

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF COMPLAINTS
CONCERNING DUST, ODOUR, NOISE AND OTHER DISTURBANCES ARISING FROM
A BROILER OPERATION IN LINDELL BEACH, BC

BETWEEN:

MICHELLE AND CHRIS LAXTON
DEBORAH LAKEBERG AND DON MCCARTHY

COMPLAINANTS

AND:

CHRISTINE AND ERNIE DYCK

RESPONDENTS

AND:

BRITISH COLUMBIA CHICKEN GROWERS' ASSOCIATION

INTERVENOR

DECISION

APPEARANCES:

For the British Columbia Farm Industry Review Board	Barbara Buchanan, Member (Panel Chair) Richard Bullock, Chair Sandra Ulmi, Member
For the Complainants	Michelle and Chris Laxton Deborah Lakeberg and Don McCarthy
For the Respondents	Bob Kuhn, Counsel Christine and Ernie Dyck
For the Intervenors	Rick Thiessen, President Bud Krahn, Vice President
Dates of Hearing	December 15-16, 2005
Place of Hearing	Abbotsford, British Columbia

INTRODUCTION

1. Under the *Farm Practices Protection (Right to Farm) Act* (the “Act”), a person who is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, may apply to the British Columbia Farm Industry Review Board (the “Provincial board”) for a determination as to whether the disturbance results from a normal farm practice. If, after a hearing, the Provincial board is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, the complaint is dismissed. If the practice is not a normal farm practice, the Provincial board is empowered to order the farmer to cease or modify the practice.
2. These complaints were commenced by Michelle and Chris Laxton by way of a complaint letter received April 26, 2005. Subsequently, Deborah Lakeberg and Don McCarthy wrote a letter of complaint received November 2, 2005 by the Provincial board. The parties agreed that the complaints would be combined for the purposes of the hearing.
3. Following the filing of the complaint by the Laxtons, the parties attempted to settle the issues with the assistance of representatives of the Provincial board, as contemplated by the *Act*. Jim Collins, the Provincial board’s General Manager, prepared two letters, dated July 14 and 20, 2005 with respect to documenting a settlement. A dispute arose regarding the intended settlement and the Complainants decided to proceed with a hearing.
4. At the hearing of these complaints, Chris and Michelle Laxton and Deborah Lakeberg and Donald McCarthy spoke on behalf of the Complainants.
5. The Respondents, Christine and Ernie Dyck, are the owners of the farm that is the subject of this complaint. Their counsel, Robert Kuhn, represented them at the hearing.
6. In addition, Kim Sutherland, Kathy Erickson, Garth Bean and Art Penner gave evidence.
7. The British Columbia Chicken Growers’ Association (BCCGA) applied for and was granted intervenor status in support of the Respondents. Rick Thiessen, President, appeared at the hearing on behalf of the BCCGA.
8. This matter proceeded to hearing December 15-16, 2005. On the morning of December 15, before the commencement of the hearing, the Panel visited the neighbourhood where the farm is situated in order to place the complaints in context. All parties were present on their respective properties during the visit from the Panel.

ISSUES

9. Are the dust, manure management, noise, odour, barn ventilation, haying, vehicle access, disposal of mortalities and biosecurity practices of the farm conducted in accordance with normal farm practices?

10. The Complainants provided the following as grounds for their complaints:
- a. excessive dust from the spreading and handling of manure too close to neighbouring residences;
 - b. potential for pests and mould/fungi contamination from manure remaining on fields from excess spreading and from uncovered manure piles too close to and upwind from residences;
 - c. prolonged odour from manure storage and spreading;
 - d. storage and spreading of manure too near a well, gravity water lines and other water sources;
 - e. spreading of manure in non-daylight hours;
 - f. spreading of manure near residences without notice;
 - g. excessive dust and prolonged odour from the barn's exhaust fans;
 - h. dust from haying and from vehicle traffic on farm access road;
 - i. noise, including air brakes, from vehicle traffic (feed and catching trucks), the operation of the farm gate (located less than 35 feet from the Complainants Lakeberg/McCarthy residence bedroom) and from the tractor spreading manure in non-daylight hours;
 - j. noise, odour, pest and fencing concerns related to cattle located within 30 feet of the McCarthy residence;
 - k. smoke and odour from the burning of mortalities; and
 - l. biosecurity practices not being followed (of concern generally and because a hog farm is within 400 meters of chicken barn and potential Avian Influenza and other disease concerns to Complainants if they start raising pheasants, layers and ducks again).

