

IN THE MATTER OF THE  
*FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT*, RSBC 1996, c. 131  
AND IN THE MATTER OF A COMPLAINT  
ARISING FROM THE OPERATION OF A LAYER FARM  
IN TERRACE, BRITISH COLUMBIA

**BETWEEN:**

ROBERT DAMS, MARGARET WARCUP AND TROY RITTER

**COMPLAINANTS**

**AND:**

DAYBREAK FARMS LTD.

**RESPONDENT**

**AND:**

THE CITY OF TERRACE

**INTERVENOR**

**DECISION**

**APPEARANCES:**

For the British Columbia  
Farm Industry Review Board

Christine Elsaesser, Vice Chair (Panel Chair)  
Richard Bullock, Chair  
Barbara Buchanan, Member

For the Complainants

Rob Dams  
Margaret Warcup  
Troy Ritter

For the Respondent

Ron Floritto, Manager  
Ian Christison, Owner

For the Intervenor

Marvin Kwiatkowski, Director of Development  
Services, City of Terrace

Date of Hearing

September 22, 2004

Place of Hearing

Terrace, British Columbia

## INTRODUCTION

1. The British Columbia Farm Industry Review Board (the “Provincial Board”) is a specialised administrative tribunal established under the *Natural Products Marketing (BC) Act*, R.S. B.C. 1996, c. 330. As part of its mandate, the Provincial board hears complaints about farm practices.
2. Under s. 3 of the *Farm Practices Protection (Right to Farm) Act* (the “Act”), if a person is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, the person may apply to the Provincial board for a determination as to whether the disturbance results from a normal farm practice. If, after a hearing, a panel of the Provincial board is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, the complaint must be dismissed. If the panel determines that the practice is not a normal farm practice, the panel must order the farmer to cease or modify the practice to be consistent with normal farm practice.
3. The City of Terrace (the “City”) commenced a complaint under s. 3 of the *Act* on behalf of some of its residents regarding a fly problem. The complaint against Daybreak Farms Ltd. (“Daybreak”) was set out in the City’s letter dated June 30, 2004 and received by the Provincial board on July 2, 2004.
4. The Respondent Daybreak owns and operates a layer farm located at 4421/4423 Eby Street, Terrace, British Columbia.
5. The City’s representatives and the Respondent’s representative attended a pre-hearing conference on July 29, 2004. The City provided the following grounds for the complaint as outlined in the August 4, 2004 pre-hearing conference report:
  7. Past efforts to resolve the problem have resulted in some occasional, sporadic relief but not all recommendations made in an April 1992 Environmental Assessment of the operation have been properly addressed.
  8. Fly problems were “mildly annoying” from 1998-2000 and started to increase in 2001 season.
  9. Since the spring/summer of 2002, the City has received a large volume of phoned-in and written complaints regarding excessive flies in the area of the farm.
  10. Analysis of the complaints (volume of flies and places where they are seen) indicates that the fly problem is localized in the vicinity of the farm.
  11. Consultative efforts with Ministry of Health (2002) and Ministry of Agriculture (2004) have not improved the situation. In fact, the situation continues to deteriorate.
6. The City sought an order from the Provincial board directing Daybreak to cease or modify its manure management, pest management and other practices relating to the fly problem to be consistent with normal farm practices for layer operations in similar circumstances.
7. The complaint proceeded to hearing in Terrace on September 22, 2004.

8. At the outset of the hearing, the Panel raised an issue as to whether the City had standing to make a complaint to the Provincial board in circumstances where the City did not have an issue with the Respondent operation beyond representing the concerns of its constituents. With the agreement of the parties, the Complaint was amended to reflect that three individual neighbours, Rob Dams, Margaret Warcup, and Troy Ritter were the complainants (the “Complainants”). The City in turn became an Intervenor in the Complaint.
9. Ron Floritto, the farm manager, was Daybreak’s spokesperson at the hearing. Ian Christison, Daybreak’s owner, also testified.
10. Marvin Kwitkowski, Director of Development Services, was the spokesperson for the City and the Complainants, although the Complainants each testified individually.
11. The Panel conducted an unaccompanied site visit on September 22, 2004 before the hearing commenced, to get a general understanding of the neighbourhood, the location of the Complainants’ houses in relation to the farm, as well as the farm property. The Panel did not receive evidence during the visit. Any questions arising from observations made during its visit form the basis of questions put to witnesses by the Panel.
12. To assist in providing evidence to the Panel, the Provincial board requested the following persons who conducted site visits to the Daybreak farm to attend the hearing:
  - (a) Graeme Johnstone, former District Agriculturist, Ministry of Agriculture, Food and Fisheries (“MAFF”);
  - (b) Leah Sheffield, Regional Stewardship Agrologist, MAFF, Smithers; and
  - (c) Jack Vaandrager and John Penner, members of the British Columbia Egg Marketing Board (the “Egg Board”) Production Management Committee (the “Committee”).

