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File: 03-06
03-08

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Attention: Jonathan Baker

Bill Lacey



Dear Sirs/Mesdames:

COMPLAINTS UNDER THE FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT BY THE CORPORATION OF DELTA FROM OPERATIONS OF WESTCOAST INSTANT LAWNS

The Panel of the British Columbia Farm Industry Review Board (the “Provincial board”) has considered the submissions it has received following its letter to the parties dated August 16, 2004.

Based on those submissions, the Panel issues the following rulings and directions.

1. The 64th street site (leachate complaint): The recent submissions before the Panel indicate that Westcoast is no longer associated with the 64th Street site (September 23, 2004 submission of Mr. Baker, p. 3). If this is so, it follows that the complaint pertaining to this site would have to be dismissed as academic, as there is no remedy this Panel could grant under s. 6(1)(b) of the *Farm Practices Protection (Right to Farm) Act* (the “Act”). There is no existing practice to “cease” or “modify”. It would also follow that it would not necessarily be appropriate to issue a summons to Mike Fitzsimmons, whose evidence Delta seeks in relation to the 64th Street property. Unless Delta is able to persuade the Panel at next

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Farm Industry Review Board

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week's hearing that the facts are contrary to those as set out in Mr. Baker's letter, or that there is some basis on which this complaint could proceed, the Panel's intention would be to dismiss that complaint.

2. The 72nd Street site (odour complaint): The Panel does not agree with Mr. Baker that a municipality's right to ask the Provincial board under s. 11(2) of the *Act* to study and report on a matter related to farm practices categorically excludes a municipality from making a complaint under the *Act*. First, that would be inconsistent with *Central Saanich (District) v. Kimoff*, 2002 BCCA 169, where the Court upheld the right of a local government to make a complaint. Second, it is in our view entirely consistent with the *Act* to allow a municipality to make a complaint where a municipality's interests are directly and adversely affected by a farm practice, while also allowing a municipality to ask the Provincial board to study a matter related to farm practices. It is noted that the Provincial board does not need to answer "yes" to a municipal request under s. 11(2), and its powers under that section are limited to making recommendations. It cannot issue any binding orders.
3. Having concluded that municipalities are not categorically excluded from making complaints, we are also of the view that, like any other person, they only have standing to do so where they are directly and adversely affected by a farm practice. As Mr. Baker points out, there are certain types of complaints where it can properly be said that only human beings can be aggrieved by. A corporation cannot have an odour complaint, and Delta to date has pointed to no other municipal interest that is adversely affected by this odour. Delta's reference to its tax base is insufficient in relation to a localised odour complaint, particularly when the persons most affected by the odour have a right to file their own complaints. Delta's reference to birds being attracted to the site and adversely affecting the airport appears to raise an entirely different disturbance, not previously complained of, and not related to the odour complaint. The concern about potential future leachate from this site is speculative, as it has not previously been raised regarding this site. Delta's odour complaint is therefore dismissed under s. 6(2)(c) of the *Act*.
4. It is the Panel's view that if an odour complaint is to proceed, it should be placed on a firm jurisdictional foundation. To do this, it would be appropriate for one or more of the neighbours (presently intervenors) to come forward as complainants. If that were to occur, we would be prepared to grant Delta full intervenor status, and would further be prepared to grant Delta full scope to advance a case in support of the complainants. In our view, there is no reason why next week's hearing cannot proceed as scheduled.
5. Compost production versus turf production: Having received the parties' helpful submissions on this question, it is apparent that a final resolution of the question whether or to what extent the Respondent's operation is an agricultural activity under the *Act*, and if so, whether or to what extent it is protected under the *Act* as a normal farm practice, will have to await our findings on the evidence.

6. To this end, we consider it appropriate to require Daryl Goodwin, who has already been issued a summons, to produce and bring with him to the hearing, as being relevant to this proceeding, copies of records from January 1, 2002 to the present, related to the [present] property, and in particular:
 - Records showing the volume of turf, and the volume of compost, sold from the property;
 - Records showing the revenues Westcoast has received from the sale of turf versus the sale of compost;
 - Records indicating the description, amount and source of any materials brought onto the property relative to Westcoast's composting operation; and
 - Records indicating what percentage of compost has been used for purposes of the turf production operation, and what percentage is sold to third parties.

7. The Panel is not prepared to entertain those portions of the complaint relating to alleged breaches of environmental statutes and regulations. Those are questions for a Court in an action described under s. 2 of the *Act*. They are not part of the Panel's more narrow and specialised mandate of determining "normal farm practice". Similarly, the Panel is not charged with administering the *Waste Management Act*. The Panel's mandate is limited to determining questions of normal farm practice under s. 3 of the *Act*. While certain facts may in some circumstances overlap and be relevant to both the Provincial board and to public officials who administer other statutes, the Provincial board's consideration of this complaint will be limited to evidence relating to normal farm practice. Delta's allegations that Westcoast is not in compliance with the *Waste Management Act* will therefore not form part of this complaint.

8. The Panel is prepared to issue a summons to Pat Martin as it appears that the evidence he would give is relevant to the 72nd Street site.

9. The Panel confirms that the hearing will proceed as scheduled. If possible, the Panel would request confirmation regarding the identity of any new complainants at that time.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD



Christine J. Elsaesser
Vice Chair