REMEDIES SOUGHT

11. The Complainants seek the following remedies:
- a. manure to be hauled off the farm instead of being spread on the farm;
 - b. manure to be stored, handled and spread (if not hauled off the farm) so that dust does not leave the farm and so that manure is not stockpiled in full view of neighbours;
 - c. manure is not stored or spread within 30 meters of water sources (wells and feed lines);
 - d. the farm conducts a nutrient plan and study to ensure that the water source(s) for wells are identified and protected and that the farm does not spread more manure than the land area allows;
 - e. no spreading of manure in non-daylight hours;
 - f. filters installed on the barn's fans;
 - g. relocation of the farm access gate and access road gravelled, oiled and watered during dry months;
 - h. strict and mandatory biosecurity protocols put in place;
 - i. proper disposal of mortalities that does not include burning;

- j. continued cleaning of the barns by pressure washing rather than blowing out dry manure; and
- k. improved communications by the farm with its neighbours in terms of advanced notice of farm operations.

FACTS

12. Christine and Ernie Dyck, the Respondents, live on Frost Road in Lindell Beach, BC. Mr. Dyck has a farming history and has been involved with growing chickens for 45 years. He works 50-60 hours per week on the chicken farm and is also employed by Jonkman Equipment Ltd.
13. The Dyck's farm, which they purchased two years ago, is on approximately 40 acres of land, about 17 acres of which are farmable. They have constructed a chicken barn near the back of the property. It is a broiler operation of approximately 13,000 birds with the first flock placed in the barn in February 2005. The Dyck home, which they moved into on December 2, 2005, is located beside the barn and also near the back of the property. Between the Dyck's home and barn and the Complainants' properties is a field that is used for spreading manure and raising cattle. The Respondents have private road access to their farm from Frost Road. The access road is located between the properties of the two sets of Complainants.
14. The Complainants Chris and Michelle Laxton's property, which they purchased in April 2004, is located on Frost Road to the north of the Dyck's property. The Laxton's property is approximately 2.3 acres. Also on the property is a cabin that the Laxtons plan to use as a bed and breakfast business. It is situated approximately 30 feet from the access road to the Dyck property.
15. The Complainants, Deborah Lakeberg and Don McCarthy's 2.37-acre property, which they have owned since 1982, also lies along Frost Road, with an access road leading to the Dyck property between the Laxton and Lakeberg/McCarthy properties. The Lakeberg/McCarthy house was built two years ago and is approximately 32 feet from the access road to the Dyck property and 26 feet to the property line lying along the Dyck's field. They have a gravity fed water line from a nearby creek which crosses the Dyck field.
16. Both the Laxton and Lakeberg/McCarthy properties are long and narrow with most of their frontage lying along Frost Road and backing on the Dyck's property. Both the Respondents' and the Complainants' properties are within the Agricultural Land Reserve.

SUBMISSIONS OF THE COMPLAINANTS

17. Mr. Laxton argued that the impacts of the Dyck's farm is too much for them, that the land has a sensitive aquifer, and that the soil conditions and the topography of the area must be considered when dealing with their complaints.