## **ISSUE**

13. Do the flies arising from the Daybreak operation result from normal farm practices?

## **FACTS**

14. Terrace is located in northwest British Columbia’s Skeena River Valley. Its climate is that of a rainforest. The area is known to be rainy and to have heavy winter snowfalls.
15. Daybreak purchased its 15-acre property in Terrace in 1992, however the layer operation had been in operation since the 1960s. There are two layer barns, commonly referred to as Barn 6 (the south barn) and Barn 7 (the north barn) that currently house 30,000 laying hens with Barn 6 containing approximately 10,000 layers and Barn 7 containing approximately 20,000. Barns formerly referred to as Barns 1 – 4 have been demolished. The two barns are deep pit operations, constructed so that the manure from the hens drops to pits below. Barn 6 has a dirt floor and Barn 7 has a concrete floor.

16. Daybreak also has a feed mill operation located east of the farm, across Eby Street and just north of Vesta Avenue. A housing subdivision is located on Vesta Avenue and the houses on the north side back onto the property where the feed mill is located.
17. The Complainant Rob Dams resides at 4321 Munroe Street, the Complainant Troy Ritter resides at 4322 Munroe Street, across from Mr. Dams. Their two houses are located southwest of Daybreak's barns. The Complainant Margaret Warcup resides at 4730 Vesta Avenue. Ms. Warcup's house is situated to the east of the barns and south of the feed mill.
18. From July 22, 2002 to September 2004, the City received complaints from residents in the vicinity of the Daybreak farm including the Complainants about excessive flies allegedly originating from the farm.
19. Flies are known to be attracted to fresh manure, decomposing food waste, and grass clippings. Proper waste management is necessary to keep fly populations within reasonable limits for the activities of daily life and for good health. Fresh manure is a common breeding place for flies.

#### **KNOWLEDGEABLE PERSONS' SUBMISSIONS**

20. The parties agreed that the four knowledgeable persons would present their observations before the parties made their submissions.

##### **(a) Graeme Johnstone, Ministry of Agriculture (retired)**

21. Mr. Johnstone, now retired, worked for the Ministry of Agriculture from 1965 to 1973 as the dairy specialist for northern BC and from 1973 as the District Agrologist for a period of about 20 years. He has a degree in agriculture from Cambridge University and farmed in England. Mr. Johnstone managed dairy farms in both England and BC and currently works as a consultant.
22. Mr. Johnstone recalled that the farm originated in the early 1960s. While employed by the Ministry, he had communication with the farm's previous owners, initially Nick Samson and then Stan Kinkead. He met the current owner and operators Mr. Christison and Mr. Floritto when they took over the farm in the 1990s. While he was still with MAFF, there had been odour and fly complaints about the farm. Mr. Johnstone subsequently retired and was not involved with the farm again until the Provincial board's Acting General Manager, Jim Collins, asked him to do an inspection in August 2004.
23. Mr. Johnstone and Ms. Sheffield attended at the farm on September 8, 2004. Mr. Johnstone noted some improvements and that the farm was generally tidier and cleaner since his visit 10 to 12 years earlier. He noted practically no odour. As a result of this visit, a joint report dated September 15, 2004 was prepared for the Provincial board. The eight-page report with attached sketch, describes their findings and recommendations.

24. Mr. Johnstone noted that Mr. Floritto was cooperative and supportive of the inspection. He observed that it was raining on the day of the visit, mortalities (dead chickens) and broken eggs were properly handled. There was little evidence of flies inside Barns 6 and 7; the egg packing area was clean. In the manure pits, the moisture content of the manure ranged from dry to liquid and there were fans running above the pits. Barn 6 pit had the most liquid and there was potential for fly breeding in some areas. However, where the manure was either very dry or liquid, there was little potential for breeding. At the outside west end of Barn 6, there was a small liquid manure lagoon. Mr. Johnstone believed that water was entering Barn 6 from somewhere, making the manure more liquid than its original consistency. The lagoon appeared to be overflow from the barn. In addition, there was standing water on the farm's southwest and northwest corners. Standing water is not a good situation as it serves as a breeding ground for flies.
25. Mr. Johnstone understands that there are plans to get rid of the standing water and the report discusses how the problem in the southwest corner could be rectified. The smaller pool of standing water in the northwest corner was being pumped out and landscaping was taking place. An uncovered manure pile was present on the north side of the property beside an unfinished composter (cement floor and walls). Mr. Johnstone was aware that the then Ministry of Environment had ordered previous owner Mr. Kinkead to construct a roof over this structure to keep rain off the manure. Mr. Johnstone was also aware that Daybreak's owner had hauled a large amount of manure from the property in August 2004.
26. Mr. Johnstone walked along the buffer (treed) zone at the south perimeter of the property and observed that several of the homeowners with property backing on the farm had dumped debris over the fence onto the farm. Such debris or garbage piles can be a source of flies. He met with some neighbours and observed that the flies in their traps were not the same as the flies in the barns. As such, he is uncertain that the farm is the source of the Complainants' fly problem. Mr. Johnstone suggested that fly samples from the barns and from the residences be obtained and identified. He offered to return to the area in the summer to find out exactly where the flies are coming from.

