

IN THE MATTER OF THE  
*FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT*, RSBC 1996, c. 131  
AND IN THE MATTER OF COMPLAINTS  
ARISING FROM THE OPERATION OF A POULTRY FARM  
IN ALDERGROVE, BRITISH COLUMBIA

**BETWEEN:**

EDWARD BARAN  
KEVIN BARAN

**COMPLAINANTS**

**AND:**

COUNTRY DRIVE POULTRY FARM LTD.  
CHARLES EDWARD ROBERTS  
SYLVIA ELLEN ROBERTS  
HENRY VERNON ROBERTS

**RESPONDENTS**

**AND:**

BC BROILER HATCHING EGG PRODUCERS' ASSOCIATION

**INTERVENER**

**DECISION**

**APPEARANCES:**

For the British Columbia  
Farm Industry Review Board

Ron Bertrand, Presiding Member  
Suzanne K. Wiltshire, Member  
Derek Janzen, Member

For the Complainants

Edward Baran  
Kevin Baran

For the Respondents

Henry Roberts

For the Intervener, British Columbia  
Broiler Hatching Egg Producers' Association

Brian Ens, President

Date of Hearing

October 11-12, 2011

Place of Hearing

Abbotsford, British Columbia

## INTRODUCTION

1. Under the *Farm Practices Protection (Right to Farm) Act* R.S.B.C. 1996, c. 131 (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 (“BCFIRB”) for a determination as to whether the disturbance results from a normal farm practice. If, after a hearing, the BCFIRB panel 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, BCFIRB is empowered to order the farmer to cease or modify the practice.
2. Edward Baran and Kevin Baran live on 48<sup>th</sup> Avenue in Langley, B.C. Henry Roberts and his parents operate a hatching egg farm called Country Drive Poultry Farm Ltd. on 48<sup>th</sup> Avenue. The Country Drive Poultry property is immediately west of the Baran property. Both properties are approximately 10 acres in size and are in the Agricultural Land Reserve.
3. Edward Baran and Kevin Baran submitted separate complaints to BCFIRB in September 2010 and May 2011, respectively. Since the complaints deal with the same property and the same issues it was decided by the Chair of BCFIRB that the complaints be combined and heard together. The Barans’ complaints are that they are aggrieved by rodents, flies, manure spreading, dumping of rotten eggs, mortality disposal (dead carcasses) and dust emanating from the operations of Country Drive Poultry.
4. The complaints proceeded to a hearing in Abbotsford, B.C. on October 11 and 12, 2011 before a three member panel. Due to time constraints, closing arguments were completed through a written submission process. On January 12, 2012 and prior to the release of this decision, panel member Derek Janzen took a leave of absence from BCFIRB. As such, this is a decision of the remaining panel members.
5. The British Columbia Broiler Hatching Egg Producers’ Association (“BHEPA”) asked for and was granted full intervener status in these complaints. Brian Ens, President of BHEPA, attended the hearing and cross-examined witnesses called by others and made submissions. He elected not to call any witnesses or otherwise put in any evidence on behalf of BHEPA.
6. The parties agreed to have knowledgeable persons, John Durham and Jacquay Foyle, attend the hearing to give evidence.

## PRELIMINARY ISSUE – REASONABLE APPREHENSION OF BIAS

7. In his closing argument, Kevin Baran raised an issue of reasonable apprehension of bias on the part of panel member Janzen. In his brief comments on this issue he stated, “In the interests of a non-biased hearing, I believe FIRB must be very careful having a current poultry producer on the panel or without disclosing potential conflict situations overseeing a poultry complaint or in an intervener status (as the panel board member may have a current working and/or social relationship with Respondent: (industry gatherings, dinners, barbeque, bonfires, award dinners etc) which appears to compromise their impartiality.”

8. In addressing this allegation of bias, the panel has followed the protocol set out in *Eckervogt v. British Columbia*, 2004 BCCA 398 at para. 47, where the British Columbia Court of Appeal stated:

If, during the course of a proceeding, a party apprehends bias he should put the allegation to the tribunal and obtain a ruling before seeking court intervention. In that way the tribunal can set out its position and a proper record can be formed.

9. It is entirely proper for the member against whom the bias allegation is made to hear the application and participate in the decision about recusal: see *Robertson v. Edmonton (City) Police Service*, [2004] A.J. No. 805 (Q.B.). In this case, we note that Mr. Janzen is no longer a panel member having taken an unrelated leave of absence in January 2012. However, to the extent that Mr. Janzen’s participation in this hearing at all is in issue, the panel wants its position regarding the bias allegation on the record.

10. The test for bias is examined from the perspective of an informed person, with the necessary information, viewing the matter realistically and having thought the matter through: *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at 394. The British Columbia Court of Appeal in *Adams v. British Columbia (Workers Compensation Board)* (1989), 42 B.C.L.R. (2d) 228 (C.A.) stated at para. 13:

This case is an exemplification of what appears to have become general and common practice that of accusing persons vested with the authority to decide rights of parties of bias or reasonable apprehension of it without any extrinsic evidence to support the allegation. It is a practice which, in my opinion, is to be discouraged. An accusation of that nature is an adverse imputation on the integrity of the person against whom it is made. The sting and the doubt about integrity lingers even when the allegation is rejected. It is the kind of allegation easily made but impossible to refute except by a general denial. It ought not to be made unless supported by sufficient evidence to demonstrate that, to a reasonable person, there is a sound basis for apprehending that the person against whom it is made will not bring an impartial mind to bear upon the cause. As I have said earlier, and on other occasions, suspicion is not enough.