18. The Laxtons are concerned about the excessive dust from the spreading and handling of manure too close to their residence. They are concerned about harmful particles from the chicken manure which cross into their property and which they have to breathe. Excessive dust and odours from the barn fans are also a problem.
19. The Laxtons are also aggrieved by the odour of the manure after it is spread and from the pile that was left uncovered for some time in the field behind their property. They stated that there was 90 days of odour from the manure in a six-month time frame. They said that they do expect some odour living next to a farm, but that this was too much. They noted that the change in the barn clean-out procedure has greatly improved the odour and dust arising from the barn clean out. However, they would like to see filters placed on the barn fans to further cut down on the dust.
20. The Laxtons are also concerned about the manure spread right to their property line and only 25 feet from their well. They stated that their well is 200 feet shallower than the well of the Dyck's and that they are concerned about possible contamination of the aquifer from too much manure.
21. Spreading manure after dark is also a problem to the Laxtons as the downdrafts from the mountain behind them bring all the dust and odour into their house. They noted that they could not open their windows in the evenings for three weeks last August.
22. The lack of notice of when manure was to be spread was also noted by the Laxtons as a problem.
23. The Laxtons argued that a lack of communication was a breach of the Settlement Agreement reached between themselves and the Dycks. This agreement was set out in two letters dated July 14 and July 20, 2005. The Laxtons give as example of the lack of communication as having occurred on August 25 when the Respondents denied that odour and dust were being caused by their spreading of manure.
24. Noise from the release of air brakes when the trucks come to pick up the birds and the noisy gate also concern the Laxtons. They plan to rent out their cabin that is very close to the gate and would like the gate moved to another location further into the Dyck's property.
25. The smoke that drifts into their property aggrieves the Laxtons as they do not know what is being burned and if it is harmful.
26. The Laxtons are concerned about the biosecurity on the Dyck farm and whether it is adequate. They are especially concerned because of the hog farm that is within 400 meters of the chicken barn and the potential of Avian Influenza and other diseases.
27. The other two Complainants, Ms. Lakeberg and Mr. McCarthy, have issues with the Dyck's farm practices. They are concerned about the upkeep of the animals on the Dyck's farm resulting in calls to the SPCA, and about the cows getting loose.

28. Ms. Lakeberg and Mr. McCarthy are also concerned about the dust created by haying. They have asked Mr. Dyck to pull his tines up when passing their property. They also state that taking three weeks to hay a field is not normal farming practice. Dust from the access road to the Dyck's house is also a problem for the Complainants. They recommend oiling or watering the driveway to mitigate this problem.
29. The farm spreading manure 26 feet from their home is a problem for Ms. Lakeberg and Mr. McCarthy. They do not feel that Mr. Dyck thought of them and they stated that this practice is ruining their lifestyle. Mr. McCarthy noted that the manure smell is so strong that it makes him gag and he is concerned by what is in the manure. He also noted that the topographical nature of the area causes the winds to blow towards their house which is in a hollow where the dust and odour settle, making them prisoners in their own house. Ms. Lakeberg noted that she cannot keep the dust out of their house.
30. Noise caused by the metal gate and heavy chains on the Dyck's gate has become a health problem for the Complainants. The tarp flapping over the manure and the noise from the cows is also an issue. They noted that things have improved now that construction is over, but they have concerns that things will deteriorate again. They would like to see the gate moved.
31. Ms. Lakeberg stated that her issues were health, lifestyle and seeing normal farming practices. She is concerned about the 10 loads of chicken manure that were delivered behind their house and what impact that might have on the water supply as the water system is not very stable. Ms. Lakeberg wants to have clean air and water.
32. The Complainants built a new house two years ago because of Ms. Lakeberg's allergies. She is concerned that the manure, which smelled for six days and which was very invasive, will aggravate her allergies. She is also concerned about the bright orange fungi growing on the manure in the field. Ms. Lakeberg said that she had bad headaches from the manure smell that finally went away with the snow and frost.
33. The big issue to Ms. Lakeberg and Mr. McCarthy is the heavy spreading of manure behind their house. Their remedy to this is to not spread or spread the manure lightly close to their property or water source. They would also like to be informed when the spreading will occur and when the chicken haul will happen.
34. Biosecurity is also a concern to Ms. Lakeberg and Mr. McCarthy, as they do not feel that proper biosecurity measures are in place.

SUBMISSION OF THE RESPONDENTS

35. Mr. Kuhn, counsel for the Respondents, Christine and Ernie Dyck, raised two preliminary matters: firstly, the jurisdiction of the Provincial board under the *Act* to hear a number of issues which have been raised by the Complainants, and secondly, the threshold of the complaints. To this end, the Respondents argued that complaints relating to allegations of breaches of the *Health Act*, environmental or other legislation or biosecurity matters are

not within the jurisdiction of the Provincial board. He also argued that because the original complaint of the Laxtons had been resolved by means of a Settlement Agreement, and because the Agreement has not been breached, that the principle of estoppel applies and there is no further jurisdiction for the Provincial board. In addition, Mr. Kuhn submitted that several of the complaints and remedies sought were trivial and vexatious and not brought forward in good faith.

