



BRITISH COLUMBIA

July 7, 2000

DELIVERED BY FAX AND REGISTERED MAIL

Mr. George J. Wool
G. Wool & Sons Farm
[address]

Fasken Martineau DuMoulin
Barristers and Solicitors
2100 – 1075 West Georgia Street
Vancouver, BC V6E 3G2
Attention: Mr. Christopher Harvey, Q.C.

Dear Sirs:

**RE: CONCERNING A COMPLAINT BY G. WOOL & SONS FARM
FROM THE OPERATION OF OUTLANDER POULTRY FARMS LTD.
AT 22675 - 8TH AVENUE, LANGLEY, BRITISH COLUMBIA**

On April 9, 1998, the subject Complaint was settled and withdrawn by agreement between Mr. George and Mrs. Gail Wool and the farm.

The Wool's have since taken the position that the farm "has violated and continues to violate the settlement of April 9th, 1998" and have applied for this matter to be "referred to hearing". In response, Mr. Christopher Harvey on behalf of the farm submitted on November 26, 1999 that the Wool's concerns "are without foundation and are frivolous and vexatious". Mr. Harvey went on to request that the Chair of the Farm Practices Board ("the Board"), under s. 6(2) of the *Farm Practices Protection (Right to Farm) Act* ("the Act"), "refuse to refer this matter to a Panel for the purpose of a hearing."

In reviewing this matter, I have examined the following documents:

- the November 26, 1997 Notice of Complaint;
- the April 9, 1998 settlement agreement;
- the August 17, 1999 Wool application letter;
- the November 26, 1999 Harvey response letter;
- the November 30, 1999 Wool reply letter;
- the March 6, 2000 Wool letter, alleging further violations of the agreement; and
- the April 5, 2000 Harvey letter in response (to which the Wool's did not reply).

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Farm Practices Board

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In their application, the Wool's raised concerns about four issues related to farm practices, some of which arise out of the April 9, 1998 settlement agreement:

1. The timing of barn clean out operations.
2. Incinerator exhaust and odour.
3. The dust and noise from the farm's 48-inch fans.
4. The timing of feed deliveries.

Issue #1. Paragraph 7 of the settlement agreement states that barn clean out operations "...will normally take place only between 6:00 a.m. and 6:00 p.m., Monday to Friday." (emphasis added)

The Wool's reported one incident, on Friday, July 9, 1999, when barn clean out operations extended past 6:00 p.m.

One instance of barn clean out occurring outside the 6:00 a.m. to 6:00 p.m. time frame does not, in my opinion, breach the settlement agreement.

Issue #2. Paragraph 9 of the settlement agreement requires the farm "to upgrade its incinerator by June 1, 1998, so that exhaust and odour are reduced, in conjunction with the construction of barns #3 and #4."

The Wool's stated that the exhaust and odour from the incinerator "ha(ve) not been reduced". Mr. Harvey responded by stating that the exhaust and odour have been "significantly reduced".

Mr. Harvey also provided documents demonstrating that the farm installed a "wholly new incinerator" by May 28, 1998.

I find that the farm is in compliance with paragraph 9 of the settlement agreement.

Issue #3. Paragraph 10 of the settlement agreement calls for the farm "to ensure that its existing mechanical and operating processes are employed so as to minimize the use of the 48-inch fans. Such use will occur primarily when conditions make it essential for the protection of the farm's flocks."

The Wool's initially stated that the farm "has failed to minimize the dust and noise produced by its 48 inch fans." Mr. Harvey responded that the use of the 48-inch fans has been "minimized" and that the fans operate only when "it is absolutely essential to provide ventilation to chicken barns" in order to control air quality and temperature.

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Subsequently, the Wool's stated that "whether or not 48" fans are essential is irrelevant. The issue here is whether or not (sic) is a "normal farm practice" to place 120,000 broiler chickens within 200 feet of an established home."

This latter issue does not arise out of the settlement agreement. However, the Board has dealt with this matter in the context of the Eason Complaint. More on this issue is set out below.

Both parties agree that the 48-inch fans start up when the temperature reaches "around plus 30 degrees". In my opinion, having these fans operating when the temperature reaches this level is, in accordance with paragraph 10, "essential for the protection of the farm's flocks."

I find that the farm is in compliance with paragraph 10 of the settlement agreement.

Issue #4. Paragraph 5 of the settlement agreement requires the farm "to have feed delivered between the hours of 6:00 a.m. and 7:00 p.m. only."

The Wool's reported that on Saturday, January, 29, 2000 and Saturday, February 26, 2000, feed was delivered at 9:30 p.m. and 7:25 p.m. respectively.

Mr. Harvey acknowledged that feed deliveries had taken place as reported by the Wool's. Mr. Harvey pointed out that the farm's compliance with this provision is subject to the requirements of a third party – the feed company. Mr. Harvey provided a letter from the General Manager of Masterfeeds describing the problems the feed company encounters in prioritizing the competing demands of the farm and its other 100 customers on the Lower Mainland. Nevertheless, both the farm and Masterfeeds make every effort to comply with the terms of the agreement and out of nineteen deliveries between January 24 and March 13, 2000, only two were outside the hours outlined in the agreement.

As full compliance with the feed delivery hours is not totally within the farm's control, and as long as the farm is making its best efforts to comply with the settlement agreement, I am not prepared to find that the two above instances complained of are a breach of paragraph 5 of the settlement agreement.

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Normal Farm Practice

A Panel of the Board has had the opportunity to consider what is “normal farm practice” for this particular broiler farm and, after four days of hearing evidence, made modifications to the farm’s practices in its March 10, 2000 *Dorle and Eugene Eason v. Outlander Poultry Farms Ltd. Decision*. Mr. Wool, who acted as Counsel for the Eason’s in that Complaint, has previously acknowledged that of all the neighbouring residents, the Eason’s are the most affected by the practices employed by the farm.

For the above reasons, I refuse the Wool’s application to have their Complaint resurrected and referred to a panel for the purpose of a hearing.

Section 8(1) of the *Act* states:

Within 60 days after receiving written notice, in accordance with section 6(5), of a decision of the chair or a panel of the board made under section 6, the complainant or farmer affected by the decision may appeal the decision to the Supreme Court on a question of law or jurisdiction.

Yours truly,

(Original signed by):

Ross Husdon
Chair

cc: (fax only)

Mr. Ken Hoschka
Outlander Poultry Farms Ltd.