**(b) Leah Sheffield, MAFF**

27. Ms. Sheffield, Resource Stewardship Agrologist, has been employed by MAFF in Smithers since August 2003. Previously, she was employed by the Ministry of Water, Land and Air Protection and with the Ministry of Forests. Ms. Sheffield completed a B.Sc.( Ag.) in Animal Science from the University of British Columbia in 1992.
28. Ms. Sheffield first attended the farm on a cold and rainy day in May 2004 in response to complaints and a telephone call from City staff. Mr. Floritto provided a tour of the barns and the farm area. She met with City staff on the same day to gain an understanding of the complaints. During her visit, Ms. Sheffield saw little evidence of flies in the barns; outside the barns, flies were present but not excessive. There was a fairly good sized manure pile on the property which Mr. Floritto said would be moved off-site.

29. Ms. Sheffield's second visit was in September 2004 with Mr. Johnstone. She observed that the barns and egg grading area were clean with little evidence of flies; there were few flies in the coffee area. Some small, light coloured flies were observed in Barn 7. The barns were full of laying hens and no odour problem was evident. As for the pits, the consistency of the manure under Barn 6 was extremely variable, ranging from dry at the east end becoming wetter towards the west. The pit under Barn 7 was drier but there was a wet area along the north wall. Mr. Floritto indicated he thought they had a leak. Barn 7 has doors at the west end where machinery enters to clean out the pit. It appeared that the westernmost portion of Barn 7 was being cleaned out at the time of the inspection.
30. The farm property was cleaner than in May. The large manure pile was gone; however, manure was being piled alongside the unfinished composter north of Barn 7. There was no compost on the farm property. Along the farm's south boundary, she too saw neighbouring yard waste consisting mostly of grass clippings and compost piles with the largest pile being about 10 feet x 12 feet and about two or three feet deep. In the tour about the neighbourhood, Ms. Sheffield met some neighbouring residents, mostly from Dairy Road. She reported seeing evidence of excessive flies in the neighbourhood, including full flytraps and fly dirt on houses. She felt there was no question that there was a fly problem in the neighbourhood. Although not an entomologist, she observed that the flies in the traps were large and black, distinctly different from the smaller, lighter-coloured flies observed in Barn 7. She agreed with Mr. Johnstone that she could not say conclusively whether the neighbourhood's flies were coming from the farm or another source.
31. Some other potential fly sources were identified. There are a couple of small hobby farms with livestock in the area, one adjacent to the west boundary of the farm. There was a waste pile approximately .8 km from the farm at the south end of Eby Street which Ms. Sheffield described as a "massive, massive compost pile, like dump truck loads of mostly grass clippings and tree trimmings...dumped right at the end of that road."

**(c) Jack Vaandrager and John Penner, Egg Board Production Management Committee**

32. Jack Vaandrager and John Penner testified as a panel. Mr. Vaandrager is a director of the Egg Board and the chair of the Committee. In addition, he has a layer operation in Abbotsford. He has worked on production management issues for a number of years. Mr. Penner is also a director of the Egg Board and a Committee member. He has two layer operations, one in Sorrento and one in Abbotsford. The Committee's role is to visit farms, work with farmers to improve their facilities to the Egg Board's standards, and resolve neighbourhood concerns.
33. Messrs. Vaandrager and Penner spent four hours at the Daybreak farm on September 21, 2004. They saw the entire operation and also toured the neighbourhood. The weather was rainy during their visit. There are no other poultry farms in the area; the closest are in Prince George, Fort St. John and the Okanagan Valley. They observed that the farm's egg collection unit and grading station were clean. As for the barns, they observed that Barn 7, with its cement walls and floor, was drier than Barn 6. Barn 7 had some fly specks on the ceiling. Barn 6 had few fly droppings on the walls or around the lights. There were more

flies in Barn 7 than in Barn 6, but there were few flies in total. The flies observed in the barns were small and grey.

34. Mr. Vandraager observed that there was so much water in Barn 6 that normal manure management could not be practiced. He commented in part:

Barn 6, I must say, was a surprise to me because it's a dirt floor and wood walls. And that's the basic – the area where the water was coming in. And it was flowing in while it was – it was just running in. It was just streams coming through that barn. I've never observed anything like that before in my life.

35. Mr. Vandraager felt that flies could not live in the liquid manure flowing out of Barn 6. However, he was of the view that the flies were breeding outside of Barn 6 in the manure lagoon. Although the majority of the manure in Barn 6 was so wet it was running out, the drier manure needed to be pushed out with a tractor.

36. Both gentlemen were of the view that many of the farm's practices were not "normal farm practices":

- water should not be flowing into barns;
- water must be directed away from barns through landscaping and use of concrete floors and walls;
- nipples drinkers are to be checked regularly and replaced as needed;
- fans should be placed in the pit itself to dry the manure;
- fly populations are to be controlled through an Integrated Pest Management program;
- barns are to be completely cleaned out once or twice a year;
- manure is to be stored under cover, with a roof or a tarp, or moved off site;
- vegetation should be kept down around the barns; and
- there should not be lagoons on the property.

