

Finding the Balance

Evolving Provincial and Municipal Governance of Nutrient Management



Final Report

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Preamble

This is the second and final report that documents municipal experience with Nutrient Management by-laws and the evolving provincial regulations under the Nutrient Management Act. This report provides an analysis of the current situation in Ontario and a comparison with the results documented in the 2004 Year 1 Interim Report.

1.0 Introduction

Since the implementation of the Nutrient Management Act (NMA) in September 2003, numerous changes to the Nutrient Management Regulation have been made. These changes impact municipalities and the applicability of local by-laws. The Nutrient Management Act under section 61(1) stipulates that where provincial regulations and local by-laws deal with the same subject matter the provincial regulation shall prevail. Consequently, to avoid conflict with provincial regulations municipalities need to evaluate the appropriateness of their local by-laws. In 2004, municipalities had significantly different views towards the legislation ranging from those who readily amended their by-laws to be consistent with the regulation to those who were willing to challenge provincial authority in court. Further changes to the provincial regulations in September 2005 have meant that municipalities need to continue to consider the implications of Section 61(1) on their local by-laws.

This final report provides insight into the current situation in Ontario since the implementation of the new provincial regulation, and identifies issues in the ongoing transition from municipal to provincial governance of nutrient management. A comparison of the current situation with the results obtained in the 2004 Year 1 Interim Report also provides insight into the progress of this transition. Insight provided in this report reflects the input of a number of people. All municipalities undergoing this transition were requested to complete a survey, and 72% of municipalities responded. As well, a number of individuals representing the municipalities, including chief building officials, planners, administrators, and by-law officers were consulted. Discussions also occurred with representatives from OMAFRA and a variety of farm groups. This final report provides a further understanding of the issues and successes of the transition from municipal to provincial governance of nutrient management and will help to ensure that the needs of agriculture and the environment are mutually respected.

1.1 Goal and Methodology

The goal of this final report is to follow-up on the transition of nutrient management from local municipal by-laws to provincial legislation since the 2004 study and to provide insight into the current situation in Ontario.

To address the goal of this research several methods were used:

- A questionnaire was faxed to 85 municipalities in Ontario that in 2003 had a nutrient management by-law (Caldwell, 2003).
- Municipal officials were interviewed to identify ongoing issues and successes with the transition from municipal to provincial regulation of nutrient management and to identify the timing required to process files under the regulation.
- Farm leaders from different farm organizations were consulted to identify their perspectives on any issues related to the provincial regulation and the continued involvement of municipalities.
- OMAFRA staff was interviewed to identify their perspective on any issues associated with the transition between municipal and provincial interests.

1.2 Organization

This final report consists of four sections. Section 1 includes an introduction and overview of the goal and methodology of this research. Section 2 presents the results of the 2006 questionnaire and provides a discussion of the results based on insight from municipal officials. Further issues identified by municipal officials, OMAFRA representatives and farm leaders are also addressed. Section 3 provides a comparison between the 2004 and the 2006 questionnaire results. Section 4 provides a series of recommendations.

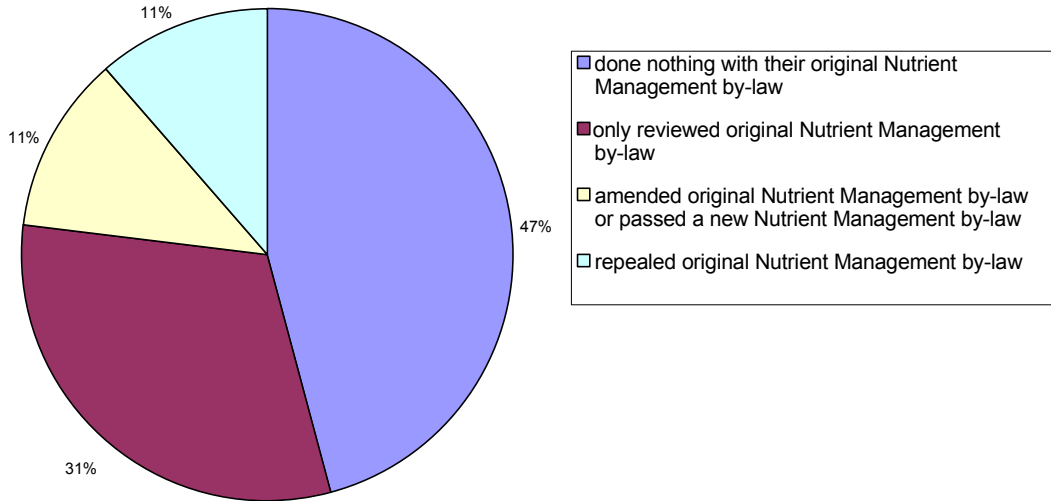
2.0 Questionnaire Results and Insight from Municipal Officials, OMAFRA Representatives and Farm Leaders

2.1 2006 Questionnaire Results and Discussion with Municipal Officials

The results of the surveys sent to municipalities are presented below. Eighty-five questionnaires were sent out and 61 responses were received. The graphs below display the percentage of each out of the total that was returned. Therefore 100% equals 61 municipalities.

A discussion of each graph is also included. The discussion is based on interviews with municipal officials. Further issues and topics discussed with municipal officials, OMAFRA representatives and farm leaders follow.

**Actions Taken by the Municipality Regarding the Nutrient Management By-law
(since the adoption of the Nutrient Management Act)**



Results

Out of the 61 responses received, 47% of municipalities indicated that they have done nothing with their original Nutrient Management by-law and 31% of municipalities have only reviewed their original Nutrient Management by-law since the application of the provincial regulation. Of the remaining municipalities, 11% indicated that they have either amended their original Nutrient Management by-law or passed a new Nutrient Management by-law. The final 11% of municipalities indicated that they have repealed their original Nutrient Management by-law. The researchers note that between the time that the survey was sent out in February/March of 2006 and the time that the interviews were conducted in April/May, at least four municipalities had repealed their by-laws. Therefore these figures may not be accurate as other municipalities may have repealed their by-laws within that same time period.

Discussion

According to the results of the survey, the greatest number of municipalities has done nothing with their by-law or has only reviewed it since the implementation of the Nutrient Management regulation. After speaking with municipal staff it was determined that even though these by-laws were officially still in effect, many of them were described as being outdated and are no longer being used in the building permit process. In these cases, the building permit process for a livestock operation would rely primarily on OMAFRA approval.

