

**Normal Farm Practices  
Protection Board**

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**Commission de protection des pratiques  
agricoles normales**

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**FILE NO.:** 004Rocca19  
**DATE:** 2022/08/16

**IN THE MATTER OF** the *Farming and Food Production Protection Act, 1998*

**AND IN THE MATTER OF** an application to the Normal Farm Practices Protection Board (“Board”) under Section 5 of the *Farming and Food Production Protection Act, 1998* for a determination as to whether disturbances are a result of normal farm practices

**AND IN THE MATTER OF** an electronic hearing to be held pursuant to the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020*

<b>BETWEEN:</b>	)	
	)	
Jacqueline and Claudio Rocca	)	
	)	Self-Represented
Applicants	)	
	)	
<b>– and –</b>	)	
	)	
Roy and Doris Bayer	)	
	)	Represented by Devan J. Munch
Respondents	)	
	)	

*Before:*  
Christine Greydanus, Vice-Chair; Judy Dirksen, Member; and Rod de Wolde, Member.

*Appearances:*  
Jackie Rocca, Applicant  
Claudio Rocca, Applicant  
Devan J. Munch, Counsel for the Respondents  
Melissa Lefrancois, Witness for the Applicants  
Alan Emiry, Expert Witness for the Applicants  
Rick Armstrong, Witness for the Applicants  
Stephen Redmond, Expert witness for the Applicants  
Doris Bayer, Respondent and Witness for the Applicants  
Roy G. Bayer, Respondent

Gary May, Witness for the Respondents  
Michael F. Payne, Expert witness for the Respondents  
Jim Dunn, Witness for the Respondents  
Jennifer Gravelle, Witness for the Respondents

## DECISION OF THE BOARD

### Procedural Background

- [1] An application, originally received by the Board on April 22, 2019 and amended on a motion, March 19, 2021, was made under section 5 of the *Farming and Food Production Protection Act, 1998* (the “Act”). The amended application alleges disturbances due to,
- a. Improper storage, application and excessive spillage of manure causing nuisance flies and odours as a result of the Respondents’ farming operation.
  - b. An increase in manure odours and flies caused by the Respondents’ damage and/or removal of hedgerows, shrubs, trees, and vegetative buffers.
  - c. The additional nuisance of manure laden dust on the Applicants’ property, gardens, fruiting hedges, shrubs, and trees, and
  - d. Deadstock disposal causing odours and flies.
- [2] The application came before the Board for a hearing on April 25, 26, 27, 28, and 29; and May 16 and 17, 2022 and was heard by way of a Zoom electronic virtual hearing.
- [3] On behalf of the Applicants, the Board heard evidence from Jacqueline Rocca, Claudio Rocca, Rick Armstrong, Melissa Lefrancois, Doris Bayer, Alan Emiry, who gave opinion evidence on dairy and berry farming and Stephen Redmond, who was qualified as to give opinion evidence with respect to minimum distance separation (MDS), nutrient management, animal sourced material (ASM), best management practices for beef and livestock, crop science, 4R stewardship for surface water runoff protection.
- [4] On behalf of the Respondents, the Board heard evidence from Roy Bayer, Jim Dunn, Jennifer Gravelle, Gary May and Michael Payne, who was qualified to give opinion evidence on nutrient management as it relates to crop forage production, non-agricultural sourced material (NASM) and ASM.

### Factual Background

- [5] The Applicants, Jacqueline Rocca and her husband Claudio have a cottage at 1446 Indian

Mountain Road, Sheguiandah, Ontario being part of Lot 5 Concession 9 in the former Township of Bidwell in the Town of Northeastern Manitoulin and the Islands (NEMI).

