

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND AN APPEAL BY THE MAINLAND MILK PRODUCERS ASSOCIATION
FROM A DECISION OF THE BRITISH COLUMBIA MILK MARKETING BOARD
CONCERNING A CONTAINMENT POLICY

BETWEEN

MAINLAND MILK PRODUCERS ASSOCIATION

APPELLANT

AND:

BRITISH COLUMBIA MILK MARKETING BOARD

RESPONDENT

AND:

B.C. MILK PRODUCERS ASSOCIATION,
CRESTON VALLEY DAIRYMEN'S ASSOCIATION
ISLAND MILK PRODUCERS ORGANIZATION,
PEACE RIVER DAIRYMEN'S ASSOCIATION
KAMLOOPS OKANAGAN DAIRYMEN'S ASSOCIATION
NORTHERN INTERIOR DAIRYMEN'S ASSOCIATION
BULKLEY VALLEY DAIRYMEN'S ASSOCIATION

INTERVENERS

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board

Ms. Christine Elsaesser, Vice Chair
Mr. Wayne Wickens, Member

For the Appellants:
Mainland Milk Producers Association

Mr. Stan van Keulen, President
Mr. Mike Yusko, Secretary-Manager

For the Respondents:
B.C. Milk Marketing Board

Mr. Ken McCormack, General Manager
Mr. Blaine Gorrell, Chair
Mr. Ben Jansen, Member

For the Interveners:
BC Milk Producers Association

Mr. Robin Smith, Executive Director

Creston Valley Dairymen's Association

Mr. Jeff Hanson
Mr. Wayne Harris

Peace River Dairymen's Association

Mr. Fred Lehmann
Mr. Rudy Bachmann

Kamloops Okanagan Dairymen's
Association

Mr. Lorne Hunter
Mr. Tom Veldhuisen
Mr. Gerry Hertgers

Northern Interior Dairymen's
Association

Mr. Barry Jacobson
Mr. Ueli Grob, President
Ms. Evelyn Souster

Bulkley Valley Dairymen's Association

Mr. George Veenstra
Mr. Dick Adema

Island Milk Producers Organization

by written submission

Date of Hearing

March 14, 2006

Place of Hearing

Richmond, British Columbia

INTRODUCTION

1. The Appellant, the Mainland Milk Producers Association (“MMPA”) is appealing a decision of the British Columbia Milk Marketing Board (the “Milk Board”) rejecting a request to implement a containment policy, whereby transfer of milk production from existing regions is discouraged through an additional freight assessment.
2. By way of background, as a result of the British Columbia Farm Industry Review Board’s (the “Provincial board”) January 19, 2004 decision in *Northern Interior Dairymen’s Association v. British Columbia Milk Marketing Board*, freight rates in the province have been pooled. Since August 1, 2004 producers pay the same rate to transport their milk regardless of the distance their milk travels to the processing plant. The decision to pool freight rates was subject to the following proviso at paragraph 79:

...Where provinces anticipated a problem arising, policies were put in place limiting a producer’s ability to move by making that producer responsible for additional freight charges. Likewise in BC, if the Milk Board felt, based on a reality that was unfolding that a “containment” policy was warranted, it has the authority to implement one on terms appropriate to the circumstances.

3. As a result of impending transfers of milk production from the lowest cost freight region (the Lower Mainland) into higher out lying freight cost regions, the MMPA requested that the Milk Board implement a containment policy to restrict transfers or at least ensure that producers who chose to transfer their milk production to higher transportation cost regions would bear their increased freight cost. In its decision of July 8, 2005, the Milk Board decided not to enact a containment policy.
4. On January 10, 2006, as part of the pre-hearing conference, the Northern Interior Dairymen’s Association (“NIDA”), an Intervener, applied for a summary dismissal of the appeal on the grounds that it had been heard before, that it was an abuse of the process and that it would have a negative impact on the dairy industry. The Milk Board and other Interveners supported this request for summary dismissal. On January 13, 2006 the Panel Chair dismissed the application stating:

I find that the application of NIDA is misconceived. The comments made by the Panel in the January 19, 2004, *Northern Interior Dairyman’s Association* decision do no more than state that the Milk Board has the authority to enact a containment policy should it determine that such a policy is appropriate in the circumstances. However, the decision in no way comments on or makes a determination on the appropriateness or the merits of whether such a policy is necessary. Subsequent to this decision, the Milk Board has considered the issue of containment and by way of a July 8, 2005 letter, communicated its decision that no such policy was necessary at this time. The Appellant is within its right to challenge this decision and argue that the Milk Board erred in not putting such a policy in place.