Other municipalities whose original by-laws are still in effect or had only been reviewed are using their Nutrient Management by-laws as part of the building permit process. Some

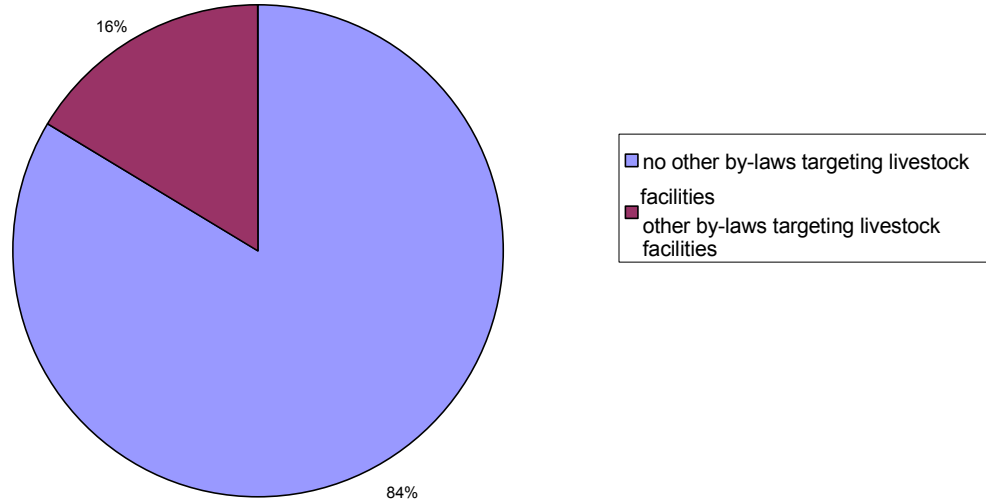
municipal officials indicated that they are applying sections of their by-laws that deal with different subject matter than the provincial regulation, whereas other officials indicated that some sections of their by-law may be in conflict with the provincial regulation. These municipalities said that their lawyers were still in the process of determining whether Section 61(1) of the legislation was applicable, and that their by-laws may either be amended or repealed in the future.

The municipalities that indicated that their Nutrient Management by-law has been amended have done so to be in accordance with the regulation. Some of these municipal by-laws were originally more restrictive than the regulation. For example, one municipal by-law required 360 days of storage and had a cap at 600 LU, but was amended so that there are no contradictions with the regulation. Some of these municipalities are still considering repealing their by-laws in the future.

According to municipal staff, the by-laws that were repealed were done so for two reasons. First, either the municipality's lawyer or other agencies such as OMAFRA recommended that the municipality repeal their Nutrient Management by-law because it was either more restrictive than or different from provincial regulations. They were advised that to avoid conflict with OMAFRA they should simply work under one set of rules. Other municipalities felt that they had spent enough time and money trying to get the Nutrient Management by-law in place that they did not want to waste any more resources in trying to change the by-law.

As mentioned in the results section, the number of municipalities repealing their Nutrient Management by-law is on the rise. Now that the Province is regulating aspects of all new and expanding operations over 5 NU and all operations over 300 NU, the need for local by-laws may be seen to be reduced.

Passing of Other By-laws that Target Livestock Facilities
(since the adoption of the Nutrient Management Act)



Results

Of the 61 survey responses received, 84% of municipalities indicated that since the implementation of the Nutrient Management Act and regulations, they have not passed any other by-laws that specifically target livestock facilities. However, 16% of municipalities indicated that since this time, they have passed some other form of by-law that specifically targets livestock facilities or relates to nutrient management.

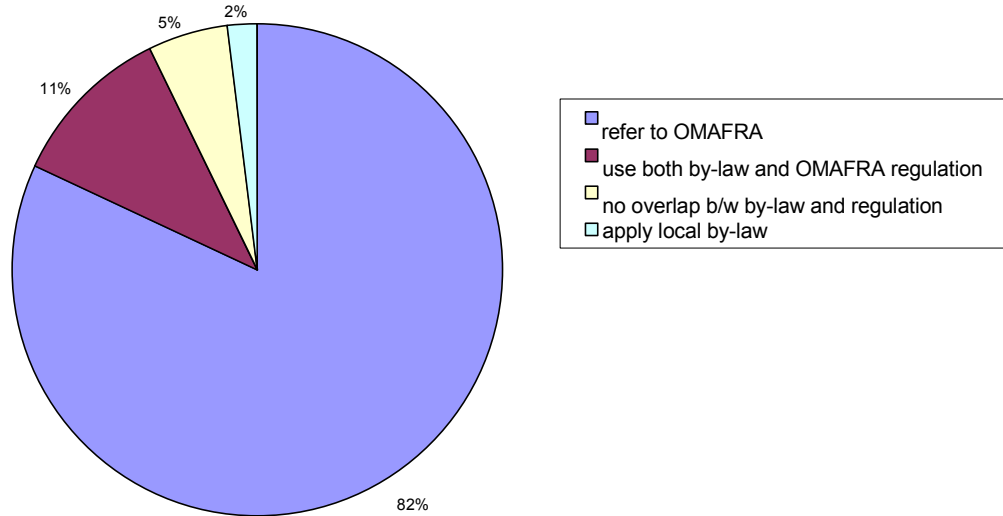
Discussion

The majority of municipalities have no other by-laws that specifically target livestock facilities other than the Nutrient Management by-law (if it is still in place) and the Nutrient Management Act and regulation.

By-laws that have been passed targeting livestock facilities in other municipalities include one restricting livestock development in wellhead protection areas, and one that requires a zoning change when an application for a large livestock facility is made. The wellhead protection by-law restricting livestock development in specific areas was the result of concerns over local soil conditions. This by-law was taken to both court and the OMB to deal with the issue of OMAFRA approval in these zones, as the farming community believes that the NMA supersedes the by-law but the municipality does not agree. The other by-law states that when an application for a livestock operation over 300 NU is made, an intensive agricultural zone is required. This means that a zoning amendment must be made and the application must therefore go through a public process. This by-law was also appealed to the OMB, but by OMAFRA. Both cases are still undecided.

There may have been confusion over the issue of MDS calculations in the questionnaire. Some municipalities specifically indicated that the MDS calculations in their zoning by-law means that the zoning by-law is considered another by-law that specifically targets livestock facilities. Other municipalities believed that the calculation of MDS in the zoning by-law was implied and the zoning by-law was therefore not considered another by-law that specifically targets livestock facilities.

Action Taken by Municipality if There is Overlap Between Local By-law and the Nutrient Management Act (NMA)



Results

Out of the 61 survey responses received, the greatest percentage (82%) of municipalities indicated that if an application clearly requires provincial approval and the municipal by-law deals with the same subject matter then they would refer the applicant to OMAFRA for approval. Of the remaining municipalities, 11% indicated that they would apply both their local by-law and require OMAFRA approval, and 5% indicated that there is currently no overlap between the by-law and the provincial regulation. A small percentage (2%) of municipalities indicated that they would continue to apply the local by-law even if an application clearly requires provincial approval.

Discussion

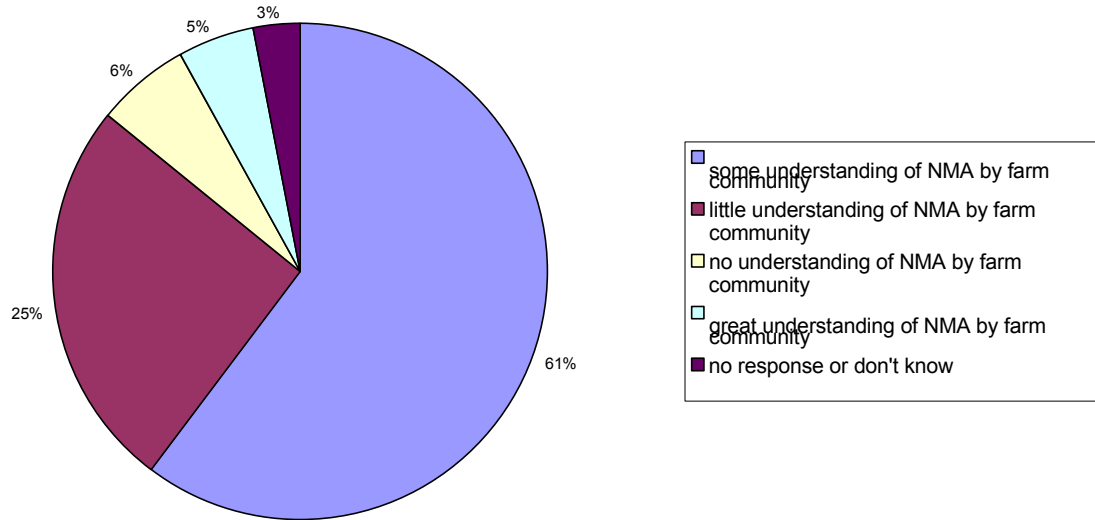
After speaking with municipal staff, it is understood that despite the majority of municipalities having only reviewed or done nothing with their original Nutrient Management by-law, most are applying the provincial regulations and are only requiring OMAFRA approval.