36. Mr. Kuhn stated that this case involves a well-run, state of the art farm which could be used to a much higher intensity with more noise, dust, and odour being part of normal farming practices. He argued that there is no evidence of any kind that this farm is operated on anything but better than normal standards.
37. The Respondents noted that the problem arose when the land began to be farmed after being used for very little for the previous number of years. They believe that the neighbours do not like the change and do not want to be caused any inconvenience due to this use.
38. Mr. Kuhn pointed out that Mr. Dyck has repeatedly shown that he is willing to mitigate any deleterious effects of his “first class” broiler operation to the extent reasonably possible, but there must be some point at which the complaints stop and he is allowed to farm normally.
39. Mr. Dyck explained that he sited the barn at the back of his property to keep it away from the neighbours and that it would have been cheaper to have it nearer the road.
40. Mr. Dyck stated that he has complied with the Settlement Agreement worked out with help from the Provincial board which was to have settled the complaints of the Laxtons. He has maintained distance barriers from the Laxton’s house and has tried to have the same barrier from the McCarthy house. He does not spread if the wind is blowing to try to keep the dust down. He noted that when the manure is dry that there is more dust.
41. Regarding the manure pile in the field, Mr. Dyck stated that it was in the field from May 9 until September 14 because the weather was too hot and he did not want confrontation with the neighbours.
42. Mr. Dyck stated that the November 2 complaint from the Lakeberg/McCarthys was the first time he had heard about the water lines, the potential for pests and fungi and the noise complaints from them.
43. Mr. Dyck said that he is washing down his barn equipment now as a result of the Laxton complaint, even though it would be quicker and easier on the equipment to blow it down. He stated that it is not a viable option to install filters on the barn fans as they would plug up because there is too much air moving through them.
44. Mr. Dyck noted that he never burned mortalities on his farm and he believes that he complies with all biosecurity requirements.

45. In response to the complaints, the Respondents stated that their road is gravel and chipped rock which is standard practice. They said that the feed trucks usually use the road in the day but are sometimes later. The chicken catchers do come at night. Mr. Dyck has removed the chain on his gate to reduce the noise, but is not willing to move the gate as it is on the property line and keeps the cows in. He stated that the cattle fence is electric and barbed wire and that he moves the cows from field to field. He said that they have never been the Lakeberg/McCarthy or Laxton properties. He will spread the manure as needed and conceded that some dust is necessary. He is storing the manure on a concrete pad. Mr. Dyck stated that the manure was thicker near the McCarthy house because he squeezed it out rather than broadcasting it so it would not create as much dust.
46. Mr. Dyck argued that he has made certain accommodations or changes to his farm practices to avoid the complaints of the neighbours. He submitted that he has taken the advice of all of the professionals or third parties that have provided advice with respect to changes of farm practices. In his view he is operating consistently with normal farm practice.

WITNESSES:

Kim Sutherland, P.Ag.

47. Kim Sutherland, a regional agrologist with the Ministry of Agriculture and Lands (MAL) and responsible for Fraser Valley East, was summoned to appear by the Panel. She stated that MAL enforces the *Act* and that the regional agrologists deal with complaints. Ms. Sutherland reported that she received a call on April 11, 2005, from Mr. Laxton. He was complaining about the dust from the Dyck's spreading of manure, from drift of dust from barn cleanout and about uncovered solid manure storage.
48. While the Provincial board does not see MAL as the agency which enforces the *Act*, the Panel accepts Ms. Sutherland as a knowledgeable person with knowledge of the issues in question. However, it was not clear to the Panel whether Ms. Sutherland's suggestions to the Respondents were based on normal farming practices, MAL guidelines, or simply her attempts to mitigate the problems faced by the farmer and his neighbours.
49. Ms. Sutherland explained that manure should not be spread in a cross wind which would spread dust across property lines. She also stated that manure can be stored between November and April, but that it should be covered and on an impermeable surface. There is no rule to cover manure in the summer. She noted that it is normal practice to fertilize a hay field with manure. Ms. Sutherland acknowledged that since the Dyck's field is over an aquifer, caution should be exercised. However, she noted that the usual sources of contamination are pesticides and fuel storage and that manure does not normally contaminate ground water. She said that the main issue is to be sure there is an impermeable barrier under the manure when it is stored.
50. Ms. Sutherland made an unannounced visit to the farm on April 25, 2005 to observe the situation. She walked 30-50 metres into the Dyck property, looked at the barn site, the