- [6] The Respondents, Roy Bayer and his wife Doris, live on the farm next to the Applicants at 1418A Indian Mountain Road.
- [7] The Applicants' property is 25 acres in size and the Respondents property (the "Home Farm") is 400 acres in size, with 100 workable acres. The Respondent rent additional parcels of land including a barn and a field immediately adjacent to the Applicants. The barn, rented since 1990, is at 1520 Indian Mountain Road (the "Morton barn"). The field, 7-acres in size, at 1439 Indian Mountain Road has been rented since the 1990's and is owned by Kristopher Belanger, Ron Sternig and NEMI (the "Belanger Sternig NEMI field"). The NEMI land is an unopened road allowance. All these properties are zoned Rural Zone by the Town of NEMI Zoning By-Law and permit a farm and other agricultural use. There are large wooded areas with Pike Lake to the north of the Applicants' and Respondents' properties.
- [8] The Applicants purchased vacant agricultural land in 2011 with the goal of developing a homestead to retire to. They have built a cottage, planted gardens, fruit trees and other trees. They forage and hunt on their land.
- [9] The Respondents driveway to their house and farm buildings at 1418A is on a 33-foot deeded right-of-way along the east property line of the Rocca property. Two properties located north of the Rocca lands are also accessed by this right-of-way. Both of the properties are owned by Jennifer Gravelle and her partner Steve Burke, where they live in a log house. The Gravelle land fronts onto Pike Lake.
- [10] Beside the Belanger Sternig NEMI field, and across from the Morton Barn, at 1529 Indian Mountain Road, Jim Dunn lives with his wife on a 1-acre lot.
- [11] The Respondent, Roy Bayer is 73 years old and has lived at 1418A Indian Mountain Road (the "Home Farm") all except for three years of his life. He started farming with his mother in 1968 after his father died. He maintained off farm employment with the Town of NEMI for 38 years retiring in 2017. He operates a cow calf farm and currently has 45 cows, 42 calves, 3 bulls and 4 horses. The cows have their calves in the fall and the calves are sold a year later. He houses his cattle in the winter primarily in the barn at the Home Farm, with the remainder at the Morton barn.
- [12] At the Home Farm cattle are housed in loose pens in an older barn. Mangers are fitted to accommodate large round bales. Manure is piled in an outdoor storage area that was relocated in the fall of 2021. At the time of the hearing there were 32 cows, 29 calves and 1 bull in the Home barn; four horses in an outside yard and 15 cows, 2 bulls and approximately 15 calves at the Morton barn. Manure at the Belanger barn is piled in the barn yard. On the Home Farm Mr. Bayer grows timothy and alfalfa, for green wrap in the

spring, and dry hay later in the season. Every four or five years the hay fields need to be reseeded. When the hay field needs to be reseeded, he ploughs down the field in the fall and reseeds in the spring with timothy and alfalfa plus an underseeding of barley, oats and peas which he will harvest and wrap in plastic. The Belanger Sternig NEMI field is on the same crop rotation as the fields at the Home Farm.

- [13] Manure from both the storage pile at the Home Farm and the Morton Barn is applied to fields after the second cut of hay commencing in mid to late August. The manure is not incorporated unless it is applied to a field that will be reseeded the following spring in which case the manure will be ploughed under in the fall. All of the manure is removed from both of the manure storage piles once a year and applied to fields. Mr. Bayer stated that he only makes one application per field where as the Respondents allege that he is making up to eight applications on the Belanger Sternig NEMI field and multiple applications on the front field at the Home Farm. The manure from the Morton Barn is applied on the Belanger Sternig field. The manure from the barn at the Home Farm is applied on the fields at the Home Farm. The evidence of the Applicants was that they saw the manure being applied on multiple days in each of these fields. They did not identify where in the field the manure was being spread. The fact that the Respondent Mr. Bayer hauled manure to these fields on multiple days, multiple times is consistent with the normal practice for removal and application of solid manure.
- [14] Mr. Bayer has a Farm Business Registration Number and operates an agricultural operation.
- [15] Mr. Bayer has not expanded or replaced any of the agricultural buildings and has not needed a building permit. Mr. Bayer's livestock operation is small enough that he is not required to have a Nutrient Management Plan and is not phased in under the *Nutrient Management Act*. Witnesses for both the Applicant and the Respondent confirmed this fact. (Redmond, Payne).
- [16] The Applicants cottage was built and is now located 196.5 meters from the manure storage at the Morton barn and 422.68 meters from the old manure storage (moved as of November 1, 2021) at the Bayer Home Farm.