Those municipalities that indicated using both their by-law and the regulation do so for different reasons. Some municipalities have amended their by-law so that there is no contradiction between the by-law and the regulation. Therefore they can apply both the regulation and the sections of their by-law that are not regulated provincially (such as the requirement to supply building drawings, etc.). One municipality, in addition to OMAFRA approval, still also requires a nutrient management plan if applying for a liquid manure system, even though this may be in contradiction to the NMA. This municipality mentioned concern over their by-law being challenged. Similarly, those municipalities that

indicated that there is no overlap between their by-law and the provincial regulation have amended their by-law to be consistent. Therefore, the municipality may actually be applying both their local by-law and the regulation.

Only one municipality indicated that despite overlap, it would apply the local by-law and not the provincial regulation. However, this municipality is in a county that has talked about repealing all by-laws within the county. Therefore this situation may have changed since the survey was initially conducted.

Understanding of the Nutrient Management Act and Regulation by the Farm Community within the Municipality



Results

Out of the 61 survey responses received, the greatest percentage (61%) of municipalities indicated that the farm community had some understanding of the Nutrient Management Act and regulations, and 25% of municipalities indicated little understanding. Of the remaining municipalities, 6% indicated that the farm community had absolutely no understanding of the requirements under the legislation, whereas 5% of municipalities indicated a great understanding of the requirements by the farm community. A small percentage (3%) either did not know the answer to the question or simply did not answer the question.

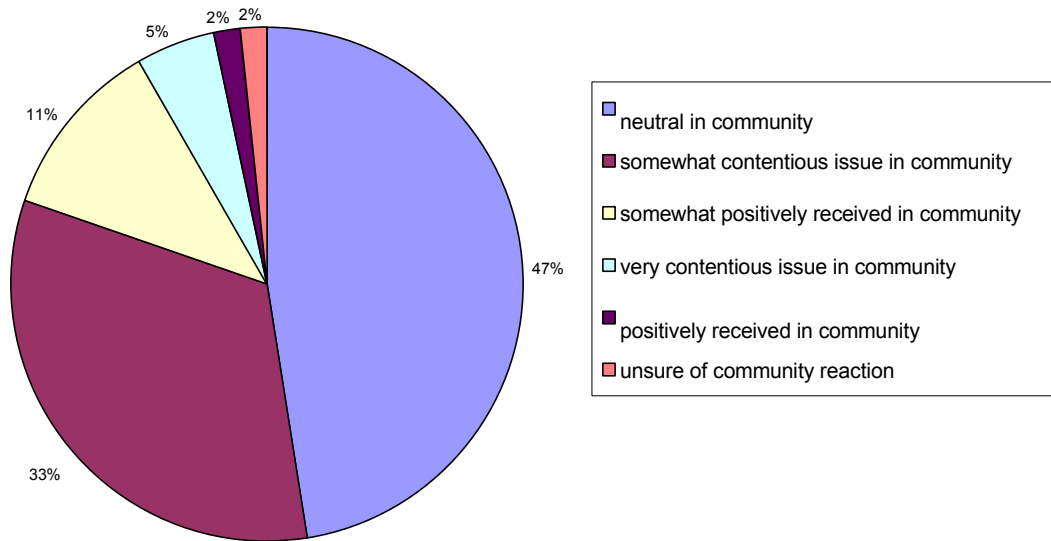
Discussion

After speaking with municipal officials it was determined that there is a range of understanding of the Nutrient Management Act and regulations by the farm community. Some municipalities indicated that farmers still do not know or understand the requirements of the legislation and regulation since they rely on the municipality for information. Other municipalities stated that the original regulations were incredibly complex, but the new regulation attempts to clarify the requirements. Therefore farmers do not have a tremendous amount of knowledge of the regulation, but do have a basic understanding. On the other hand, some municipalities indicated that most farmers are well educated and understand their requirements and responsibilities.

Numerous changes to the regulation may have caused confusion amongst both the farm community and the staff. One municipality mentioned that last year the farmers knew what was required, but with the recent changes they are not caught up. However, most

municipalities indicated that they have had farmers go through the application process at some point since the implementation of the original regulation, so those farmers would have a better understanding of the requirements than those that have not gone through the process. Most municipalities indicated that OMAFRA staff has been available for questions and if either the farmer or the municipal official has a question they can contact OMAFRA.

Reception of the Nutrient Management Act (NMA) within the Community



Results

Out of the 61 survey responses received, 47% of municipalities indicated that the Nutrient Management Act and regulation has been neither positively nor negatively received in the community (neutral). The next greatest percentage of municipalities (33%) indicated that the Nutrient Management Act and regulation has been somewhat of a contentious issue in the community, whereas only 11% of municipalities indicated that it has been somewhat positively received by the community. Of the remaining municipalities, 5% indicated that the Nutrient Management Act and regulation has been a very contentious issue in the community, 2% indicated that it has been positively received in the community, and 2% of municipalities were unsure of the community reaction.

Discussion

As can be seen from the results, there has been a range of reactions to the NMA and regulation. For those farmers who were concerned with the varying by-laws across the province, they were initially pleased that the government was going to create one set of rules for all farmers. Farmers were also relieved that they would no longer have to deal with local politics affecting decisions around building applications. As well, municipal staff indicated that the non-farm community was pleased that the provincial government was going to step in to regulate and monitor nutrient management across the province. However, many municipalities indicated that the farm community was very unhappy with the initial set of regulations and felt that they were too onerous and costly. Even now that the regulation has changed, the farm community is not entirely pleased with the outcome, as some believe that the regulation is still fairly heavy, while others in the community believe that the regulation of nutrient management has been weakened.

Those municipalities that indicated the issue as neutral did so for a couple of different reasons. The first being that the NMA has been a non-issue in the community, either because livestock agriculture is not an active industry in the municipality, or because there is not a great amount of understanding of and interest in the NMA on the part of the community. The other reason for indicating the issue as neutral is because there is a great variety of opinion on this issue within the community.

