town or municipality if the agreement is financed from public funds.
- Any public works such as highways, roads and bridges, and public buildings.
- Any other purpose that is a public purpose.

The *Expropriation Act* provides for a means of compensating persons whose land is expropriated. Compensation is generally set at the market value of the property, which is the price a willing buyer would pay to a willing seller on the open market. The compensation that is paid to the owner of the land is the aggregate of:

- the market value of the land,
- reasonable costs, expenses and losses arising out of or incidental to the owners,
- damages for injurious affections,
- value to the owner of any special economic advantage to him arising out of or incidental to his actual occupation of the land.

### Impact on other land

Where only part of an owner's land is taken, compensation may also be claimed for an 'injurious affection' to the remaining lands, including the reduction in their market value and personal and business damages resulting from construction or use, or both, of the works.

### Expropriation of a family home

Where a family home is expropriated, the owner is entitled to an amount that would permit the purchase or construction of a reasonably equivalent home. Where a landowner is forced to relocate as a result of expropriation, he may be entitled to compensation for moving expenses.

### Expropriation affecting business activity

Where a business is located on the land to be expropriated, compensation is to be paid for business loss resulting from the relocation of the business made necessary by the expropriation but these business losses are not determined until the business has moved and in operation for 12 months or until 3 years have elapsed from the date of expropriation, whichever occurs first. If it is not feasible for a business owner to relocate, the compensation for the land is to include an amount for the loss of the business.

Other than making representations to the appropriate authorities, there is little one can do to prevent an expropriation. If the expropriation is approved, the authority simply files certain documents at the registry of deeds, and the expropriation is effective.

If the landowner does not agree with the compensation offered, the amount can be appealed to the Utility and Review Board. One may want to seek advice about the property values from a real estate appraiser and seek legal advice. Even if you do not accept the offer of compensation from the expropriating authority right away, that authority must pay you 75% of its offer while you seek additional compensation. It would be wise to seek legal advice to assist in the process and negotiate fair compensation.

At any time before the compensation has been paid in full, the authority can declare that the land is no longer necessary and is abandoned it – in such a case the land re-vests in the person from whom it was taken.

**For more information:**

On-line Resources:

Nova Scotia Utility and Review Board

<http://www.nsuarb.ca/functions/adjudicative/planning/index.html>

Reference Section:

Expropriation Act, sections 3, 24-30

page 19

## Question 27

Can I put a wind turbine on my farm?

### Answer:

The answer to this question will depend on the location of your farm and the size and type of wind turbine you wish to install. Wind turbines are becoming a popular source of energy in Nova Scotia and the siting and regulation of wind turbines in this area is just beginning to be established.

There are generally two types of wind turbines: small scale turbines and large scale turbines. Nova Scotia Power Inc (NSPI) considers a small scale wind turbine to be in the range of 1kW to 50kW, operated by the owner and connected directly to their own electrical service. NSPI considers a large scale wind turbine to be in the range of 0.6 MW to 2.0 MW and connected with the NSPI distribution and transmission system.

Regardless of the size or type of turbine(s) you wish to put in place there are a number of things that must be considered to ensure that the turbine is effective, safe and will not adversely affect the environment. For information on how much wind exists in your area, you can consult the Nova Scotia Wind Atlas. The Wind Atlas provides a map of wind resources across the province. Environmental and safety considerations include:

- setbacks from other buildings and structures
- separation distances to address noise impacts on neighbors
- impacts on birds and bats
- break down of the equipment resulting in blade throw, ice throw, leaks.

There are no federal laws currently in place that directly address wind turbines.

In Nova Scotia the *Environment Act* requires any wind turbine or combination of wind turbines that can produce at least 2MW of energy undergo an environmental impact assessment.

Most municipalities in Nova Scotia have some means of regulating wind turbine development and several have included statements in the municipal planning strategies that address the development of wind energy in the municipality.