### **The Complaint**

### **The Applicants' Evidence**

- [17] The Applicant alleged nuisances of:
- a. Improper storage, application and excessive spillage of manure causing nuisance flies and odours as a result of the Respondents' farming operation.
  - b. An increase in manure odours and flies caused by the Respondents' damage and/or removal of hedgerows, shrubs, trees, and vegetative buffers.

- c. The additional nuisance of manure laden dust on the Appellants' property, gardens, fruiting hedges, shrubs, and trees, and
- d. Deadstock disposal causing odours and flies.

### **Disturbance of flies**

- [18] The Applicants' allege that the fly population has increased to the level of a nuisance beginning in 2017 not long after their land use agreement ended with the Respondents. The Respondents had taken the hay from the Applicants' field and in exchange the Respondents had cleaned the snow from the Applicants' driveway and granted hunting privileges on the Home Farm from 2011 to spring of 2015. The flies are a problem from late August until November.
- [19] The Applicants allege the Respondents since 2017 have increased the number of cattle and spread manure more frequently and in a greater volume in the fields immediately neighbouring their property, specifically in the Belanger Sternig NEMI field and in the field south of the house by the right-of-way at the Home Farm.
- [20] The Applicants allege that the Respondents spill large quantities of manure on the roadway when hauling the manure from the Morton barn across the road to the Belanger, Sternig, NEMI field.
- [21] The Applicants' provided videos and pictures of the flies in their cottage and on the sides of their cottage.
- [22] The Applicants' gave the following evidence concerning how the quantity of flies have directly affected them, reducing their enjoyment of their property:
- They can no longer process and dry produce in the cottage and must transport their produce back to their home, near Sudbury, to avoid flies from introducing bacteria onto the food.
  - They cannot enjoy sitting on their deck in the fall.
  - There are flies on their vehicles, trees and dogs.
  - There are flies in the garden on their fruit and vegetables creating a threat of bacteria.

### **Disturbance of odour**

- [23] The Applicants allege they experience the nuisance of odour after the manure is spread on the Belanger Sternig NEMI field. They allege that the Respondents have altered their manure handling such that they are spreading manure on this field from August to October, while in the past they had spread in September & October. They further allege that the

field is getting multiple applications of manure, up to eight, thereby increasing the odour.

- [24] As a result of the odour, the Applicants are unable to leave their windows open at night after there has been manure spread. They do not have air conditioning, and the cottage becomes like a sauna inside making it uncomfortable for sleeping.

### **Disturbance of dust**

- [25] The Applicants allege to experience nuisance dust that is manure laden and that contaminates their gardens, fruit hedges and gets on their shrubs, and trees.
- [26] They attribute the excessive dust to the Respondents removal of buffer hedges and vegetation on the west side of the right-of-way.
- [27] The Applicants did not provide any evidence that there was dust from manure or dust from another source drifting into or covering their property. They both testified to the brushing along the right-of-way by the Respondents.

### **Evidence of Applicants' witnesses on flies, odour and dust**

- [28] Ms. Lefrancois is a Senior Environmental Officer with the Ontario Ministry of the Environment, Conservation and Parks (MECP). Ms. Lefrancois did an inspection at 1418A and 1520 Indian Mountain Road, on June 8, 2021. Ms. Lefrancois noted that at 1520 Indian Mountain Road (Morton Barn) there was minimal odour and that she could faintly hear flies. There were no observations as to flies or odour for 1418A Indian Mountain Road and Ms. Lefrancois has no recollection of odour or flies, odour being subjective if she had noted an overwhelming odour she believed that she would have recorded it.
- [29] Rick Armstrong is the Chief Building Official (CBO), By-Law Enforcement Officer and Property Standards Inspector for the Town of NEMI. He was involved in a property standards complaint at 1439 Indian Mountain Road. He inspected on June 23 and 24, 2021. At the time of his inspections he did not notice significant flies or odours.
- [30] Stephen Redmond, expert witness for the Applicants, did not make a site visit to either the Respondents' farm or the Applicants' property.