2.2 Further Discussion with Municipal Officials

In speaking with municipal officials, a number of topics other than those presented in the survey were discussed. These topics were viewed differently by different municipalities and were identified as issues by some. If a topic was identified as an issue by a municipality then it is presented here, along with the varying opinions of the other municipalities. These issues include:

- The downloading of responsibility to municipalities
- The need for municipal involvement and inclusion of local conditions
- The enforcement of the regulation
- The lack of communication between the province and the municipality
- The need for specific training for building officials
- The lack of rigor in the new regulation
- The timing of OMAFRA approvals
- The end result of the NMA (and the role of the Clean Water Act)

2.21 Downloading of responsibility to municipalities

After speaking with municipal officials it was determined that there is some confusion around whether the provincial government is leaving room for municipalities to regulate aspects of nutrient management. One municipality in particular expressed concern that they were led to believe that when the new regulation came out the province would be totally responsible for regulating nutrient management. Now however, the opinion was expressed that the provincial government is leaving room for municipalities to potentially regulate aspects of operations. This particular municipality would like the provincial government to take over all aspects of nutrient management, including MDS calculations. On the other hand, no other municipal officials interviewed mentioned that the new regulations left room for municipalities to regulate aspects of nutrient management again, even though some expressed interest in doing so.

2.22 Need for municipal involvement and inclusion of local conditions

Many of the municipal officials interviewed expressed concern over their lack of involvement in regulating nutrient management and the need for local conditions to be taken into account. Some municipal officials were disappointed that even though the municipality knows the local environmental conditions better than the provincial government, the municipality has been entirely removed from the process and has no control over approving livestock operations, as now all that is needed is clearance from OMAFRA (as long as they meet all other applicable law such as zoning requirements).

They believe that the environment would be best protected if they were still involved in the process.

One municipal official stated that if there are municipal policies that require more distance from municipal wellheads, because local studies have shown that it would be prudent to have more protection than the regulation offers, then they should be allowed to implement this policy. This official also believed that there should be more discussion with the province regarding this issue because if it is left to the courts to decide, then it will become more of a legal discussion rather than a science based one.

Another municipal official expressed concern that OMAFRA does not require farmers to provide detailed approved strategies or plans to the municipality, including information on where manure will be spread. The opinion was expressed that since the municipality knows the land base the best it could inform OMAFRA of potential problems if they had a copy of the strategy or plan.

2.23 Enforcement of the regulation

The enforcement of the nutrient management strategies and plans required by the provincial regulation is a concern for a number of municipal officials. One official stated that enforcement is such a problem that no one has really followed up on the original nutrient management plans to ensure that they are being followed, even though enforcement was guaranteed by the province. On the other hand, another municipal official believed that even though the province needs to do more work on the enforcement of the regulation, the fact that the MOE enforcement group will do random audits of some properties may be enough to ensure compliance. If farmers know that there is an enforcement group completing random checks, then this may be incentive for them to follow their strategies/plans.

2.24 Lack of communication with the municipalities

Most municipal officials interviewed stated that the communication between OMAFRA and municipalities was a problem. These officials all stated that they were concerned that the province was failing to keep them informed of changes to the regulation. One official stated that it was frustrating to read in a farming magazine that changes had been made to the regulation without being previously notified. It was reported that the notice of the new regulation was not sent out until January 10, 2006, saying that the new regulation had been in effect as of January 1, 2006. This meant that for ten days the regulation was not being enforced, except by those municipalities that were directly involved in these changes and therefore knew about them ahead of time. Municipalities want to be kept informed of any and all changes to the NMA and believe that OMAFRA could be doing more to communicate with municipalities.

2.25 Specific training for building officials

All of the interviewed municipal officials discussed the education and information sessions offered by OMAFRA. Most agreed that the province has made a good effort at making sure that municipalities understand the requirements of the regulation through numerous

seminars and information sessions. However, a few municipalities mentioned the need for specific training for building officials. One building official stated that some municipalities have never dealt with nutrient management. A building official would have to double check the approved strategy/plan to ensure that what is being built by the farmer is what was approved. Therefore they would have to understand the requirements in more depth than other municipal staff. There is also concern that since January 1, 2006, building officials have been working with the new regulations but may not understand them completely. The province has been working on developing a training program for building officials but, as of yet, it has not been implemented.

2.26 Lack of rigor in the new regulation

Even though some farmers claim that the new NMA regulation is still onerous, some municipal officials are concerned that the new NMA regulation is a step backwards in the protection of the environment. These officials claim that the most recent amendments to the regulation were a step backwards because OMAFRA is no longer reviewing nutrient management plans. These officials believe that initially OMAFRA created too big a workload for itself and is therefore trying to cut back on the requirements. It was thought that if the nutrient management issue was moved from the municipal level to the provincial level that it would be rigorously regulated. The opinion was expressed that the public may have a false sense of security around the NMA, as there is no longer any “teeth” left in the regulation.

2.27 Timing of OMAFRA approvals

There is a great deal of variance around municipal concern over the timing of OMAFRA approvals of nutrient management strategies and plans. One municipal official claimed to not know the timing of approvals as applications for building permits are only made after the strategy has already been approved. Other officials have not found the OMAFRA approvals process all that time consuming, and that they are fairly quick at returning applications. Another stated that the timing of returning applications depends on the time of the year. This official believed that it took approximately six weeks for the application to be approved, and would be less time compared to some municipalities that originally required a third party review of an application. Finally, other building officials were concerned that the OMAFRA approvals process was too slow. One stated that the process takes approximately six to eight weeks or longer. Since building officials must approve an application within 30 days the opinion was expressed that the province should approve their applications (if they are done correctly) just as quickly. These officials are especially concerned that the OMAFRA approvals process is holding up construction.

2.28 The end result of the NMA (and the role of the Clean Water Act)

All the municipal officials interviewed were asked if they believed that the NMA would serve to protect water quality. The question generated a range of responses. Most municipal officials stated that it has yet to be seen if the NMA will make any difference to the water supply. However, many of those believed that the proposed science-based standards would definitely help the legislation achieve its goal. Others stated that the introduction of the Clean Water Act, along with the NMA, will have more of a desired

effect on the environment. One municipal official stated that the NMA is concerned with issues such as manure spreading but is not concerned with wellhead protection, a big issue in water supply safety. The Clean Water Act will address this outstanding issue and help to protect water. However, there is concern around the municipality's future role in source-water protection and a gap in understanding of how the legislation will work in conjunction with the NMA.

Other municipal officials believe that the NMA will not make a difference in the protection of water quality. Instead, the protection of water will boil down to whether the farmer will use good common sense. Many officials have faith in the general farming population, and believe that they are good stewards of the land. They accredit the protection of the water supply to the modernization of farming operations and the improvement of knowledge around farming practices, not to the NMA.

2.3 OMAFRA Perspectives

Along with municipal officials, OMAFRA staff was also interviewed to identify their perspectives on the continuing transition from municipal to provincial regulation of nutrient management. OMAFRA staff shared their perspectives on the changing NMA and regulations, and the enforcement of the regulation.

2.31 Transition between municipal and provincial regulation

In terms of the transition from municipal to provincial regulation of nutrient management, one OMAFRA staff member indicated that they are not currently keeping track of this. When the NMA and regulation were first implemented, a comprehensive review of all municipal by-laws was completed to determine their status. As this is no longer a high priority, a recent survey of these by-laws has not been completed by OMAFRA. However, staff has asked municipalities to send them an updated version of their nutrient management by-laws, but there is no requirement for municipalities to do so.

