



## BC Farm Industry Review Board

August 11, 2022

File: F1916

### DELIVERED BY EMAIL

Shannon Gaudette  
[REDACTED]

Rick Enns, Operations Manager  
[REDACTED]

Dear Parties:

### **A COMPLAINT FILED UNDER THE *FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT* CONCERNING ODOUR FROM MANURE STORAGE**

On December 12, 2019, the BC Farm Industry Review Board (BCFIRB) received a notice of complaint and filing fee from the complainant, Shannon Gaudette.

The complainant alleges that she is aggrieved by odour generated by what she describes as an unauthorized manure storage operation not in compliance with the Ministry of Environment.

### **Timeline**

By process letter dated December 17, 2019, I found the notice of complaint deficient in two respects. The relationship between the complainant and the disturbance complained of, was unclear. It was also unclear whether the manure storage operation described was a "farm operation" conducted as part of a "farm business" as required by s.3 of the *Farm Practices Protection Act (FPPA)*. I asked for further particulars from the complainant and advised that BCFIRB lacked jurisdiction over alleged breaches of environmental statutes and regulations.

On December 19, 2019, the complainant clarified she was "representing" King Traditional Elementary School PAC and has a child attending this school, which is located across the street from the respondent, stating:

The property at 1582 Bradner Road, owned by 93 Land Company, has poultry on site. They store the manure from their poultry, as well as poultry manure brought in from other farms in the area and in turn, sell it for non-farm, commercial use. The unhealthy/toxic odor coming from the property, is a result of the manure being stored in an open air, tent like structure. Since 2017, this toxic odour has been causing serious health issues for the students, teachers and staff at King Traditional. We do not believe that what they are doing on the property is a "normal farm practise."

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The Ministry of Environment has had ongoing involvement with the above manure storage facility since the Spring of 2017, resulting in an Advisory of Non-Compliance, three official Warnings of Non-Compliance and a significant monetary penalty for violations of the Environmental Management Act, related to importation of manure for non-farm use and improper manure storage practices. However, the facility continues operate their manure storage operation, well aware that the MOE operates on a voluntary compliance basis.

On January 24, 2020, I outlined several issues:

1. To bring a complaint involves a personal connection to the disturbance alleged. A complainant does not represent the interests of another broader pool of persons (like the student body or the PAC) rather a complaint is specific to the person complaining and that person must be able to demonstrate that they specifically are aggrieved by the disturbance complained of.
2. While BCFIRB could hear a complaint related to the manure management practices of a poultry farm, to the extent that this complaint relates to the industrial (as opposed to farm) practice of storage, composting of manure sourced off-farm and its sale off-farm is likely a practice over which BCFIRB does not have jurisdiction.
3. BCFIRB has no jurisdiction over Ministry of Environment's compliance and enforcement matters under the *Environmental Management Act*.
4. As described by the complainant, the subject matter of this dispute appears to fall within the jurisdiction of the MOE, the Ministry of Health and potentially the Agricultural Land Commission.

As a result, I ordered the complaint be held in abeyance pending the complainant's response to the issues identified.

On March 16, 2020, BCFIRB staff requested an update on the complainant's intentions with respect to the complaint. By email dated March 17, 2020, the complainant advised:

93 Land Company has made an application to the City of Abbotsford/ALR to have their 1582 Bradner Rd Property rezoned for non-Farm use. The School District has sent a report to the Mayor and council stating their strong opposition to this, as have I on behalf of the PAC of King Traditional. I sent my concerns to the MOE and ALR staff as well. The owners of 93 Land Co have met with School District staff and will need to meet with the King PAC as well, as part of their public consultation process. With it being Spring Break now that is the latest info I have.

Thank you for checking in.

I will let you know if something changes.

Between May 20, 2020, and February 10, 2022, BCFIRB staff requested and received numerous updates from the complainant with respect to the status of respondent's non-farm use application. It appears not much has changed and the non-farm use application was still with the City of Abbotsford.

The complainant's email of February 11, 2022 states:

So as of now, their application with the City of Abbotsford will soon be going from the Planning Department to the City's Agricultural Committee and from there, depending on their recommendations, will go to Mayor and Council sometime in May/June.