### **The Respondents' Evidence**

#### **On the Issue of Flies and Odours**

- [31] The Respondents called witnesses who testified on the issue of the alleged disturbances of flies, odour and dust.
- [32] Jennifer Gravelle, a neighbour, lives directly north of the Applicants, travels past the

Respondents' Home Farm yard to get to her house. She will bicycle or take her golf cart past the farm yard to pick up her mail at Indian Mountain Road. She could smell farm odours as she passed the barns but to her it was never offensive. She stated that she is familiar with the smell of hay bales and did not observe or smell any bales that were either discarded or rotting. She has never smelled decomposing animals at the Respondents' farm or at her property. Ms. Gravelle does not have air conditioning in her house at 1418C Indian Mountain Road and does not keep her windows closed due to odour.

- [33] Michael Payne, expert witness for the Respondent, visited the Respondents Home Farm, the Morton barn and the Belanger Sternig NEMI field on June 10 and July 19, 2021 and the Home Farm on November 3, 2021. Mr. Payne's experience of flies when he attended the Morton barn, on June 10 and July 19, was that he parked his car on Indian Mountain Road right in front of the barn, leaving the car windows open and there were no flies in the car when he returned to it. At the Morton barn there was an odour but, in his experience, it was a faint odour, but at that time of the year the manure pile is dry on top so at the road there was no odour. Dust was experienced when a car went by on the road, which is tar and chip. At the Home Farm, there were no flies, and the odour was similar to the Morton Barn. When he was by the manure pile he smelled manure. He experienced no smell of decomposing animals at either the Morton Barn or at the Home Farm.
- [34] Mr. Payne walked the Belanger Sternig NEMI field and the front field at the Home Farm on June 10 and July 19, and there were no flies, and no manure odour. The odour was of hay, not a foul odour but a pleasant odour. As for the bales in the fence row, he did not notice any but he was not looking for them. He is familiar with the smell of decomposing hay bales and he did not smell decomposing hay.
- [35] Jim Dunn, a neighbour since 2009 and friend of the Respondents testified that they periodically have flies. Generally, they have more flies first thing in the spring when the weather turns warm and again in the fall before it gets cold. The flies have not increased over the years and the flies do not deter anything that he does at his property. Prior to COVID and his current illness, he and his wife would host events four or five times during the summer. They do not avoid any particular time of the year due to flies or odour. They get some odour, with more in the winter, from the Morton barn but nothing that would stop them from doing anything at their property. Mr. Dunn has not experienced an increase in odour since 2009. He has never had to shut his windows because of foul odour, he does not have air conditioning and has ceiling fans in most of the rooms.
- [36] Mr. Dunn noted that there is dust from the tar and chip road when there is traffic and estimated that there are approximately 200 vehicles per day on the road during the high season and 100 vehicles during the low season.
- [37] Mr. Dunn testified that Mr. Bayer spreads manure in the field (the Belanger Sternig NEMI field) beside his house from late August to October each year. The house is 75 feet from the field. He has never experienced a problem with odour or flies due to the manure.

## THE LEGISLATION

### *The Farming and Food Production Protection Act, 1998 (the "Act")*

[38] The objectives of the *Farming and Food Production Protection Act, 1998* are found in the preamble, and state as follows:

"It is desirable to conserve, protect and encourage the development and improvement of agricultural lands for the production of food, fibre and other agricultural or horticultural products.