OMAFRA staff indicated that if a municipality has a nutrient management by-law that conflicts with the provincial regulation, the building official of that municipality must still take the by-law into consideration after an approval has been obtained from OMAFRA. As a part of the building permit approvals process the local nutrient management by-law should be considered along with section 61(1) of the regulation, and a decision is made by the building official whether or not to issue a building permit. If a building permit is not issued but the farmer has received OMAFRA approval, then the farmer may take the municipality to court to determine whether section 61(1) of the regulation was applicable. Whether or not OMAFRA would become involved in the situation would depend on a case-by-case basis. According to OMAFRA staff, there has been at least one municipal by-law that was obviously contrary to section 61 of the legislation. OMAFRA staff wrote a letter to the municipality saying that they should amend the by-law in case someone applied for a building permit. So far they are not actively pursuing by-laws to take to court, but they may have to do so in the future.

Another OMAFRA staff member claimed that the change from municipal to provincial regulation of nutrient management has been fairly successful, and for the most part,

municipalities have either amended or repealed their extreme by-laws. However, there is concern that the most recent amendment of the regulation may have opened up this issue again. Since the province took away some requirements in the regulation, municipalities may choose to add more requirements back to their Nutrient Management by-laws. This could potentially result in varying by-law provisions across the province.

2.32 The changing regulation

OMAFRA staff indicated that changes to the Nutrient Management regulation were made for a number of different reasons. Primarily, the farm stakeholder group found the previous regulation too onerous. The Provincial Nutrient Management Advisory Committee that was formed at the time of the initial regulation to look at issues that the province viewed as “thorny” subjects also advised the policy makers that they were moving too quickly with the regulations and that they were too complicated. OMAFRA’s technical staff also thought that the science behind the original regulations was weak. They did not believe that there was enough empirical data to support the practices that the regulation was requiring. These land application issues will now be dealt with in the three-year research program.

Staff indicated that so far they have not heard a lot of negative response to the last round of changes. Currently there is more concern on the part of the municipalities and the farmers around trying to understand the requirements of the new regulation.

2.33 Enforcement

OMAFRA staff also discussed the enforcement of the NMA regulation. Staff indicated that the Act is jointly administered between OMAFRA and MOE. OMAFRA deals with the training and approvals of strategies and plans, and MOE deals with the compliance and enforcement of the regulation. Agricultural environmental officers are those that respond to issues under the legislation, and even though they technically work for MOE, they are trained through OMAFRA. Staff indicated that they are impressed with the level of understanding of the legislation and agriculture of the officers, and for the most part these officers have been well received by the farming community since they are viewed as coming from an agricultural background. These officers have also done a lot with educating the public and helping people gently come into compliance. So far no charges have been laid as the officers are trying to encourage rather than enforce compliance.

2.4 Farm Leaders’ Perspectives

Interviews with farm leaders from various organizations showed a mixed response to the transition from municipal to provincial regulation of nutrient management, and resulted in the identification of a variety of issues. These issues include concerns over the involvement of the province and lack of local consideration, funding for the farmers, and regulating farmers in general.

2.41 Provincial Involvement

Although lobbying of the province by farm groups contributed to the development of the Nutrient Management Act, there were some farm leaders that never wanted the province to intervene. These farm leaders believed that inconsistencies in the regulation of nutrient management through municipal by-laws across the province were good, since local environmental conditions varied across the province. According to these farm leaders, livestock agriculture should be limited in some areas and developed in other areas because environmental conditions are more sensitive in some areas and are more acceptable for livestock in other areas. These farm leaders have therefore been consistently frustrated with the NMA and regulation, believing that it does very little to protect the environment, and they do not see a long term future for it.

Even those farm leaders that did want provincial intervention to ensure consistency in regulation across the province were not pleased with how the legislation and regulation were developed. Initially the farm leaders were working very closely with OMAFRA to develop the legislation and regulation. However, after the Walkerton tragedy occurred, the government had to be perceived as taking control of the situation. OMAFRA then discouraged open dialogue between the farm organizations and the ministry because it became more important to take the lead role in the regulation of nutrient management. Although this was a step backwards for nutrient management, many farm leaders say that the situation is better now with the new changes to the regulation.

2.42 Funding

Funding for the NM regulation was another issue identified by farm leaders. Initially, livestock operations had reservations about the added cost from the regulations. Unlike other industries that can pass on the cost of regulations to the consumer, farmers must cover additional costs in order to remain competitive. Therefore, in the opinion of these farm leaders the government must be accountable for compensation for regulatory requirements. Now that the NMA and regulation has been in effect for a few years, the additional costs added by the regulation have become the cost of doing business for new and expanding livestock operations.

The farm leaders also commented on the Nutrient Management Funding program provided by the provincial government. The farm leaders stated that those farmers who were eligible for the funding program were pleased with the results as they could get up to 90% of their costs of complying with the regulation covered. However, only those existing operations over 300 NU were eligible for this program. If an existing operation less than 300 NU decided that they wanted to voluntarily comply with the regulation then they had to do so with less funding (approximately 30% of costs covered). However, the farm leaders did not object too much to this because they agreed that the funding should be provided to the larger operations that were required to comply with the regulation.

2.43 Regulation of Farming

The farm leaders interviewed all agreed that regulating nutrient management may not be the most effective way to protect the environment. According to these farm leaders, farmers are independent actors who have traditionally not been regulated. Farmers tend to respond better to incentives and education rather than regulation. Therefore the best way to

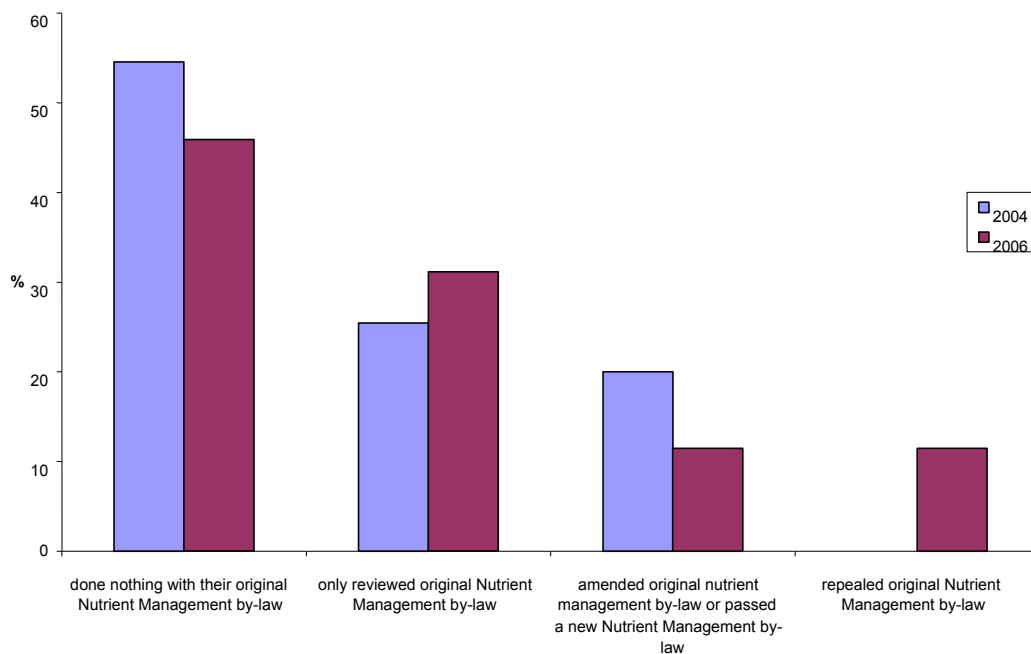
protect the environment would be to encourage best management practices. If you can prove to a farmer that a practice is beneficial for the environment then they will tend to adopt that practice. Another farm leader suggested providing the end goal of environmental protection and allowing the farmer to develop strategies and innovate.