clean-out arrangement, the buffers in place and the manure pile. She observed no evidence of excessive manure spread on the fields. Ms. Sutherland talked to Christine Dyck about the manure drift and told her to set back the spreading from the property lines and not to spread in a cross wind. She told Ms. Dyck that the wire fence along the property line was not much of a barrier and that the Dycks might want to consider planting trees or constructing a closed fence between the Laxton's garden and the Dyck field. However, she felt that observing a setback from the property line and spreading when there was not wind drift should be sufficient.

51. Ms. Sutherland noted that when dry manure is spread that there is a certain amount of dust that is difficult to control and that sometimes it cannot be totally prevented from crossing a property boundary. She stated that rain would reduce the amount of dust, but that for environmental reasons, spreading manure in the rain is discouraged. She admitted that totally controlling manure dust is a challenge.
52. Regarding the drift from the barn cleaning, Ms. Sutherland found it difficult to envision problems as the barn is situated in the back corner of the property with the clean out occurring in the back of the barn. She was happy to see the barn situated so far from the property line.
53. Ms. Sutherland spoke to the Laxtons about her findings and informed them about the Provincial board and the complaint process.

Garth Bean, P.Ag.

54. Garth Bean was called as a witness for the Respondents. Mr. Bean has a Bachelor of Science degree in Agriculture from the University of Manitoba and is a professional agrologist. He was involved in the chicken growing business for 25 years and one year ago took an Environmental Farm Planning course and on February 1, 2005 became an environmental planner for the BC Poultry Association. In the Environmental Farm Planning Program farmers do their own risk assessment following a workshop. The program is voluntary and confidential and identifies strengths and weaknesses and environmental problems on farms. Approximately 20 percent of chicken growers have taken the program.
55. Mr. Bean explained that he worked with the Dycks when they undertook an Environmental Farm Plan in November 2005. Part of the Environmental Farm Plan is a nutrient management plan which looks for any possible sources of pollution on the farm.
56. Mr. Bean noted that the Dyck's farm is brand new and that barns are well sited at the back of the property next to high trees. He was amazed that there was any dust. He stated that the farmer seems very knowledgeable and conscientious. Mr. Bean stated that Mr. Dyck is very proactive and he would put him in the top 10% of farmers with whom he has dealt.
57. Mr. Bean examined photos taken by the Laxtons (Exhibit #3) of dust created while Mr. Dyck was spreading manure. He stated that photos 1(a), (b), and (c), were normal dust

amounts and photo #2 was also normal. Looking at photos #11 and 12, he stated that clumping of manure should be avoided unless there is a reason for it. He stated that all of the photos looked normal to him.

Katherine Erickson

58. Katherine Erickson testified as a witness for the Respondents. Ms. Erickson has been an auditor and inspector employed by British Columbia Chicken Marketing Board (BCCMB) for the past four years. She is currently auditing the On Farm Food Safety Assurance Program (OFFSAP), a national program with the Chicken Farmers of Canada. She is also an environmental farm planner. Prior to her employment with the BCCMB, she was a Royal Canadian Mounted Police member for 13 years.
59. Ms. Erickson stated that she has been to the Dyck farm once and that the farm is OFFSAP certified. She noted that the farm is small with a large land base and is state of the art. She stated that there is nothing abnormal about the farm. Ms. Erickson said that the farm presently farms 13,000 broilers but could have 180,000 broilers on a farm of this size. She inspects 125-150 broiler operations per year and stated that this farm is in the top 20% of producers for his practices. She noted that the barn is at the back of the property with the fans facing towards the trees that filter and minimize dust.
60. Ms. Erickson also stated that there is mandatory biosecurity as part of the certification for the OFFSAP program. She also stated that she has no environmental concerns about the farm.

