



BC Farm Industry Review Board

January 5, 2020

File: F2017

DELIVERED BY EMAIL

Erin and Erik Solbakken
[REDACTED]

Jon and Katherine Jolivet
Arbutus Glade Sheep Farm
[REDACTED]

Dear Sir/Mesdames:

A COMPLAINT FILED UNDER THE FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT CONCERNING NOISE, ODOUR AND WATER

On October 26, 2020, the British Columbia Farm Industry Review Board (BCFIRB) received a Notice of Complaint (NOC) filed by Erin and Erik Solbakken (the complainants) alleging noise, odour and “water quality issues,” caused by a neighbouring farm operated by Jon and Katherine Jolivet.

By letter dated November 20, 2020, BCFIRB set up a submission schedule to hear from the parties with respect to the “water quality issues” and whether these issues related to a farm practice, as it was not clear that the complainants’ allegations related to low water volume in their well and water quality were in fact a “disturbance” within the meaning of the *Farm Practices Protection (Right to Farm) Act* (the *Act*).

Section 3 of the *Act* provides for complaints to BCFIRB as follows:

3(1) 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 in writing to the board for a determination as to whether the odour, noise, dust or other disturbance results from a normal farm practice.

(2) Every application under subsection (1) must

(a) contain a statement of the nature of the complaint, the name and address of the person making the application, the name and address of the farmer and the location of the farm,

(b) be in a form acceptable to the chair of the board, and

(c) be accompanied by the fee prescribed by the Lieutenant Governor in Council.

A written submission schedule was established and I have now reviewed the parties’ positions.

Submissions of the Parties

To the extent the complainants' submission of November 26, 2020 went beyond the water-related issues, I have not considered those submissions.

The complainants indicate that they have reported water quality and quantity issues to the Ministry of Health and indicate that they understand this is not a BCFIRB issue. They say it was included as they were advised to bring all concerns forward as part of their complaint.

The complainants indicate that their water concerns are part of the overall concerns about the farm operation and its effect on our health and safety. They say the water quality concerns stem from the farm operation's original dumping of the manure at the fence line (and approximately 30m uphill from their well. They argue that this dumping of manure contravenes setback requirements in the Code of Practice for Agricultural Environmental Management.

Subsequently, they allege the farm has tried a different method of manure management to control the smell and moved the dump site approximately 30m uphill. Their concern is that the original pile is still within the setback and was never removed and the new storage area remains susceptible to entering their water system due to the topography of the land. Specifically, the two properties are on a mountain side and the entire farm operation is higher in elevation. Following a downpour, water runs through the ditch adjacent to the two properties for days. As the complainants' well is directly below the farm operation, the complainants are concerned about possible contamination.

The complainants point to the Code of Practice for Agricultural Environmental Management and say the Director may impose higher setbacks if it is believed that contaminated runoff may be entering a drinking water source or crossing a property boundary. They say they are in a high-risk area due both to being in a phosphorus-affected area (per map provided) as well as us having topographic features. They indicate their well technician has referred them to the Vancouver Island Health Authority.

In reply, the respondent's position is that while the issues related to the farm practice of composting farm manure and animal bedding fall within the jurisdiction of the BCFIRB, issues related to health and safety and possible contamination of the complainants' well do not. The complainants have stated that they have already contacted the Ministry of Health with regards to this issue.

The respondent disputes that his original manure pile was closer than 30m as alleged by the complainants. He has measured the distance at 30.5m at the closest point. The manure pile was not located at the fence line and was measured at 15.5m from the fence line. With respect to the complainant's allegation of "runoff" from the manure pile located at a higher elevation than the complainants' well, the respondent says there is no surface water between the two locations, there has never been any surface water between the two locations, the complainant's paved driveway runs perpendicularly between the two locations (effectively creating a dam against any shallow-depth underground water flow) and there has never been run-off of water over the driveway.

Even in the wettest time of year, there has never been any standing water or running water between the two locations.

The respondent says that he met the setback of 30m found in the Code of Practice for Agricultural Environmental Management. Further, he disputes the allegation that he "moved" the manure composting site uphill to a location >30m. He says manure is now regularly gathered into plastic garbage cans and bags and moved off-site to a location owned by a 3rd party for use as a soil enhancer.

The respondent disagrees with the complainants' assertion that there is essentially no safe distance for a farming operation that is uphill from a well. With regards to the statement that the Code of Practice allows the Director to impose higher setbacks if it is believed that contaminated runoff may be entering a drinking water source or crossing a property boundary, there is no evidence of contamination and the allegation is based entirely on fear and unsupported speculation.

The respondent says he is not a geologist and has not personally conducted an analysis of the local soil and its drainage characteristics but notes that the original manure composting pile was co-located with his septic field which was installed by a licensed septic field contractor approximately 14 years ago. Permits for this location were granted by the city and a full analysis of potential impacts on any nearby drinking water wells was done by qualified personnel and the location was deemed suitable for a septic field. The respondent argues that the fact that the permit was granted is evidence to support that there is no potential for contamination and the standard setback of 30m is appropriate, safe, and applicable for this area.

As the complainants did not address any specific water quantity issues in their submission, the respondent did not respond to that issue and assumes the complainants no longer have any concerns with water quantity.

The complainants reply was brief and focussed on the odour issues not water quality or quantity.

Decision

In order for BCFIRB to have jurisdiction to hear a complaint, it must meet the requirements of section 3 of the Act which states "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 in writing to the board for a determination as to whether the odour, noise, dust or other disturbance results from a normal farm practice".

The purpose of this submission process was to give the complainants an opportunity to speak to whether their allegations related to water quality and water quantity can properly be understood as "disturbances" within the meaning of the Act.

The complainants concede in their submissions that they understand that matters related to water quality do not fall within BCFIRB's jurisdiction. They say they provided this information to give a complete picture of their complaint which appears to primarily relate to this farm's manure management practices. To the extent that the complainants are

alleging a potential health hazard related to a risk of water contamination given the siting of the respondent's manure pile, this aspect of the complaint is not within the jurisdiction of BCFIRB. The complainants have taken their allegations of contravention of the *Environmental Management Act or the Health Act* up with the appropriate authorities and that is where any resolution of this issue will need to be found.

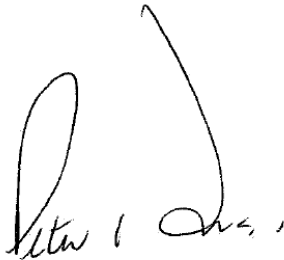
Despite being given an opportunity to speak to the "quantity" issue (low well pressure in late summer and low volume), the complainants did not do so. The complainant has not explained how this allegation relates to any practice of the respondent. There appears to be a dispute about ground water usage, an issue which in the absence of any causal link to a farm practice, falls outside BCFIRB's jurisdiction. The appropriate course is for the complainants to take this issue up with the appropriate authorities, as they have done.

In light of the foregoing ruling, I am prepared to refer this complaint to a hearing on amended grounds. I am directing that the issue under complaint and the associated grounds as set out in the Case Management Report to be revised to remove reference to the water issues and related grounds in paragraphs 7, 10 -14.

I have given BCFIRB staff instructions to provide the parties with an amended Case Management Report in due course and the Case Manager will be in touch with the parties to advise of the next steps in the complaint process.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read 'Peter Donkers', is written over a horizontal line.

Peter Donkers, Chair
BC Farm Industry Review Board