3.0 Comparison of the 2004 and 2006 Questionnaire Results

The results of the 2006 questionnaire are compared with the results of the 2004 questionnaire presented in the Year 1 Interim Report to provide insight into how the transition between municipal and provincial regulation of nutrient management has changed since the previous report. For each survey question, the graph displays the percentage value of each response for 2004 and 2006 side by side.

A discussion of each graph is also included. The discussion is based on conclusions made from the 2004 and 2006 interviews with municipal officials.

Comparison of Actions Taken by the Municipality Regarding the Nutrient Management By-law (since the adoption of the Nutrient Management Act) in 2004 and 2006



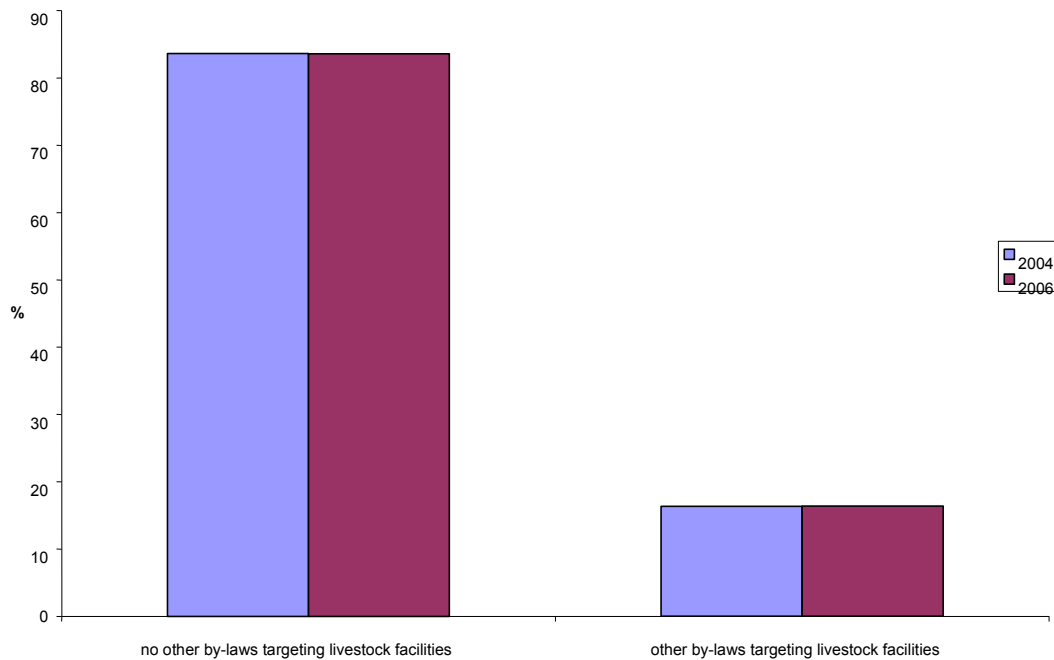
Results

Comparing the 2004 and 2006 survey results shows that a greater percentage of municipalities had done nothing with their original Nutrient Management by-laws in 2004 than in 2006. By 2006, a greater percentage of municipalities have reviewed their original Nutrient Management by-laws. Although in 2004 a greater number of municipalities either amended their original Nutrient Management by-law or passed a new one than in 2006, a greater number of municipalities repealed their original Nutrient Management by-law in 2006 than in 2004.

Discussion

In 2004, the greatest percentage of municipalities had done nothing with their nutrient management by-laws either because they had not had any applications for livestock facilities that would fall under their local by-law or the NMA or they had been too busy dealing with other issues. The results indicate that since 2004, more municipalities had applications that fell under either their by-law or the NMA and therefore had to at least review their by-law. As well, in 2004 more municipalities had amended their nutrient management by-laws than in 2006, when more municipalities repealed their by-laws. This is most likely due to the recent changes to the regulation that has left many municipalities believing that there is no need to have a local nutrient management by-law.

Comparison of Percentage of Municipalities that Passed Other By-laws that Target Livestock Facilities (since the adoption of the Nutrient Management Act) in 2004 and 2006



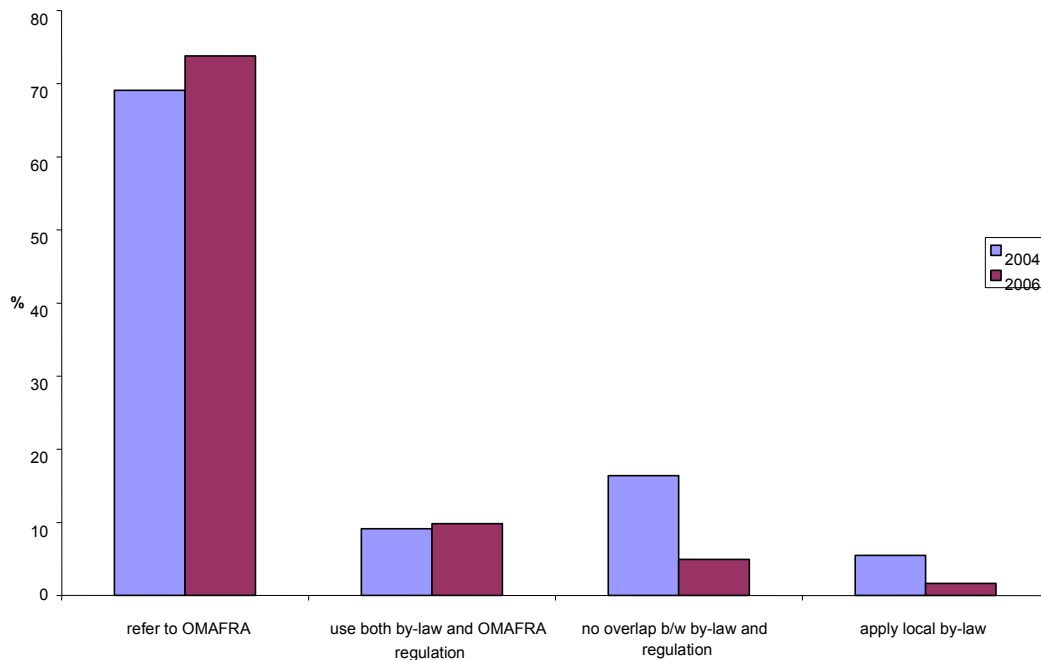
Results

A comparison of the 2004 and 2006 survey results indicate that the percentage of municipalities that had passed other by-laws targeting livestock facilities in 2004 is the same as the percentage of municipalities that have passed other by-laws targeting livestock facilities in 2006.