37. Mr. Vaandrager felt that Barn 6 could be remedied by adding a cement floor foundation and walls and put fans to the existing barn. The barn would only have to be empty for four to six weeks. Once remedied, a maintenance program similar to that found in Lower Mainland farms could be implemented. Parasitic wasps could be used to control fly populations.

38. Farmers commonly use fly sprays to break the fly life cycle of roughly 14 days so if you have a severe problem, you spray within those 14 days. Mr. Penner usually sprays right after his barn is emptied and finds that the residual effect lasts for months. It is possible that flies are laying eggs and continuing a cycle year after year around the houses. Mr. Penner did not want to guess about the neighbourhood's source of flies but agreed that it is logical that the farm would be one source since all farms have flies.

39. Liam Keane, an on-farm inspector for the Canadian Egg Marketing Agency ("CEMA"), did his annual routine inspections of the Daybreak farm on July 26, 2004 as part of the voluntary *Start Clean Stay Clean* rating program. Mr. Keane, who has B.Sc.(Ag.), provided a summary of his findings dated August 10, 2004 to the Committee. He did not observe any

flies either inside or outside of the barns and described the manure in the pits as being too wet to provide a suitable habitat for flies. Daybreak received a low industry rating of 79% on the inspection. This past year, three or four farms received a 100% rating. There is an incentive for farms to get the best rating as compensation rates are based on the rating. Mr. Keane did recommend removing manure stored outside, filling in the small lagoon, and levelling land for ease of mowing. Mr. Vaandrager commented that the Committee had questions and did not necessarily agree with Mr. Keane's observations regarding fly habitat. Mr. Keane was not in attendance at the hearing so it was not possible to question him about any aspects of his report.

40. Messrs. Vaandrager and Penner toured the neighbourhood with Mr. Floritto. The little grey flies they observed in the barns were not the same as the big black flies observed in the neighbourhood. They saw the neighbours' debris piles, including vegetables thrown over the fence. While this debris could be a source of flies, in Mr. Vaandrager's opinion, it is not the main source of the problem. He is of the opinion that the farm's feed mill across the road from the farm and to the north of the Vesta Avenue subdivision is as big of a fly concern as the egg operation. Cleanliness is important; there should be no spilled feed left lying around. The large compost pile near the feed mill was also a fly concern. It was unclear who was responsible for the compost pile. There was no evidence of flies at the feed mill likely due to the cool, wet weather. However, Mr. Vaandrager was of the view that flies would be an issue during the hot summer months.

## **COMPLAINANTS' SUBMISSIONS**

41. Rob Dams built his house in 2001 and has experienced "epidemic" fly problems since then during the summer months. His house windows, walls, siding, interior walls, and eaves are covered in fly droppings. In an attempt to reduce the number of flies inside the house, he enters through the garage but flies still get in. In July 2002, while unable to do so outside his own house, Mr. Dams enjoyed an outdoor barbeque at his mother's house approximately 600 yards away. His mother has lived in that location since 1971 and Mr. Dams lived there until he was about 20 years old. Though his family had a hobby farm with cows, chickens, ducks, geese, and a horse, they did not have a fly problem. His mother still does not have a fly problem.
42. In summer 2003, Mr. Dams and his neighbour Randy Durand attempted to alleviate the problem using flytraps. During a period starting about May 2003 and ending in about September, they set flytraps at the back of the Durand property, adjacent to the southwest corner of the farm. During warm weather, they filled a couple of flytraps every two or three days. Mr. Dams estimates that they captured about 35 to 40 gallons of compressed flies during this period. During the summer of 2003, Mr. Durand had about 10 to 20 chicks on his property and a compost heap within metres of the flytraps.
43. Margaret Warcup has resided in Terrace for about 20 years and moved to Vesta Avenue in 1998. After 2000, the flies got very bad. She has screens on her windows and doors and uses flytraps and sprays. Despite this, she was irritated by small and big flies enough to change her lifestyle. By 2003, she decided to move her father from her home into a nursing

home because he could no longer comfortably smoke outside the house due to the flies. She stayed away from home more and considered selling her home.

44. Ms. Warcup phoned the Ministry of Health about the flies and a health inspector came in 2002 or 2003. He advised that it was the chicken feed stored on property behind her house that was the problem. Work undertaken around the feedmill days after this complaint made a positive difference in the short term. In Ms. Warcup's view, the feed area needs to be inspected as a source of flies.
45. Ms. Warcup admits that she has a covered composter and concedes that she has dumped grass over her back fence. Generally, she believes that the neighbours try to keep the neighbourhood clean.
46. Troy Ritter and his wife purchased a corner lot at Munroe Street and Dairy Road three years ago. They began constructing their house in 2004. Sometime after he laid the foundation, Mr. Ritter, while walking with his wife, observed Mr. Durand's house at 4405 Munroe Street buzzing with flies, "almost like a beehive." He could hear flies from halfway across the street. They looked at Mr. Dams' house and up and down Dairy Road and saw evidence of flies from one end to the other. A fly problem soon developed in the basement of their new house. Although they considered selling and legal action, because of the potential for cleaning up the problem, they went ahead with their construction.
47. Mr. Ritter appealed to a common sense approach. Manure is left on the farm site, it rains, and the flies are breeding there. Prior to the September visit, he saw many dump truck loads of manure being removed from the farm. Mr. Ritter's biggest concern is that there will be recommendations from this process that may or may not be followed. However, he is clear that he does not want to see the farm shut down.