11. Applying that law to this case, the panel concludes that the allegation of bias against Mr. Janzen, set out in its entirety in paragraph 7 above, is wholly without evidentiary

foundation. Mr. Baran's sole complaint is that the mere fact that Mr. Janzen is a poultry producer, and nothing more, casts doubt on his ability to conduct a hearing involving another poultry operation in a fair and unbiased manner and to bring an impartial mind to bear on the case.

12. The panel is satisfied that an informed person would require something more than merely demonstrating that a panel member operates a business in the same industry before there could be a finding of a reasonable apprehension of bias. In our view, a party must show something more in the nature of a personal relationship or some conduct on the part of that panel member which may lead an informed person to conclude, on a demonstrable foundation, that a perception of bias exists. This is especially so in a farm practices complaint where the subject matter of what is being adjudicated is whether the complained of practices are "normal farm practices" and where what is "normal farm practice" involves a consideration of the practices of similar farms in similar circumstances. The reality is that in order for members of BCFIRB to carry out their statutory mandate under the *Act*, they must be knowledgeable about the agricultural sectors affected by their decisions.

13. BCFIRB takes allegations of bias against board members very seriously because they go to the core of the board's ability to function as a quasi-judicial decision-maker. Allegations of bias should not be made lightly without proper foundation, as they can potentially and unfairly harm the credibility of both the board and its members. As stated by Southin J.A., for the Court of Appeal, in *Vancouver Stock Exchange v. British Columbia (Securities Commission)*, [1990] B.C.J. No. 2049 (C.A.) at p. 4 (Q.L.):

To say that someone is unable to give an unbiased decision when he sits, in whatever capacity, deciding things between other people is an affront of the worst kind, and unless it is well founded upon the evidence it is not something that should ever be said.

14. The complainant's bias objection is not "well founded on the evidence" and as such is dismissed.

## **ISSUES**

15. During a pre-hearing conference held on June 20, 2011, the parties agreed that the following identified the disturbances complained of and the issues to be decided :

Are the rodents, flies, manure spreading, dumping of rotten eggs, mortality disposal (dead bird carcasses) and the dust released by the exhaust fans toward the complainants' property in accordance with normal farm practices?

## **BACKGROUND**

16. These are not the first complaints filed by the Barans. In 2004, the Barans filed complaints under the *Act* with respect to similar disturbances. The matter went to hearing

and in its September 30, 2005 decision<sup>1</sup> the BCFIRB hearing panel concluded that normal farm practice with respect to excessive fly and rodent populations as well as dust concerns required the implementation of reasonable measures to attempt to mitigate the complained of practices and made the following orders::

57. Accordingly, the Panel orders the Respondent to modify his farm management practices to reduce pests, specifically flies and rodents, as follows:

1. Implement fly and rodent control systems to maintain populations at appropriate levels.
2. Maintain appropriate records in support of the foregoing management plans.
3. Employ the necessary qualified technical professionals to assist in the design and implementation of the foregoing management plans including the implementation of any spray program.
4. Maintain CHEQ™ certified farm status with the Commission and continue ongoing monitoring by the BHEPA to ensure compliance with the best management practices as set out in the CHEQ™ program.

58. With respect to the dust problem on the farm the Panel orders the Respondent to modify his farm management practices as follows:

1. Install fan hoods on all fans on both sides of the barn to reduce dust surrounding the farm.
2. Use of a tarp system over the truck and clean-up area when cleaning out the barns to reduce dust levels.
3. Maintain the health and growth of the hedge between the two properties.
4. Maintain a grass barrier along the side of the barn facing the Baran property and keep this grass cut to a reasonable length to discourage rodents using long grass as a cover.

17. It is the position of the Barans that the respondents did not fully comply with the above orders and, in any event, that these and other issues continue to have an unacceptable impact on them and their property. For these reasons they filed the present complaints.

18. The respondents' position is that all the modifications required by the September 2005 order have been carried out; namely, installation of fan hoods, commencing "a parasite program" for fly control, implementing a rodent control program, maintaining the hedge and instituting a system to reduce dust when using a conveyor to ship out manure. The respondents submit that their current practices accord with normal farm practices.

## **KNOWLEDGEABLE PERSONS**

### ***John Durham***

19. BCFIRB engaged John Durham as a knowledgeable person. He was qualified by the panel as an expert in broiler hatching egg production. Mr. Durham visited both the

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<sup>1</sup> [Baran v Roberts Decision \(September 30, 2005\)](#)

complainants' and respondents' properties on November 26<sup>th</sup>, 2010 and provided a report that was entered as evidence at the hearing.