In addition, 93 Land Company recently received another monetary penalty from the Ministry of Environment, for being in non-compliance of the Environmental Management Act. Since 2017, 93 Land Company has been found to be in noncompliance with the EM

Act in every inspection they've had and the toxic smell from the property is still a concern for students and staff at King Traditional.

The most recent update of July 11, 2022 confirmed as follows:

93 Land Company continues to be in non-compliance with the Ministry of Environment, and the toxic smell coming from their property on Bradner, continues to be a concern for students and staff at King Traditional. They have had seven inspections since 2017 and have been out of compliance on every single one. The most recent inspection was at the end of 2021.

Meanwhile, the owners of 93 Land Company, Nolan and Sheri Johnson, continue collect and store manure on their property at 1582 Bradner Rd and sell it through their retail company, Nature's Nutrients, even though their property is zoned for Farm use only. They have applied for a non-Farm use rezoning permit with the City of Abbotsford. The last time I spoke with Anna-Marie Paquette, with the City, their application was still with the Planning Department, waiting to go the City's Agriculture Committee. If you need any more information, please let me know!

## **Decision**

At the outset of this complaint, I identified two issues related to BCFIRB's jurisdiction to hear this complaint and gave the complainant an opportunity to provide submissions on these issues. Section 6(2) of the *FPPA* allows for summary dismissal of a complaint as follows:

- 6 (2)The chair of the board, after giving the complainant an opportunity to be heard, may refuse to refer an application to a panel for the purpose of a hearing, or, after a hearing has begun, the panel to which an application has been referred may refuse to continue the hearing or to make a decision if, in the opinion of the chair of the board or the panel, as the case may be,
- (a) the subject matter of the application is trivial,
  - (b) the application is frivolous or vexatious or is not made in good faith, or
  - (c) the complainant does not have a sufficient personal interest in the subject matter of the application.

Section 6(2) gives me the authority to refuse to refer an application to a panel for the purpose of hearing where I find the subject matter of the application is trivial, frivolous or vexatious, not made in good faith, or where the complainant does not have a sufficient personal interest in the subject matter of the application. I appreciate that the terms "vexatious" and "frivolous" can appear somewhat jarring. However, as used in legislation, they have established meanings. A "vexatious" complaint, which has no application here, is made with an intent to harass, or even if not made with such intent, which abuses the board's process because it is asking the board, and the opposing party, to commit resources to matters that have been fully and finally adjudicated. A "frivolous" complaint is one that is inappropriate to refer to a panel because it has no reasonable prospect of success. While this is a judgment that needs to be exercised wisely and with restraint, it recognizes that it is fundamentally unfair to the other party, and contrary to the public

interest, to establish a hearing process where there is no reasonable prospect of success.

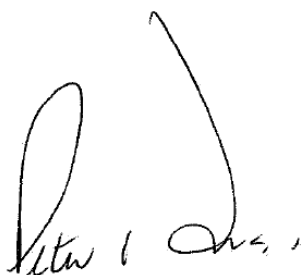
Turning to the specific circumstances of this case, I find that the complainants' direct personal exposure to the disturbance is very limited, and as such, she does not have sufficient personal interest in the subject matter of the odour complaint (related to a manure composting operation) and I would dismiss the complaint on that basis. Ordinarily, an odour complaint would be made by a neighbour living or perhaps working in close proximity to the disturbance.

It is clear from the complainant's updates, the operation complained of is not the respondent's poultry operation, rather it is its commercial manure composting operation, which appears to be an industrial or non-farm use of the property involving manure sourced off site. Unfortunately, BCFIRB cannot adjudicate on disturbances related to non-farm operations. Further, BCFIRB could not order a farm to cease or modify a non-farm operation even if it is causing a disturbance. As a result, this complaint to BCFIRB has no prospect of success and on that basis, it meets the test for being frivolous. As such, I am not prepared to refer it to a panel for hearing. Other government agencies have jurisdiction over this issue. The fact that, to date, those agencies have not addressed the odour issues to the complainant's satisfaction is something that must be taken up with the appropriate agency.

I do not want to diminish the significance of this issue for the complainant. However, as BCFIRB lacks jurisdiction to address these issues, the complaint is dismissed pursuant to sections 6(2)(b) and (c) of the *FPPA*.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read "Peter Donkers". The signature is written in a cursive, somewhat stylized font.

Peter Donkers, Chair  
BC Farm Industry Review Board