Art Penner

61. Art Penner, a chicken grower and a director of the BCCGA was called as a witness. Mr. Penner is on the alternative dispute resolution committee for the BCCGA. He farms 65,000 broiler chickens.
62. Mr. Penner stated that he did a farm inspection for normal farm practice for the Dycks and attempted to mediate the Laxton complaint. He saw nothing abnormal on the farm and stated that there were above average farm practices with the barn well situated much closer to the Dyck's house than the neighbours. He noted that the fans were hooded and blew away from the neighbours with trees around the fans to contain the dust. Mr. Penner said that he has seen 20 to 30 farms and that this farmer has done more than many others to try to solve the problems with the neighbours.
63. Mr. Penner stated that the 17 acres of useable property of the Dycks could support 250,000 chickens and have no problems spreading all of the manure on the 17 acres of the property.
64. Mr. Penner also stated that the Respondent was meeting the minimal standards for biosecurity and that no more was expected.

SUBMISSION OF THE INTERVENOR

65. The Intervenor BCCGA's purpose in intervening in this appeal was to ensure that normal farm practices are upheld under the right to farm legislation. Rick Thiessen, President of BCCGA, attended the hearing on behalf of the Intervenor. Mr. Thiessen made an opening statement, cross-examined witnesses during the hearing, and the Panel has noted BCCGA's written closing statement.
66. In its written submission, the Intervenor argued that there was no evidence produced at this hearing that would indicate that the Dycks have been doing anything contrary to normal farm practice.
67. The Intervenor noted that witnesses such as Ms. Erickson and Mr. Penner both estimated that this property could accommodate more than 15 times the amount of poultry that is currently housed there, indicating that the impact to the surrounding environment is minimal when compared to other poultry farming operations in BC.
68. The Intervenor argued that this appeal has become one of personality conflict rather than farm practice. To illustrate, Mr. Thiessen noted that the changes the Dycks have made to address the concerns of the Laxtons have brought no positive acknowledgement and only further complaints.

DECISION

69. At the outset of the hearing, the Respondents requested that the complaint should be dismissed for three reasons:
 - a. the principle of estoppel should apply because a Settlement Agreement had been reached and since this agreement has not been breached, the Provincial board does not have the jurisdiction to hear the complaint;
 - b. some of the Laxton complaints and remedies were trivial, vexatious and not brought in good faith and should therefore be dismissed; and
 - c. the Provincial board does not have the jurisdiction to hear breaches of legislation such as the health or environmental acts or matters of biosecurity.
70. The Panel does not accept that the rule of estoppel applies in this case and that once an agreement has been made that the parties cannot reopen the case. In fact, the Settlement Agreement expressly stated that "[i]t is understood that Mr. and Mrs. Laxton may apply to renew their complaint and request that it proceed to a hearing if the farm's manure management practices continue to impact on the neighbours in a significant way or on an ongoing basis." In addition, Ms. Lakeberg and Mr. McCarthy did not receive the Settlement Agreement and were not party to it. Therefore, the application to dismiss the complaint on the principle of estoppel is denied.
71. The Panel is not persuaded that some of the Laxton complaints and remedies are trivial, vexatious and not brought in good faith and should therefore be dismissed. The Panel

accepts that the Complainants are sincerely aggrieved and are entitled to a hearing. Accordingly, the request for dismissal on these grounds is denied.

72. The third point raised by the Respondents is in regard to the jurisdiction of the Provincial board on breaches of the health or environmental acts or biosecurity matters or other legislation. The *Act* is very specific and this decision will not enter into a determination of possible breaches of other legislation. The Complainants are free to take these concerns to the appropriate authorities if they feel that breaches of other legislation have occurred.
73. Resolving a complaint under the *Act* requires the Panel to undertake a two-step analysis. First, the Panel must be satisfied that the complainant is aggrieved by odour, dust, noise or some other disturbance emanating from the 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.
74. Section 1 of the *Act* 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).
75. In determining what is meant by “normal farm practice,” the Panel looks to whether a particular practice is consistent with “proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances.” This is a contextual analysis where industry practices are examined and weighed along with other factors such as 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 the operation subject to complaint.
76. As to the threshold question of whether the Complainants are aggrieved by odour, dust, noise or some other disturbance emanating from a farm operation, the Panel finds that the Complainants have satisfied their evidentiary burden. The ongoing nature of the complaints and the proximity of the Complainants to the Respondents’ property satisfies the Panel that the Complainants have sufficient personal interest in the subject matter of this complaint. Having found the threshold question met, the Panel must determine whether the complained of practices result from normal farm practice.
77. In this case, the Complainants introduced little evidence with respect to “normal farm practice” of similar farms in similar circumstances. Their main submissions are that they are being aggrieved by the practices of this farm and that their properties are located in a sensitive aquifer that should be considered differently than farms located in other areas. The Panel has not been provided with sufficient evidence to be able to conclude that there