## **THE CITY OF TERRACE'S SUBMISSIONS**

48. Marvin Kwiatkowski, Director of Development Services, testified for the City. Mr. Kwiatkowski has a broad role overseeing engineering, planning, bylaw enforcement, building inspection, and mapping. He has worked for the City approximately 11 years. He completed a civil engineering program in 1989 at BCIT and obtained a degree in civil engineering specialising in water resources in 1994 from the University of Waterloo.
49. In the summer of 2002, the City began receiving complaints about flies in the Daybreak farm area. All of the complaints were from owners of properties located in close proximity (within a block or 400 metres) of the farm. Most came from residents of Eby Street, Vesta Avenue, Dairy Road and Munroe Street and consisted of concerns of excessive flies and the inability of property owners to enjoy their properties spring to fall. The complaints persisted in 2003 and 2004. The neighbours making complaints and Mr. Kwiatkowski are concerned about potential health risks posed by the excessive numbers of flies.
50. Mr. Kwiatkowski explained that to his knowledge and according to records, the City has not received fly complaints in any other neighbourhood of Terrace. He lives on the south side

of the City near farmland where lots are one-half to one-acre in size and people compost. There have been no fly complaints there and he has not personally experienced any problems.

51. Mr. Kwiatkowski tendered in evidence a Poultry Fact Sheet produced by MAFF. Some of the points relevant to this situation are:

Fresh manure, because of its high moisture content, is very attractive to flies. Therefore operations that clean out manure once a year should try to avoid removing it during fly season.

Because dry manure is not suitable for fly development, it is important to maintain waterers in good working order so as to avoid adding water to the manure from waterers that are overflowing or leaking. The watering system should be checked regularly and the manure examined for "soupy" spots.

Wet spots around barns should be eliminated as they may result in moisture seeping into the building, especially at the end doors, during periods of heavy rain. The ground around the barns should slope away from the structure.

Ideally flies are controlled in the immature (maggot) stage before they become adults and reproduce.

In addition to naturally occurring beneficial insects, a number of parasites are commercially available.

52. Mr. Kwiatkowski also referred to the 1992 Environmental Assessment on this farm and points out that prior to 2002 there was a long history of complaints about fly and odour nuisances in the subdivision adjacent to this poultry farm. Further, he points out that a number of the recommendations set out in that Assessment do not appear to have been carried out by the farm. Mr. Kwiatkowski was quite candid stating that he was made aware of this report by a neighbour and he is unsure why the City of Terrace did not have a file with respect to this matter as clearly they were copied with the original report.
53. Mr. Kwiatkowski visited the Daybreak farm on a hot day in mid-August 2004 and observed few flies inside the barns. No flies entered his vehicle while at the farm either. As for the zoning, he confirms that this area is zoned AR-1 which denotes agricultural land use.
54. Mr. Kwiatkowski tendered the affidavit of a Don Gillanders who has resided at 4518 North Eby Street since February 1976, adjacent to the layer operation. This affidavit sets out Mr. Gillanders concerns about excessive flies since the summer of 2000.

## **RESPONDENT'S SUBMISSIONS**

55. Mr. Floritto and Mr. Christison testified on behalf of Daybreak. Both gentlemen conceded that there is a neighbourhood fly problem and that their farm may contribute to the problem. The manure and standing water on Daybreak's farm can both provide a breeding ground for flies. However, they do not believe that their farm is responsible for the extent of the fly problems in the neighbourhood.

56. Daybreak has owned the layer operation since February 1992 and since that time, there have been a number of upgrades. These are summarised as follows:

- one lagoon of liquid manure has been filled in;
- four old barns at the feed mill site have been demolished;
- several hundred cubic metres of wood waste was moved from the feed mill area in 1992 to the lagoon area on the farm site, mixed with manure and recently hauled away in several hundred dump truck loads in August 2004;
- standing water in the old lagoon area is being pumped off the property and the plan is to fill it in next fall;
- excessive manure was removed from the barns;
- exhaust fans have been repaired;
- the exhaust fans in Barn 7 were increased from five 12-inch fans to 12;
- complete watering systems in both barns were replaced;
- worn feed troughs in Barn 7 were replaced;
- feed system in Barn 6 was replaced;
- baffling in Barn 6 was repaired;
- improvements to the handling of broken eggs were implemented;
- extensive renovations have been done to the grading plant; and
- new spray equipment was purchased.

57. Future plans include:

- filling in both lagoons (at the west side of Barn 6 and in the northwest corner);
- filling in the standing water (southwest part of property) immediately following the hearing;
- remedying the drainage issues; and
- demolishing the old feed mill and constructing a new mill on the farm site.