### **Regulatory Approaches to Wind Development Among Nova Scotia Municipalities (2007)**

[taken from *Model Wind Turbine By-laws and Best Practices for Nova Scotia Municipalities* prepared for the Union of Nova Scotia Municipalities, prepared by Jacques Whitford Environment Limited]

Region of Queens Municipality (Planned areas only)	Wind turbine generators were considered as-of-right in some zones but with proposed revisions to Land Use By-law, utility scale wind turbines are now being considered by development agreement.
Cape Breton Regional Municipality	Utility scale wind turbines are permitted as a General Provision throughout the municipality subject to by-law requirements.
County of Pictou	Utility and domestic scale wind turbines are permitted by development permit anywhere in planning area subject to by-law requirements.
County of Kings	Small scale turbines (no greater than 100kW and less than 52m) are permitted by development permit in specific zones subject to by-law

	regulations and turbines under 6.1m are permitted as accessory structures in any zone.
Municipality of East Hants	Mini and small scale wind turbines are permitted as of right subject to by-law requirements and large scale turbines are subjected to site plan approval and associated requirements.
District of Guysborough	Wind turbines and wind farms are permitted by development permit in certain zones subject to by-law requirements.
District of Lunenburg	Small wind turbines (less than 12,000 kWh per year) are permitted in designated zones and large scale wind turbine or multiple wind turbines capable of producing in excess of 12,000 kWh per year are permitted through a development agreement process in District 3.
Halifax Regional Municipality	Wind turbines permitted by development permit in certain zones subject to by-law requirements.

### Kings County Example

In Kings County wind turbine development is addressed in Land Use Bylaw # 75. Bylaw #75 defines “small-scale wind turbine” to mean a turbine that converts the wind’s kinetic energy into either electrical power or mechanical energy. The turbine comprises the tower, rotor blades and nacelle. It shall have a maximum rated output capacity of no greater than 100 kilowatts, a maximum total height no higher than 170 feet, and a minimum rotor clearance no less than 15 feet from grade. Power-generating small-scale wind turbines primarily provide power for on-site usage. Section 3.2.16 provides the requirements that must be met to install a small-scale wind turbine (see the Reference Section for details)

### **For more information:**

#### On-line Resources:

Nova Scotia Wind Atlas [www.nswindatlas.ca](http://www.nswindatlas.ca)

#### Reference Section:

Environment Act, sections 31, 32	page	8
Environmental Assessment Regulations, Schedule A	page	16
Kings County Land Use Bylaw # 75	page	40

**A Resource for Farm Businesses:  
Q & A on Environmental Law (2010)**

**PART V  
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## Question 28

Why do federal and provincial inspectors appear to be doing the same job?

**Answer:**

The federal and provincial governments share responsibility for protection of the environment and the regulation of activities that may impact the environment.

The area where it most often appears that the federal and provincial inspectors are doing the same job is with regard to water.

The Nova Scotia *Environment Act* vests all ‘watercourses’ in the crown (government). This provides the provincial government with significant authority to regulate the quality and quantity of water throughout the province.

The federal government does not have the power to regulate water, unless it crosses provincial borders. However, the federal government does have the power, through the *Fisheries Act*, to protect fish and fish habitat.

For example, if after spreading manure there is a heavy rainfall and the manure runs off the field into a watercourse, both federal and provincial enforcement officers may attend the site. The federal officer is there under the power of the *Fisheries Act* to determine whether or not a “deleterious substance” (the manure) has entered water frequented by fish. The provincial enforcement officer is there under the power of the *Environment Act* to determine whether or not there has been an adverse affect to the watercourse.

**For more information:**

Reference Section:

Environment Act, sections 67(2)

page 8

Fisheries Act, section 36(3)

page 4

## Question 29

What is the difference between an inspection and an investigation?

### **Answer:**

#### Inspections

The purpose of an inspection is to confirm that the company, organization or individual is obeying the law. Inspections take place on premises where there are activities, materials or substances that are subject to a particular law, such as the Nova Scotia *Environment Act*. Under the *Environment Act* any person who holds an approval, certificate of qualification or certificate of variance must allow an inspection to take place.

117 It is a condition of every approval, certificate of qualification or certificate of variance that the holder must forthwith on request permit inspectors to carry out inspections authorized pursuant to this Part of any place, other than a dwelling place, to which the approval, certificate of qualification or certificate of variance relates

An inspector under the *Environment Act* can also enter and inspect any place in or from which the inspector has reasonable grounds to believe a substance is being, has been or may be released into the environment. The enforcement officer or inspector is there to ensure that the company or individual is complying with the requirements of the Act. The enforcement officer does not believe that there has been a violation of the law.