Agricultural activities may include intensive operations that may cause discomfort and inconveniences to those on adjacent lands.

Because of the pressures exerted on the agricultural community, it is increasingly difficult for agricultural owners and operators to effectively produce food, fibre and other agricultural or horticultural products.

It is in the provincial interest that in agricultural areas, agricultural uses and normal farm practices be promoted and protected in a way that balances the needs of the agricultural community with provincial health, safety and environmental concerns."

...

Subsections 5(1) and 5(4) provide as follows:

"5 (1) A person directly affected by a disturbance from an agricultural operation may apply to the Board, in a form acceptable to it, for a determination as to whether the disturbance results from a normal farm practice."

...

(4) After a hearing, the Board shall,

- (a) dismiss the application if the Board is of the opinion that the disturbance results from a normal farm practice;
- (b) order the farmer to cease the practice causing the disturbance if it is not a normal farm practice; or
- (c) order the farmer to modify the practice in the manner set out in the order so as to be consistent with normal farm practice."

...

Subsection 1(1) definitions provide that;

"agricultural operation" means an agricultural, aquacultural, horticultural or silvicultural operation that is carried on in the expectation of gain or reward."

...

"disturbance" means odour, dust, flies, light, smoke, noise and vibration;

...



“normal farm practice” means a practice that:

(a) is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances, or

(b) makes use of innovative technology in a manner consistent with proper advanced farm management practices.””

### **The Issues**

- [39] Are the Applicants persons directly affected by disturbances or nuisances from an agricultural operation?
- [40] The alleged disturbances are flies, odour and dust which are all enumerated in the list of disturbances to which this *Act* applies as set out in the definition of “disturbance”.
- [41] If the Applicants are entitled to bring this Application under Subsection 5(1) of the *Act*, do the disturbances complained of result from a normal farm practice?

### **Analysis and Findings**

- [42] Are the Applicants persons directly affected by disturbances from an agricultural operation?
- [43] The disturbances alleged are ones of odour, flies and dust which are set out in the definition of disturbances at subsection 1 (1) under the *Act*. The Board finds based on the evidence that the Respondents operate an agricultural operation within the meaning set out in definitions at subsection 1 (1) of the *Act*.
- [44] In order to have standing to apply under Section 5 to the Board for determination as to whether the disturbance results from a normal farm practice the Applicant must be found to be a person “directly affected by a disturbance”. If the Applicant establishes standing by providing sufficient evidence to show that he or she is a person directly affected by a disturbance from an agricultural operation then the onus of proof shifts to the Respondent to prove on a balance of probabilities that the alleged disturbance results from a normal farm practice. In other words, the onus is on the Applicant to prove that he or she is directly affected by a disturbance from an agricultural operation.
- [45] In *Richardson v. Fox, 2005 ONNFPPB 34 (CanLII)*, the board established that when determining whether or not the burden of proof has been met by an applicant before the Board one is to look to the common law test for nuisance in civil actions.

[46] In coming to this conclusion, we specifically consider Ferguson J. in *Pyke v Tri Gro Enterprises Ltd.* [1999] O.J. NO. 3217 (Ontario Superior Court of Justice), Ferguson J. at paragraphs 202 through 206 inclusive:

“The fundamental issue in a nuisance claim is whether, taking into account all of the circumstances, there has been an unreasonable interference with the use and enjoyment of the Plaintiffs’ land.

In this case the Plaintiffs rely on the alleged injury to their health, comfort and convenience, and the alleged depreciation of the resale value of their lands.

To establish nuisance, the Plaintiffs must show substantial interference which would not be tolerated by the ordinary occupier in their location. The test is objective. The interference must be repeated or continuous.

In considering the interference, the Court must consider the type of interference, the severity, the duration, the character of the neighbourhood, and the sensitivities of the Plaintiffs’ use of their lands. With respect to the severity of the interference, it is not actionable if it is a substantial interference only because of the Plaintiff’s special sensitivities. With respect to the neighbourhood, the Court should consider the zoning, whether the Defendants’ conduct changed the character of the neighbourhood and the reactions of other persons in the neighbourhood.