Discussion

Aside from the interim control by-law that was in place in one municipality in 2004 that has since expired, the number of municipalities with other by-laws targeting livestock facilities and the composition of these other by-laws in 2004 and 2006 is similar. This could be illustrative of the fact that even though in most cases these by-laws have been appealed to either the OMB or the courts, very few decisions have been made and therefore these by-laws are still in effect.

Comparison of Action Taken by Municipalities if there is Overlap Between Local By-law and the Nutrient Management Act in 2004 and 2006



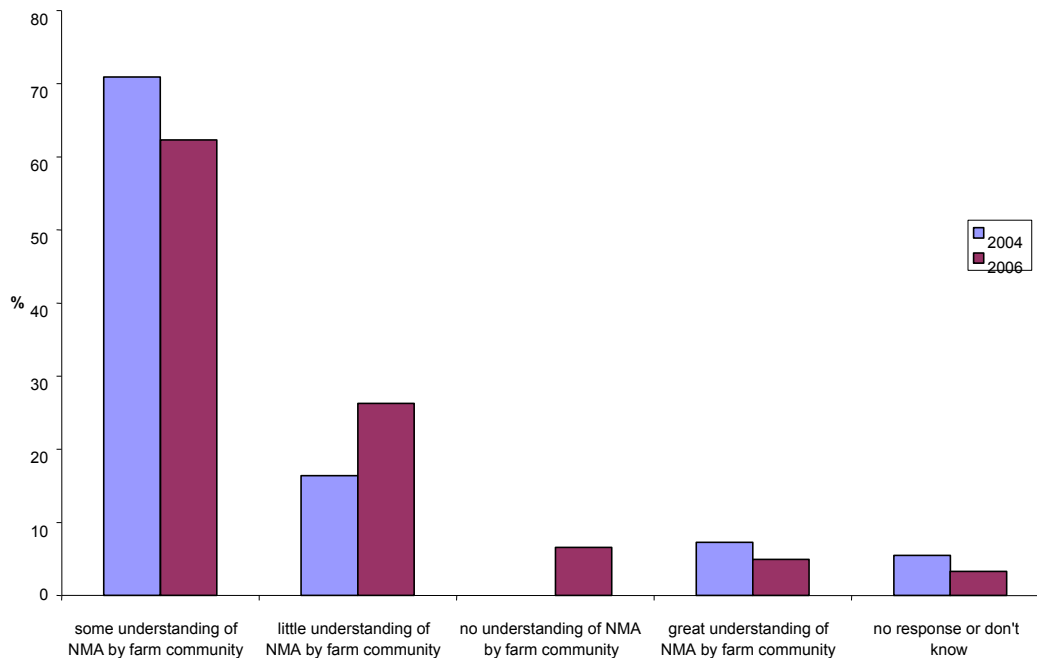
Results

A comparison of 2004 and 2006 survey results shows that in 2004, fewer municipalities would refer an applicant to OMAFRA than in 2006. In 2006, more municipalities would also apply both their local by-law and require OMAFRA approval, whereas in 2004, a greater percentage of municipalities indicated that there was no overlap between their local by-law and the provincial regulation. As well, a greater percentage of municipalities in 2004 indicated that they would apply their local by-law even if an application clearly required provincial approval.

Discussion

The differences in results between 2004 and 2006 for this question may be tied to what municipalities have done with their original nutrient management by-laws. Since more by-laws have been repealed and are not being used in 2006 than in 2004, there would now be more municipalities referring applicants directly to OMAFRA, fewer municipalities with overlap between the by-law and the regulation, and fewer municipalities applying their local by-laws at all. Perhaps now more municipalities are acknowledging the jurisdiction of the provincial government over this issue, and so more of those municipalities that still have nutrient management by-laws are referring applicants to OMAFRA for approval before applying aspects of their local by-laws.

Comparison of the Understanding of the Nutrient Management Act and Regulation by the Farm Community within the Municipality in 2004 and 2006



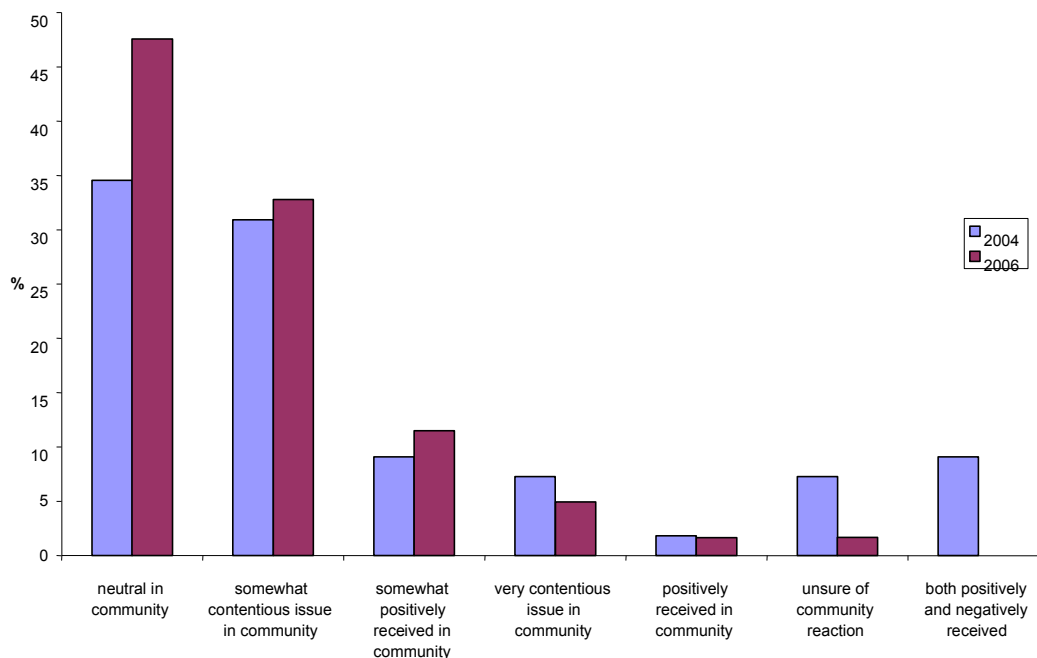
Results

A comparison of 2004 and 2006 survey results shows that a greater percentage of municipalities indicated some or a great understanding of the Nutrient Management Act by the farm community in 2004 than in 2006. On the other hand, a greater percentage of municipalities indicated little or no understanding of the Nutrient Management Act by the farm community in 2006 than in 2004.

Discussion

The fact that more municipalities indicated less understanding of the NMA by the farm community in 2006 than in 2004 may be a result of the most recent changes to the NMA regulation. At the time of the 2006 survey, the provincial government had not yet provided information sessions to the municipalities and farm communities on the requirements of the new regulation. The lack of understanding shown by this graph may be a result of this confusion.

Comparison of the Reception of the Nutrient Management Act within the Community in 2004 and 2006



Results

A comparison of 2004 and 2006 survey results show that a greater percentage of municipalities indicated that the implementation of the Nutrient Management Act was a very contentious issue in 2004 than in 2006. A greater percentage of municipalities in 2004 also indicated that the Nutrient Management Act was positively received, as a greater percentage in 2004 also indicated that the NMA was both positively and negatively received. In 2006, more municipalities indicated that the NMA was somewhat positively received, somewhat of a contentious issue, and not really an issue at all (neutral).