When a legal inspection is underway, the owner or occupier of the premises must give the inspector all reasonable assistance and furnish all relevant information that the inspector may reasonably require. A failure to provide reasonable assistance may be an offence under the Act. For more information, see Question 29.

#### Investigations

The purpose of an investigation is to gather information and evidence to support the prosecution of a suspected violation. If the enforcement officer reasonably believes that there has been a violation of the law, then they have the authority to conduct an investigation. The Canadian *Charter of Rights and Freedoms* applies to individuals and in some instances corporations who are under investigation. In most circumstances (though not all), a search warrant is required before an investigation is commenced.

If an enforcement officer discovers reasonable grounds to suspect a violation during an inspection and chooses to move from the inspection to an investigation immediately, the officer must declare that they believe an offence has been committed and they are conducting an investigation of the alleged offence. For more information, see Question 30.

### **For more information:**

#### Reference Section:

Environment Act, sections 118, 119

page 8

Fisheries Act, section 49

page 4



### Question 30

What should I do if an enforcement officer comes to my farm to carry out an inspection or investigation?

**Answer:**

Also refer to Question 29.

Enforcement officers (also referred to as inspectors) have broad powers under the law to enter and inspect certain properties. Generally speaking, this means any property where there are activities, materials, substances, records, books, electronic data or other documents subject to the law. For example, the federal *Fisheries Act* provides an enforcement officer with the power to enter and inspect any place, other than a private dwelling place, where there is work underway that may result in the deposit of a deleterious (i.e. harmful) substance in to water frequented by fish.

If an enforcement officer arrives on your property to carry out an inspection or an investigation you should ask the officer for (1) identification; (2) the nature of the visit (i.e. inspection or investigation); (3) the authority under which the inspection or investigation is being carried out (i.e. *Environment Act*, *Fisheries Act*, etc.).

#### Inspections

During an inspection, the enforcement officer can examine substance or products, open and examine receptacles, containers or packages and take samples, examine books, records or electronic data and make copies of them.

Given the broad powers of enforcement officers, there is little choice but to fully cooperate with an officer during an inspection. It is generally an offence to obstruct an enforcement officer when they are carrying out their duties. In fact some statutes, including the *Environment Act*, require the owner or occupier of the property to give the inspector all reasonable assistance.

#### Investigations

An enforcement officer may carry out an investigation where they have a reasonable belief that a law has been violated. While carrying out an investigation, the enforcement officer may search the property and seize anything that could provide evidence of the offence. In most cases, an enforcement officer will not conduct a search unless they first obtain a search warrant.

If an enforcement officer indicates that he or she is carrying out an investigation, you should ask the enforcement officer to produce the search warrant. The search warrant will provide you with information on the alleged offence and the search. You should also contact your lawyer immediately. You may ask the enforcement officer to hold the investigation until after you have contacted your lawyer. If the enforcement officer refuses to wait, do not attempt to stop the investigation. It is important to cooperate with the enforcement officer during the investigation; however, it is also important to protect yourself. You should accompany the enforcement officer as he or she examines the property. If the officer takes a sample or a photograph, then you should take a sample or photograph of the same thing. If the officer takes a copy of a document, make a note of the document title and the time it was taken.

The enforcement officer may choose to interview you or one of your employees. Some guidelines to consider during an interview are as follows:

- Cooperate with the officer, do not hinder or obstruct the process.
- Make sure you understand the question before answering. Ask for clarification if necessary.
- Take time in answering the question, think about the question and the answer.
- Do not attempt to answer questions when you do not know the answer.
- Do not guess at the answer or offer opinions, stick to the facts
- Stick to the question asked. Do not wander on to other topics or offer speculation.
- Do not sign anything prepared by the officer, unless instructed by your lawyer.
- If you are under investigation, you are entitled to have a lawyer present during the interview.
- If you believe that you are being detained or coerced into answering question, you may refuse to answer the questions until your lawyer is present.

These are just some of the items that should be considered when an investigation takes place. If you have been informed that you are under investigation it is advisable to contact your lawyer for further advice.

**For more information:**

Reference Section:

Environment Act, sections 118, 119  
Fisheries Act, section 49

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