While NIDA and some of the other intervenors may believe this appeal is contrary to the best interests of the dairy industry and that it could potentially have a negative impact on the industry, the Appellant has a right to appeal the Milk Board’s decision to the Provincial board. Given that the Provincial board has not made any determination as to the appropriateness of a

containment policy, this remains a live issue which can be heard on appeal. I am satisfied that allowing this matter to proceed to appeal does not raise an issue of an abuse of process.

5. The appeal was heard on March 14, 2006.

ISSUES TO BE HEARD

6. Should the Milk Board implement a containment policy as contemplated in paragraph 79 of the Provincial board's January 19, 2004 decision concerning freight charges?
7. The Appellant sets out the following grounds of appeal:
 - a) the calculations used to justify total pooling of freight charges were flawed and the real costs since the implementation of total pooling on August 1, 2004 are in the order of 12 times greater than projected (\$1.33/hl vs \$0.11/hl) and are unreasonable;
 - b) total pooling is an encouragement for increased milk production in some regions that have little or no milk processing facilities. Such movements in milk production will increase freight costs for all producers in the province; and
 - c) total pooling is inequitable and does not recognize economic differences between regions.

DECISION

8. There is only one issue on this appeal, did the Milk Board err in its decision to not implement a containment policy.
9. The Appellant argues that the Milk Board should have enacted a containment policy requiring all producers moving to regions without processing facilities to pay all charges for moving their milk to processing facilities. Further, they argue that all producers in regions with processing facilities should pay any charges for moving additional production they require. As an alternative to these two proposals, the Appellant seeks to have a partial containment policy (which is in fact a partial pooling system) enacted. The Appellant relies on the expert evidence of David Matviw, a former Executive Director of Policy and Legislation Services with the then Ministry of Agriculture, Food and Fisheries and an expert in the area of policy including transportation policy in the milk industry.
10. Mr. Matviw is of the view that due to the Provincial board's decision to provincially pool and the increased fuel costs, it is critical for the Milk Board to be proactive and implement a containment policy now. A shift of producers from the Fraser Valley to outlying regions is imminent and a containment policy is required to prevent a major shift in production that would significantly increase transportation costs. A containment policy is essential to prevent potentially punitive transportation costs to dairy producers in the Fraser Valley.

11. Mr. Matviw relies on an “unofficial poll” conducted by the MMPA that shows a number of Lower Mainland producers are making plans to move to outlying regions and expand production to take advantage of lower land, tax and feed costs. If these anticipated moves do take place, an additional 17.5 million litres of milk would have to be moved at a further cost to the milk pool of \$600,000 annually. He is critical of the Milk Board for basing its decision to not enact a containment policy on current data. It has no means of forecasting changes. While he concedes the Appellant’s poll may be incomplete in that it only looked at transfers out of the Fraser Valley and not those into the Valley, it does show imminent moves of significant amounts of production.
12. Mr. Matviw supports the Appellant’s proposed containment policy as it forces relocation decisions to be made on the basis of all the economics of farming in a region without reliance on the benefits of a pooled transportation policy where producers in one region pay for part of the transportation costs of the outlying region. He concedes that while a total containment policy may not be workable a partial containment policy may be the more reasonable alternative. A partial containment policy is in fact a return to partial pooling and would involve amending the current system to make the pooling rates “more equitable”. His view is that a partial containment policy removes the current disincentive for processors to build in outlying regions and thus prevents further erosion of the regional industries. His opinion is that pooled transportation rates remove incentive for regional processing as milk can be delivered to a plant at the same price, irrespective of where it is located.
13. Mr. Matviw states that a partial containment policy reflects regional freight costs as if they had processing facilities with additional charges averaged among all milk sold. This system would be transparent to producers so that they could plan moves according to the actual costs to the system. He is of the view that such a containment policy would be more equitable and fairer to Fraser Valley milk producers.
14. The Panel received submissions from the regional producer associations who all intervened in this appeal. The main points are summarized below:
 - The BC Milk Producers Association took no position on this appeal.
 - The Island Milk Producers Organization supported the immediate implementation of a containment policy and proposed that existing producers be “grandfathered” with no volume restrictions and new producers in these regions bearing the full freight costs on their milk.
 - The balance of the interveners the Kamloops-Okanagan Dairymen’s Association, the Creston Valley Dairymen’s Association, the Peace River Dairymen’s Association, the Bulkley Valley Dairymen’s Association and the Northern Interior Dairymen’s Association support the Milk Board and argue:
 - the MMPA’s position that milk production is shifting or will shift from the Fraser Valley is incorrect as statistics from the Milk Board indicate