Discussion

As can be seen from the results and was sensed in the interviews, the reactions to the NMA and regulation tended to be stronger in 2004 than in 2006. In 2004, more municipalities rated the issue as very contentious, positively received, or both positively and negatively received. In the 2006 survey it was rated as somewhat contentious, somewhat positively received or neutral. This may be a reflection of the changing regulation; now that the regulation is perceived to be weaker then the reaction to the regulation may also be weaker.

As well, since the changes were made to the initial regulation, some municipalities indicate that, although they are not overly pleased with the outcome, farmers have seen the benefit of having the strategy (and in some cases a plan) that is required by the regulation. They believe that by following the strategy they are ensuring good farming practices and are indirectly protecting themselves from those that may complain. As well, the cost of

implementing the regulatory requirements has now become the cost of doing business and is not as big of a concern as before.

4.0 Recommendations

The following recommendations address the current and ongoing issues identified through the survey and interviews with municipal officials, OMAFRA staff and farm leaders that are presented in this report.

Recommendation 1: Clarification of the Requirements of the New Regulation

It is recommended that the Province continues to provide the municipalities and the farm community with information and clarification on the requirements of the recently amended regulation.

Recommendation 2: Specific Training for Building Officials

Due to the lack of depth in understanding of the requirements of the regulation by those who are enforcing it, it is recommended that the Province provides specific training for building officials. This training also needs to occur with any future regulatory changes.

Recommendation 3: Advance Notice for Municipalities

It is recommended that the Province inform municipalities well in advance of any changes to the regulation, including the potential for new technical standards.

Recommendation 4: Clarification on the Role of the Clean Water Act

Some municipalities expressed concern around the Clean Water Act. Therefore it is recommended that the Province clarify the connection between the NMA and the Clean Water Act – how they will interact and where the NMA is superseded (if it is).

Recommendation 5: Dialogue with farm leaders

It is recommended that the Province continue to work with farm leaders, and keep an open dialogue on all aspects of farming regulation.

Recommendation 6: Promotion of Tools

It is recommended that the Province continues to promote the awareness of Nutrient Management Plan/Strategy tools available to the public on the OMAFRA website.

Recommendation 7: Clarify Municipal role

It is recommended that the Province clarify the current role for municipal involvement in nutrient management, and whether or not there is room for local by-laws. In particular the

implication of Section 61(1) continues to raise questions and would benefit from clarification.

Recommendation 8: OMB and Court Decisions

It is recommended that the Province monitor decisions regarding outstanding OMB and court cases and alter legislation/regulations if required to ensure the intent of the legislation is maintained.

Recommendation 9: Collaboration between Province and Municipality

It is recommended that the Province seeks further assistance for dealing with the issues outlined in this report from those that are currently working through the issues (i.e. municipal staff and consultants). Municipal staff and consultants are gathering experience that would be helpful to the province in improving the existing regulatory framework.

Recommendation 10: Consistent Standards

It is recommended that the province uphold the goal of a consistent approach to Nutrient Management across the province. The Nutrient Management Act was built on the premise that consistency in standards is in the best interest of agriculture. This implies the need to monitor municipal involvement with this issue and to take action where this principle is not respected.

Appendix A

Municipalities That Received Survey

Municipality of Brockton
Municipality of Arran Elderslie
Municipality of Kincardine
Municipality of South Bruce
Town of Saugeen Shores
Town of South Bruce Peninsula
Township of Huron-Kinloss
County of Brant
Chatham-Kent
Town of Mono
Township of East Garafraxa
Township of Melancthon
Township of East Luther Grand Valley
Township of Amaranth
Township of Brock
Township of Scugog
Municipality of Uxbridge
Municipality of Bayham
Municipality of West Elgin
Municipality of Dutton/Dunwich
Township of Malahide
Township of Southgate
Township of Chatsworth
Township of Grey Highlands
Municipality of West Grey
Meaford
Township of Stirling-Rawdon
Township of Tyendinaga
Municipality of Bluewater
Municipality of Huron East
Municipality of South Huron
Municipality of Morris Turnberry
Township of Howick
Township of North Huron
Township of Ashfield-Colborne-
Wawanosh
Municipality of Central Huron
City of Kawartha Lakes
Lambton County
Town of Plympton-Wyoming
Town of Greater Napanee
Township of Stone Mills
Township of Loyalist
Township of Edwardsburgh/Cardinal

Village of Merrickville-Wolford
Municipality of Thames Centre
Municipality of North Middlesex
Municipality of Southwest Middlesex
Township of Middlesex Centre
Township of Lucan Biddulph
Township of Adelaide Metcalfe
Township of Strathroy-Cardoc
Norfolk County
Municipality of Trent Hills
Township of Alnwick/Haldimand
Township of Hamilton
Township of Cramahe
Municipality of Port Hope
City of Ottawa
Township of South-West Oxford
Township of Norwich
Township of East Zorra-Tavistock
Township of Zorra
Township of Blandford Blenheim
County of Perth
Township of Perth South
Municipality of West Perth
Township of Cavan-Millbrook-North
Monaghan
Township of Havelock-Belmont-Methuen
Township of Otonabee-South Monaghan
Township of Asphodel-Norwood
Township of North Kawartha
Stormont, Dundas and Glengarry
Township of North Dundas
Township of South Stormont
Township of South Glengarry
Township of East Hawkesbury
Prince Edward County
Township of Ramara
Township of Ewanturel
Township of Chamberlain
Town of Erin
Township of Guelph-Eramosa
Township of Puslinch
Township of Minto
Township of Centre Wellington

Appendix B

Municipalities That Returned Survey

Municipality of Brockton
Municipality of Arran Elderslie
Municipality of Kincardine
Municipality of South Bruce
Town of Saugeen Shores
Township of Huron-Kinloss
Chatham-Kent
Township of East Garafraxa
Township of Melancthon
Township of East Luther Grand Valley
Township of Amaranth
Municipality of Dutton/Dunwich
Township of Malahide
Township of Southgate
Municipality of West Grey
Meaford
Township of Stirling-Rawdon
Municipality of Huron East
Municipality of South Huron
Municipality of Morris Turnberry
Township of Howick
Township of North Huron
Township of Ashfield-Colborne-Wawanosh
Municipality of Central Huron
City of Kawartha Lakes
Lambton County
Town of Plympton-Wyoming
Town of Greater Napanee
Township of Stone Mills
Township of Loyalist
Township of Edwardsburgh/Cardinal
Village of Merrickville-Wolford
Municipality of Thames Centre
Municipality of North Middlesex
Township of Middlesex Centre
Township of Lucan Biddulph
Township of Adelaide Metcalfe

Township of Strathroy-Cardoc
Norfolk County
Township of Alnwick/Haldimand
Township of Hamilton
Township of Cramahe
Township of South-west Oxford
Township of East Zorra-Tavistock
Township of Zorra
Township of Blandford Blenheim
County of Perth
Township of Perth South
Municipality of West Perth
Township of Cavan-Millbrook-North
Monaghan
Township of Havelock-Belmont-Methuen
Township of Asphodel-Norwood
Township of North Kawartha
Stormont, Dundas and Glengarry
Township of North Dundas
Township of South Glengarry
Prince Edward County
Township of Ramara
Township of Guelph-Eramosa
Township of Puslinch
Township of Minto