58. As for farm management, Mr. Floritto testified that Daybreak controls fly populations by spraying a total of two or three times March and April. To prevent fly immunity, he uses several different organo-phosphate sprays (Diazinon, Malathion, Dibrom) mixed with sugar both inside and outside of the barns beginning in March. At that time a lot of large over-wintering flies are seen. After that spray is applied every 14 days, shortening up to every 10 days as the weather warms up. The best method is to control flies as they arrive. Mr. Christison testified that the only time they use pesticides is when they absolutely have to. He said that he would not want to be spraying every 10 days and that they are trying to stay away from that. Daybreak does not use a parasitic wasp program as Barn 6 is too wet and the wasps would not survive. As for Barn 7, the manure is never completely cleaned out so that natural parasites can control fly populations.

59. As for the barns, Mr. Floritto concedes that there are problems with Barn 6. It does not have a cement foundation and water leaks in from outside. Mr. Floritto is looking at ways of controlling water that gets into Barn 6 and remedying the lagoon at the west end of the barn. There is a concern that the Barn 6 may be the low point on the property and a natural area

for water to flow. Daybreak is contemplating installing a cement foundation. Once the lagoon is filled in, they will have a better idea of what can be done to keep the manure dry. They may need to extend the eaves. Currently, Barn 6 is pumped out twice per year by a local septic service. Barn 7 is a conventional barn. Daybreak has plans to improve ventilation by putting in new fans on the north side of the barn next year. The manure on the side of the pit where there are no exhaust fans is moister than the manure on the side where the fans are. New flies are coming from the moist side of the barn. Barn 7 had a leaky pipe joint which was recently fixed.

60. Mr. Floritto commented on the use of the barns over the past few years. From December 14, 1999 to about August 2002, Barn 6 was empty as some of Daybreak's quota was moved to Vancouver Island. Upon the return of the quota, 6000 birds were placed in Barn 6. Barn 6 went into full operation in May 2003 with 10,000 birds. It still houses a flock of approximately that size. Mr. Floritto does not understand why the fly complaints appear to have worsened in a time when the farm was housing fewer birds.
61. Mr. Floritto states that the property has three areas of standing water for most of the year, a small liquid manure lagoon at the end of Barn 6, the old lagoon, and the standing water to the southwest near the buffer zone. He does concede that prior to this farm he had never seen lagoons on any egg production farm. Ordinarily, egg production facilities contain manure within the barn and from there, move it off the property. Manure is not ordinarily stored on-site in lagoons. The climate in Terrace compounds the problem and he agrees that manure stored on the property needs to have a roof over it and attempts had to be made to keep it dry. Mr. Floritto agrees with the general proposition that the drier the manure is, the less likely it is to breed flies. Daybreak's plan is to clean out the barns and then haul the manure away right away; they do not plan to store manure for years again.
62. Mr. Floritto was aware that tall grass can be a breeding ground for flies and conceded that Daybreak could do a better job keeping down the tall grass and that would help solve some of the problem. As for the feed mill, Daybreak rents this property from Mr. Christison's former partner, Roy Jensen. While Mr. Floritto was aware that flies may be attracted to the fish meal, there are generally few flies inside the mill. Daybreak's plan is to shut down that feed mill in the spring of 2005 and construct a smaller feed mill on Daybreak's property. They want to put the foundation in during the winter.
63. Mr. Floritto concedes that manure and standing water are potential fly breeding grounds. However, he does not believe Daybreak is the sole source of flies in the neighbourhood. He has seen no evidence of flies breeding around his farm and he does not believe the standing water contains enough manure to be a breeding ground and describes it as too "liquidy". He concedes that breeding occurs on the margins of ponds but he rejects that any breeding that may occur causes the fly problems in the neighbourhood. In support of this view, he argues that the timing is off. During the period of time when the farm had the most manure on it, there were no complaints. These complaints have arisen in the past two or three years after things have begun to be cleaned up. Further, there are a number of other sources of flies in the neighbourhood.

64. Mr. Floritto reviewed photographs of a number of rubbish piles in the neighbourhood which, in his view contribute to the fly problems. There was garbage by the corner of Johns Road and Orde Road, a pile of rubbish on Eby Street approximately 15 metres long, 7 to 8 metres deep and a few metres wide comprised of lawn clippings, burlap sacks, tomato plants and tomatoes. He described this as a “fly factory”.
65. Mr. Floritto also inspected the flytrap from one of the neighbours' homes, which was entered as an exhibit at the hearing and observed that while some of the flies are similar to those found at the farm, some are different.