milk production in the Fraser Valley has increased for years and continues to do so since the Provincial board's decision in 2004.

- the number of producers and volume of milk produced in all outlying regions has declined significantly with most of the growth in production being moved to the Fraser Valley.
- the MMPA's proposal for a containment policy would further encourage regional loss and support Fraser Valley growth ultimately destroying the future of the dairy industry in the outer regions.
- the MMPA is using the containment issue as a loop hole to continue addressing their dissatisfaction with the Provincial board's earlier decision for total pooling.

15. The Milk Board acknowledged that it has the authority to implement a containment policy, but argues that the decision to do so must be defensible and represent the best interests of the industry. The Milk Board has not said that it would never consider a containment policy only that to date there is no basis to justify the implementation of such a policy.
16. The Milk Board points to its data which confirms the trend for movement of milk into the Fraser Valley region. They met with the MMPA on October 25, 2005 in an effort to clarify the Milk Board's data and answer all the MMPA's questions relating to that data. It is significant to note that in this appeal, the MMPA does not refute the Milk Board's data. Rather, the criticism is the Milk Board's failure to be proactive. In response, the Milk Board states that it is committed to reviewing the movement of quota at the end of each dairy year and if the facts support the need for reconsideration, it is fully prepared to do so.
17. The Panel finds that the Milk Board had complied with the Provincial board's directions in its January 19, 2004 decision. The Milk Board has established a transportation policy with the support of its Transportation Advisory Committee and is fully aware of industry trends and production movement. The Panel also accepts the Milk Board's decision that current trends and movement of production do not warrant the establishment of a containment policy at this time as more production of milk continues to move into the Fraser Valley than leaves for other regions. Further, the Milk Board is committed to monitoring this issue on an ongoing basis.
18. The Panel finds that the MMPA has failed to demonstrate that the Milk Board erred in its decision to not enact a containment policy. The Panel was left with the impression that the MMPA's appeal on this issue was an attempt to reargue the merits of a fully pooled system. One only need look at the grounds of this appeal to get a flavour of what this appeal was really about. The partial containment policy proposed by the MMPA in reality is a return to much the same system that was rejected by the Provincial board in its January 19, 2004 decision. That appeal was heard over five days spread over six months. Many witnesses were called and many submissions were made. This Panel is not prepared to set aside the considered decision to impose

a provincial pooling system on the basis of a half day hearing with only one witness.

19. On a related point, the Appellant argued that a partial containment policy would remove what they see as the current disincentive for producers to support processing initiatives in outlying regions. Support for regional industries is a recurring theme and similar arguments were in fact advanced in the freight rate appeal. However, we note that policies which support regional processing may not necessarily support regional production. While we accept that this is a factor that the Milk Board, in its capacity as the regulator of the dairy industry, needs to take into account in its decision making both now and in the future, policies aimed at supporting the regions raise complex issues and we do not accept that the Appellant's argument, here in and of itself, justifies a return to a partial pooling system.
20. The Panel finds that the Milk Board is committed to its mandate as a regulatory body representing the interests of all producers in the province of British Columbia and not just the interests of a single region. Should its data show that the trend for movement of production is to regions outside the Fraser Valley, the Panel is satisfied that the Milk Board can enact polices to manage that change.

ORDER

21. The appeal is dismissed.
22. There will be no order as to costs.

Dated at Victoria, British Columbia this 11th day of July, 2006

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

(Original signed by):

Christine J. Elsaesser, Panel Chair
Wayne Wickens, Member