is anything about the aquifer that would vary our assessment of normal farming practices in this situation. If the Complainants feel that there is a violation of the *Environmental Management Act*, they are free to pursue a remedy under that legislation.

78. Regarding normal farming practices on similar farms in similar circumstances, the Panel had the benefit of hearing from others in the industry such as Kim Sutherland, agrologist with MAL; Kathy Erickson, an auditor of the On Farm Food Safety Program; Garth Bean, a professional agrologist who is now an environmental farm planner; and Art Penner, a chicken farmer, director of the BCCGA, and on the alternative dispute resolution committee for the BCCGA. In addition, the Intervenor BCCGA outlined practices used generally in the industry.
79. Based on the evidence presented at the hearing and the testimony of those familiar with normal farming practices, the Panel has concluded that with some minor exceptions which the Respondents have already agreed to adjust, the operations of the Dyck farm are being carried out according to “normal farm practice” and as such, are protected by the *Act*.

Practices which were not consistent with normal farm practice

80. With respect to spreading of manure, the Complainants allege numerous instances of dust from manure spreading drifting onto their property. Their testimony, as well as their photographs, confirm that did occur. They are also concerned about manure being spread near their well. When Ms. Sutherland investigated the Laxton’s complaints regarding dust from manure spreading drifting onto their property, she suggested to the Respondents that they use larger setbacks when spreading manure and not to spread in windy conditions. Accordingly, the Panel does accept that at times, in 2005, the manner in which the manure was spread was not consistent with normal farm practice.
81. The Panel understands that Mr. Dyck has agreed to not spread manure within a 3.5 meter zone adjacent to the Laxton and Lakeberg/McCarthy property lines and a 30 meter radius from the Laxton’s well. In addition, the Respondent has agreed to take into consideration weather aspects, such as wind, when spreading the manure. As such, the Panel does not consider it necessary to order the farm to modify its practices in this regard.
82. The Complainants were aggrieved by a pile of manure left uncovered in the field behind their houses for a period of more than two weeks. Ms. Sutherland investigated the Laxton’s complaints regarding this uncovered chicken manure piled and she stated that manure should be stored on an impermeable surface such as a tarp and covered it if it was not spread right away. In light of this evidence, the Panel accepts that the manure was not stored according to normal farm practice. The Panel also understands that Mr. Dyck has subsequently moved the manure storage to a concrete pad at the end of the barn and out of sight of the Complainants’ homes. Therefore, the Panel does not consider it necessary to order the farm to modify its practices in this regard.
83. The Complainants have requested notification of when the manure will be spread. The Panel accepts that this is normal farm practice and also notes that in the Settlement

Agreement, Mr. Dyck agreed to give notice of his spreading of manure. As we understand the farm is prepared to provide this notice, the Panel does not consider it necessary to order the farm to modify its practices in this regard.