## DECISION

66. A complaint under the *Act* involves a two-step analysis. First, a panel must be satisfied that the complainant is aggrieved by odour, dust, noise or some other disturbance emanating from a farm operation. If the complainant fails to establish that he is aggrieved, the complaint must be dismissed without need to consider whether the alleged source of the grievance results from a normal farm practice. If however, the panel finds that the initial threshold question has been met, it must go on to make a determination as to whether the grievance results from a normal farm practice.
67. Section 1 defines “normal farm practice” as follows:
- "normal farm practice"** means a practice that is conducted by a farm business in a manner consistent with
- (a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and
  - (b) any standards prescribed by the Lieutenant Governor in Council,
- and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b).
68. The Provincial board has considered the meaning of “normal farm practice” and “proper and accepted customs and standards as established by similar farm businesses under similar circumstances”. In determining whether a complained of practice falls within the definition of “normal farm practice”, the panel looks at whether it is consistent with “proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances”. This analysis involves a close examination and weighing of industry practices as well as an evaluation of the context out of which the complaint arises. This evaluation may include many relevant factors including the proximity of neighbours, their use of their lands, geographical or meteorological features, types of farming in the area, and the size and type of operation that is the subject of the complaint.
69. On the initial threshold question as to whether the Complainants are aggrieved by the Respondent farm’s management practises relating to fly control, the Panel is satisfied that they meet this threshold. The Complainants have established, through their relative proximity to the layer operation and the duration of their complaint, sufficient personal

interest in the subject matter of the complaint. Having found the threshold question met, the Panel must determine whether the flies result from normal farm practice.

70. In this case, the Complainants' evidence with respect to "normal farm practice" was fairly limited and mostly involved anecdotal evidence of those Complainants with a long history of living in the area never experiencing flies to this degree. However, the Panel had the benefit of four knowledgeable persons, Ms. Sheffield, Mr. Johnstone, Mr. Vandraager and Mr. Penner. These witnesses provided experience in farm management including manure management. Messrs. Vaandrager and Penner provided their specialised experience in poultry management and fly control.
71. The Panel has heard the response of the farm that despite the presence of standing water and manure on their property, the farm is not the source of *all* the flies in the neighbourhood. Mr. Floritto does not believe that flies come from his property to any great degree as he has seen little sign of breeding activity. Clearly, there are not large populations of flies within the barns as there is little evidence of fly dirt on surfaces inside the barn. The Panel is of the view that Mr. Floritto has an effective pesticide program which controls fly populations in his barns. However, we cannot accept that this farm does not significantly add to the fly problems in the neighbourhood. To do so would be to ignore MAFF publications as to proper farm management to control flies and the testimony of the Committee members.
72. We have before us clear evidence that this farm does not follow "proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances" when it comes to manure management. Despite the long list of improvements set out by Mr. Floritto, the farm is generally unsightly. Much of the property is in weeds, long grass or mud. There is standing water and lagoons present on the farm and until very recently, there were large piles of uncovered manure; all of which are recognised as potential breeding grounds for flies. Not surprisingly and unlike any other neighbourhood in Terrace, there are fly problems in *this* neighbourhood and in very close proximity to this farm. The Panel cannot accept that this is a coincidence. The lack of evidence of fly populations in the barns is not proof that flies are not a problem on this farm and can be explained by the diligent spray program implemented by Mr. Floritto beginning every March.
73. In addition to the manure management practices, the Panel observes that the fly control practices on this farm do not conform to other poultry operations either. This lack of conformity is brought about by the state of the barns. Barn 6 lacks cement walls and foundation and as such, water continuously enters the building and streams out the end. It appears that the source of water is both rainwater and ground water as Barn 6 is located in a low spot on the property. As long as this barn remains in this state, pit fans and parasitic wasp programs to control fly populations will not be effective. Further, Barn 7 does not have pit fans either. According to the Committee members, these could be installed in the barn's current state to keep the manure in the driest state possible.
74. It was suggested by the Committee members that the feed mill is a potential source of flies. There was some confirmation of this in the observations and testimony of Ms. Warcup.

According to the Committee members, Daybreak must take care to clean up feed spills and ensure that feed ingredients especially fish meal as well as the feed be kept dry and covered. Given that the plan is to construct a new mill, there is an opportunity for the farm to improve the design of the mill to ensure these factors are taken into account.

75. The approximately 49 residents who have complained about flies live on the streets immediately surrounding the farm. Given their close proximity, the Respondent must exercise greater diligence with farm management than a farmer whose property is not similarly situated. Given the added complication of heavy rainfall, clay soil, poor drainage and old barns which all present difficulties in maintaining optimum manure moisture levels, there is an obligation on this farm to be more diligent than where these circumstances do not exist. In this case, Mr. Floritto does not dispute that there have been problems with farm management in the past and he has recently demonstrated a willingness to implement recommendations to improve on-farm management. He was candid in these proceedings, acknowledging that more work needed to be done on the farm.
76. The Panel finds that the Respondent farm's pest management practises relating to fly control do not fall within the definition of "normal farm practice" as defined in s. 1 of the *Act*. Accordingly, the Panel directs that the Respondent modify its manure management and fly control programs to accord with normal farm practice within the layer industry.
77. However, directing the Respondent to make modifications is not the end of the story. Flies may originate from a number of sources and may travel considerable distances. Accordingly, the entire neighbourhood must be vigilant in implementing a fly management strategy. Mr. Johnstone offered his services to determine the origin of the flies within the community. Although this Panel does not have jurisdiction to order the neighbourhood to take any particular action, it is clear that the solution to fly control lies not just with the Respondent. Potentially, the farm could implement the directions below and this neighbourhood may still have a problem with flies. The whole neighbourhood must do its part in eliminating attractants which encourage flies. Accordingly, the neighbours are encouraged to work towards a neighbourhood solution.
78. It would appear that the problems relating to this farm have been allowed to fester. According to the Environmental Assessment Report completed in April 1992, the then Ministry of Environment had concerns relating to this operation going back to 1982. The ministries of Health and Agriculture had also been involved with the farm's problems. Pollution Abatement Orders were issued in 1988 and 1989. The concerns identified in 1992 related to manure management; one of the barns had not been cleaned out for *seven* years and had *six feet of manure* below the cages. The manure was liquid consistency and formed a manure seepage pool at the west end of Barn 6. Manure appeared to be seeping into lagoons on site. A culvert drainage system directed manure runoff into a ravine. Broken eggs were buried on site. A large pile of wood waste was being stored near the starter and grower barns (now demolished) on the east side of Eby Street. The Report made suggestions for dealing with the manure backlog, improvements to manure handling systems, watering systems, culverting and equipment. The report concluded that the farm is not a good example of proper management as it did not comply with the Environmental