The Court must balance these considerations against the value of the Defendant’s enterprise to the public and the Defendant’s attitude towards his neighbour. The court must consider whether the Defendant is using the property reasonably having regard to the fact that the Defendant has neighbours. The Court should consider whether the Defendant took all the reasonable precautions.”

[47] It is therefore reasonable to expect the Applicants to establish the same level of interference with the use and enjoyment of their property in the Application under Section 5 of the Act, as they would have to establish if they were making a claim for damages on the basis of nuisances in the Superior Court. After an analysis of the evidence in accordance with the statements of law set out in Justice Ferguson’s decision, the Board must be able to find on the balance of probabilities that the evidence supports a finding that the Applicant has been directly affected by the disturbance.

[48] Has there been an unreasonable interference with the use and enjoyment of the lands of Jacqueline and Claudio Rocca? The Applicants’ allegations are that flies, odour and dust interfere with their enjoyment of their cottage and property. They argue the potential or possibility of injury to their health from bacteria transferred by flies. They did not claim that a physical injury has occurred. The interference they experience leads to their discomfort and inconvenience and thereby infringed enjoyment of their property.

## Severity Of The Interference

### Flies

- [49] The allegation of the Applicants is that the fly population in the Applicants' cottage and around their property is significant at times of the year. The Applicants' evidence showed a significant number of flies on the inside of windows and on the siding of the cottage when in the sun. There was no evidence offered that the fly population is continuous throughout the year. There was no expert evidence offered as to the source of the flies, however, if the flies were found to be a result of the farm operation, then, the question to be answered is whether, taking into account all the circumstances, has there been an unreasonable interference by the repeated occurrence of flies? The difficulty with objectively characterizing the Applicants' disturbance from flies as unreasonable, is that the neighbours who also experience a fly pressure, do not experience them as a nuisance but as a normal occurrence. The evidence from the Respondents' witnesses (Dunn and Gravelle) was that there is a seasonal pattern to the increase in the fly population throughout the summer and fall until the end of October and that the fly population did not alter their outside use and enjoyment of their property. Ms. Gravelle noted that the flies would be on the side of her house where the sun was shining on it and that they would be on her windows when the heat was turned on her house.

### Dust

- [50] The evidence disclosed by the Applicants did not establish that dust from the handling or hauling of manure caused a disturbance. The evidence disclosed by the Applicants did not confirm that there was either significant or continuous dust coming from either the Respondents' property or activities. Witnesses for the Respondents experienced dust from traffic on the right-of-way and on Indian Mountain Road. (Payne, Dunn, Gravelle)

### Odour

- From deadstock - The allegation by the Applicants is that they are subjected to nuisance odour from the Respondents' deadstock. Their evidence showed that the Applicant Claudio Rocca was discomforted by the odour emanating from the Respondents' deadstock on one occasion while he was hunting on the Respondent's land. The Respondents' evidence was credible that the procedure for the disposal of deadstock is for the immediate burial of deadstock at a location 1 km east from the Applicants' cottage and that the odour of deadstock does not have its origins with the Respondents operation.
- From manure - The allegation by the Applicants is that the odour from the Respondents' cattle manure during storage and application is creating a disturbance such that they are not able to enjoy their property. The Applicants testimony was that they experience a level of interference with the use and enjoyment of their property such that they need to keep their windows closed after the application of manure due to their personal discomfort with the odour. When the windows are closed their cottage is uncomfortably hot. Witnesses for

both the Applicants and the Respondents testified to experiencing odours that were minimal farm odours at both the Home Farm yard and at the Morton Barn (Lefrancois, Armstrong, Payne, Dunn, Gravelle). The odour from manure can be significant immediately after it is applied on a neighbouring field and represents a minimal interference and discomfort that is reasonable to occur in the circumstances in an agricultural neighbourhood with cattle farms.