Practices that are consistent with normal farm practice

84. As for the remainder of the complaints, the Panel finds that these arise out of normal farm practices and as such are protected under the *Act*. We make the following comments and observations on the remedies sought by the Complainants:
- a. Manure to be hauled off the farm – as noted in evidence from Ms. Erickson and Mr. Penner, this farm could support a much larger chicken farm and still spread the manure on the land. As such, the Panel does not find that the manure should be hauled off the farm.
 - b. The farm conducts a nutrient plan and study to ensure that the water source(s) for wells are identified and protected and that the farm does not spread more manure than the land areas allows – there was no evidence given to the Panel that the farm is spreading more manure than the land allows. In fact, it was stated by Mr. Penner that the land could support a much larger operation and still spread the manure on the land. Evidence from Mr. Bean showed that the Dycks have conducted an environmental farm plan which includes a nutrient management plan. Therefore, the Panel concludes that the manure spreading as it has been carried out is normal farm practice.
 - c. No spreading of manure in non-daylight hours – the Panel received no evidence to suggest that spreading of manure after dark is anything other than normal farm practice. The Panel notes, however, that the farmer has agreed not to spread after 9:30 p.m.
 - d. Filters installed on the barn’s fans – the use of filters on the fans is not normal farm practice. The barn’s fans are already hooded and facing away from the Complainants’ houses, into a wooded area. The Panel therefore dismisses this remedy as not being normal farm practice.
 - e. Relocation of the farm access gate and access road gravelled, oiled and watered during dry months –Mr. Dyck has constructed a road with gravel and chipped rock which the Panel accepts is normal farm practice.
 - f. Strict and mandatory biosecurity protocols put in place – the Dyck farm is certified by the On Farm Food Safety Assurance Program. Biosecurity is a mandatory part of OFFSAP. Therefore, the Panel does not accept that there is anything that is not normal farm practice regarding the farm’s biosecurity practices.
 - g. Proper disposal of mortalities that does not include burning – as part of the OFFSAP program, the farmer must dispose of mortalities in a proper manner. Therefore, the Panel accepts that the Dyck farm is disposing of its mortalities in a manner that is a normal farm practice.
 - h. Continued cleaning of the barns by pressure washing rather than blowing out dry manure – the Panel accepts that blowing down the equipment is normal farm practice and is faster and easier on the machinery than washing it down. Washing

down is not normal farm practice. However, Mr. Dyck has stated that he is willing to continue to wash down his equipment as the Complainants have stated that it has greatly cut down on the dust.

- i. Moving the gate of the farm further into the Dyck's property to reduce the noise of the gate opening – the Panel heard evidence that the gate is along the property line as part of the fence which is used to keep the cows in. The Panel accepts that this is normal farm practice and that it would be impractical to move the gate further into the property. The Panel also notes that Mr. Dyck has removed the chain from his gate to reduce the noise.

85. It is very clear that the Respondents have considered their neighbours in their on-farm management. The placement of their barns away from the neighbours indicates that the farmer was considering his neighbours from the start. In addition, Mr. Dyck's willingness to modify many of his practices to appease his neighbours shows how far he was willing to go to solve their issues. The Panel commends the Dycks for these efforts. In the opinion of the Panel, the Respondents have gone beyond normal farm practices to try to resolve the complaints of their neighbours.
86. The Panel finds that the Dyck's farm practices either meet or exceed the practices of other broiler operations in similar circumstances. While we understand the Complainants' desire to obtain rulings to alleviate their grievances, we note that the Complainants have pressed on with this complaint despite the fact that the Dycks have been responsive to their concerns and made attempts to go beyond what is necessary to solve them. We suggest that good communication and willingness to compromise on the part of *all* parties will go a long way to making this situation a positive one for all concerned.

ORDER

87. Section 6 of the *Act* provides that a Panel must dismiss a complaint if it is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, and must order a farmer to cease the practice that causes the odour, noise, dust or other disturbance if it is not a normal farm practice, or to modify the practice in the manner set out in the order, to be consistent with normal farm practice.
88. The only elements of the Respondents' farm practices which the evidence shows were not consistent with normal farm practice were the Respondents' spreading and storage of manure and their failure to give notice of when they would spread the manure as noted in paragraphs 80-83 above. The Panel does not consider it necessary to make an order because the practices in question have already been changed or agreed to, to be compliant with normal farm practices.

RECOMMENDATIONS

89. While not part of the order, in an attempt at reconciliation, the Panel has the following recommendations to offer the parties:

- The Panel recommends that the Complainants work with the Respondents to consider the viability of a cedar tree buffer along the property line between the properties. If a buffer does prove feasible, it should be on a cost-sharing basis as it goes beyond normal farm practice.
- The Panel recommends that the parties consider the feasibility of moving the access road to the Dyck's property to go around the far end of the Laxton property to alleviate the noise problem.

Dated at Victoria, British Columbia this 23rd day of March 2006.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per



Richard Bullock, Chair
and for Sandi Ulmi, Member