Guidelines for Poultry Producers in British Columbia or the Code of Agricultural Practices for Waste Management with respect to manure storage in barns and earthen lagoons, broken egg disposal and wood waste storage. The Report recognised the incompatibility of a farm operation in such close proximity to a residential area, with houses as close as 50 to 100 metres. The Report appears to contemplate follow up with Daybreak to require the clean up of the operation. However it is unclear what if any follow up occurred.

79. The Panel has a strong sense of déjà vu reading the following passage:

The long history of complaints about fly and odour nuisances in the subdivision adjacent to the poultry farm has led to several site investigations, two Pollution Abatement Orders with subsequent court appearances but to no resolution of the matter.

The farm operation itself is a poor example of agricultural practice, primarily because it lacks a viable, on-going manure management strategy.

80. Although the farm has made some of the improvements noted in the Report, specifically the seven year collection of manure was removed from Barn 6, egg disposal has improved, the culvert system has been largely removed and recently the wood waste was removed, these improvements have taken 12 years. Currently, the farm is far from a model operation. There remain significant problems with the management of manure. Despite the apparent co-operation of the owners of Daybreak, it is clear that improvements are slow to happen, occurring on their schedule or when they are pressured into making a change.

81. The Panel does not know what the outcome of the 1992 Report was. It does not appear that the Ministry of Environment followed up with the farm to ensure that recommended improvements were implemented. Further, it does not appear that the City took any role in either ensuring that the respective ministries did their jobs or acting within its own regulatory authority to try and improve the on-farm management. Had the City taken an interest in these issues and monitored the situation, it is likely that solutions could have been found sooner.

82. Finally, the Panel has one final observation about the role of the City. From the evidence, and as referred to above, it appears that fly problem in this neighbourhood does not originate solely with the farm. The Panel heard evidence from a number of witnesses of rubbish piles and compost heaps that are untended. The City can play a leadership role in encouraging good yard maintenance and waste disposal practices throughout this neighbourhood. Any solution must be neighbourhood wide.

## **ORDER**

83. Given that we have found a breach of the *Act* insofar as the farm management practices complained of result in excessive fly populations, s. 6(1)(b) of the *Act* confers upon the Panel the jurisdiction to order the farm to modify the practice in the manner set out in the order, to be consistent with normal farm practice. Normal farm practice with respect to the fly control requires the implementation of reasonable measures to attempt to mitigate those pests.

84. Accordingly, and pursuant to s. 6(1)(b) of the *Act*, the Panel orders the Respondent to modify its farm management practices to control fly populations, as follows:
1. The Respondent is to consult qualified technical professionals (“professionals”), to determine and implement appropriate systems for:
    - a) manure management including:
      - (i) the storage and disposal of manure;
      - (ii) elimination of moisture sources within barns due to lack of a cement foundation and walls, poor drainage and leaking downspouts and equipment;
      - (iii) maintenance of nipple waterers; and
      - (iv) installation and proper orientation of pit fans to maximise drying action.
    - b) remediation of the farm site including the removal of all lagoons and standing water;
    - c) management of the feed mill to eliminate potential fly attractants;
    - d) integrated pest management program; and
    - e) maintenance of the grounds to eliminate vegetation creating potential fly habitat.
  2. The Respondent is to maintain appropriate records in support of the foregoing management plans.
85. The Panel’s modification order in the previous paragraph will take effect immediately. However, any modifications requiring the barns to be empty can be postponed until such time as the Respondent ships flocks currently housed in the barns.
86. The Respondent must provide the Provincial board with the professionals’ certifications that systems and programs pursuant to clause 1(a) of this Order have been implemented in accordance with their recommendations, together with a proper plan to maintain and monitor those systems and programs.
87. The Panel is aware that it may take time to get the necessary professionals in place. Accordingly, within 10 days of receiving this decision the Respondent is ordered to provide a schedule to the Provincial board of when the foregoing modifications will be made and the name of any professionals retained in accordance with paragraph 84(1) above.

Dated at Victoria, British Columbia, this 20<sup>th</sup> day of May 2005.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

Per

Christine Elsaesser, Vice Chair

Richard Bullock, Chair

Barbara Buchanan, Member