- From hay bales – The allegation of the Applicants is that the odour from rotting hay bales that have been stored and or discarded are causing an odour that is a disturbance that is interfering with the use and enjoyment of their property. The Applicants evidence did not demonstrate that there was a significant odour from the hay bales. The evidence of witnesses for both the Applicants and the Respondents’ weighted against the Applicants’ evidence reduced the credibility of their evidence as to there being a significant odour from hay bales that caused discomfort or an interference. On questioning specifically about the odour from rotting bales witnesses testified that they either had noticed no odour at all or that the odour was not such that would cause them any discomfort. (Armstrong, Dunn, Payne, Gravelle)

### **Character Of The Neighbourhood**

[51] The evidence disclosed that the neighbourhood is designated Rural Use with the permitted use of a farm and any other agricultural uses in the Town of NEMI Comprehensive Zoning By-Law 2018-41. The Applicants choose to reside in a rural area and testified that they sought out good agricultural land when they purchased their property at 1420 Indian Mountain Road in 2011. The evidence disclosed is that the Applicants are producing food, harvesting it, hunting and foraging successfully on their land. The Respondent, Mr. Bayer, has been operating a cow calf farm since the early 1970’s at 1418A Indian Mountain Road and on the surrounding lands. He has housed cattle in the Morton Barn since 1990, and leased the Belanger Sternig NEMI field south of the Applicants cottage since the 1990’s. The evidence disclosed further that the Respondents at the time of the hearing had 45 cows, 42 calves, 3 bulls and 4 horses and that his cattle numbers have stayed relatively consistent over the years with the capacity to house up to 45 cows with their calves and the bulls. There is no evidence of complaints by any others in the neighbourhood.

### **Defendants’ Attitude and Actions**

[52] The Defendant, Mr. Bayer, has been farming for the past 50 years in the same location. He operates his cow calf farm using practices similar to other cow calf operations. (May). Mr. Bayer meets the requirements of his landlord neighbours from whom he rents land from by not applying manure or commercial fertilizers where he is requested not to. He

complied with the order from the MECP inspector to relocate his manure storage by November 1, 2021 and verified his compliance to the satisfaction of the inspector. The Respondents use normal practices when hauling manure on roadways and remove manure and mud that is tracked onto the road to the extent that they can giving consideration for the type of road surface (tar and chip). The evidence of the Applicants was that there had been a good relationship with the Respondents when they initially purchased their property but that it deteriorated over time due to the Respondents non-compliance with the terms of the use of the Rocca hay field. The specific non-compliance was the Respondent, Mr. Bayer cutting the hay before August 1<sup>st</sup> thereby disturbing the nesting sites for Bobolinks. Respondent Mr. Bayer did voluntarily increase the distance between the Applicants' well and the application of manure in the Belanger Sternig NEMI field.

- [53] Considering all the factors, the Board finds that the Applicants have not shown substantial interference and discomfort which would not be tolerated by the ordinary occupier in their location, nor has there been an unreasonable interference with the use and enjoyment of the Applicants' land. Consequently, the Applicants are not persons directly affected by the disturbances alleged and this Board has no jurisdiction to entertain their application to consider whether or not the Respondents' operation is a normal farm practice.
- [54] If the Applicants are entitled to bring this Application under Subsection 5 (1) of the Act, do the disturbances complained of result from a normal farm practice?
- [55] In the view of the Board's findings that the Applicants have not met the threshold test as to being directly affected by a disturbance, it is not necessary for the Board to answer this question. However, if the Board had in fact found that it had jurisdiction to make a decision on this question the Board would have found that the Respondents' agricultural operations at the time of the hearing are normal farm practices based on all the evidence before it.

### **DECISION**

- [56] The Board therefore dismisses the Applicant's Application.



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Christine Greydanus  
Vice-Chair

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