20. Mr. Durham concluded that Country Drive Poultry farm was following “normal farm practices”. However it was his opinion that neither the location of the barn nor its configuration could be considered normal. In addition, he was of the view that Country Drive Poultry had been slow to implement all provisions of the previous 2005 BCFIRB orders. Mr. Durham stated, “It is for these reasons that I feel Mr. Roberts needs to go beyond ‘normal farm practices’”.
21. Stating he did not believe “the current situation is a full ‘normal farm practice’ and because of the barn setup”, Mr. Durham made several recommendations for BCFIRB to consider “to achieve the same result”, as follows:
  1. The farm to follow industry standards for composting the pullet barn litter, but incinerate the dead pullets.
  2. The use of fly strips in the egg room and other areas as appropriate.
  3. Move the incinerator to an area between the barns to remove the visual irritant of the facility and freeze the dead pullets and laying birds before incinerating. Freezing the carcasses facilitates incineration by improving air circulation in the burning process.
  4. The farm modify their clean up procedures:
    - a) Suspend rodent bait on wires under the roosts on an ongoing basis. Prior to catching, increase rodent control by adding bait stations to the dry litter.
    - b) Replace the current fly control program with a total control program using a suitable insecticide such as Ectiban.
    - c) Remove trucked litter and manure offsite immediately.
    - d) Once the litter that is to be spread behind the barn is removed from the barn it is to be hauled to back of the property, spread and turned in immediately.
    - e) Clean roosts in area between the barns and till in any remaining manure.
    - f) Keep barn doors closed as much as possible to keep dust and rodents contained.
    - g) Give notice to the neighbor of upcoming clean out schedule.
  5. Hoods must remain on the exhaust fans at all times and any horizontal vents must be directed to the rear of the property.
  6. Install a secondary dust barrier around the hood fans in the form of hedging or other suitable barrier to help further mitigate the dust.
  7. Spray the service road during the dry season as necessary to mitigate the dust.
22. Mr. Durham initially recommended a change from the current fly control program to a total control program using the insecticide, Ectiban, in the mister system in the evening. On cross-examination, he retracted that recommendation as he agreed it was inconsistent with the Directions for Use found on the label of Ectiban. Having observed signs of a past fly problem in the egg room, his remaining recommendation was to suggest the area could benefit from fly strips.

**Jacquay Foyle**

23. Ms. Foyle was qualified by the panel as an expert in air quality and emissions control related to poultry operations. She has expertise related to the use of vegetative buffers and electrostatic precipitation technology to reduce dust emissions from poultry farms. She submitted a report dealing with the use of electrostatic precipitators and vegetative buffers to reduce dust issues from poultry operations. She is involved with research projects evaluating the effectiveness of these technologies. Her report states:

At this point in time the actual efficiency and site specific layout for optimum performance of these technologies has not been verified in BC specific conditions. It is expected that after both technologies are researched further, as in the current projects being conducted, that the Ministry will be capable of recommending more specific guidelines and expectations from the use of these technologies. The electrostatic precipitator project is expected to conclude in March 2012, whereas the vegetative buffer project is expected to conclude in March 2013.

**ANALYSIS**

24. A complaint under the *Act* involves a two-step analysis. The panel must first be satisfied that the complainant is aggrieved by odour, dust, noise, or some other disturbance emanating from a farm operation. If the complainant fails to establish that they are aggrieved, the complaint is 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 is met, it must go on to make a determination as to whether the grievance results from a normal farm practice.

25. 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).

26. In various decisions, BCFIRB has considered the meaning of "normal farm practice" and "proper and accepted customs and standards as established by similar farm businesses under similar circumstances". In determining whether a complained of practice falls within the definition of "normal farm practice", the panel generally looks to whether it is consistent with "proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances". This analysis involves an examination of industry practices but also includes an evaluation of the context out of which the complaint arises. This evaluation may include 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 operation that is the subject of the complaint.

27. In its 2005 decision, the previous hearing panel took into consideration the proximity of the breeder barn to the complainants' property in deciding whether or not the disturbances complained of at that time resulted from normal farm practices. The modifications ordered at that time to the farm's practices thus represent the actions considered necessary by that panel to bring the farm's practices into conformity with normal farm practice given the proximity of the breeder barn.
28. We address each of the disturbances presently complained of under separate headings below and, in doing so, also address whether or not the farm was in compliance with the relevant 2005 orders in 2010 when the first of the two complaints now being considered was made. We note the complainants' submission that the documentary evidence provided by the farm with respect to its rodent control and fly control programs relates to 2010 and that since the evidence does not go back to the inception of the 2005 orders the farm has not established compliance with the 2005 orders for the entire period. While we understand the complainants take the position that the farm was non-compliant with the 2005 orders in several aspects for a period of time, the *Act* does not require us to conduct an audit of farm practices over a five year period. We have instead looked at the state of compliance with the 2005 orders as at the date non-compliance was first alleged in September 2010 as current compliance or non-compliance with the 2005 orders is relevant to the determination we must make in these new complaints of whether or not the farm's operations are in accordance with normal farm practice.

### ***Rodents***

29. Kevin and Edward Baran state that rodents are an issue on their property and attribute this to the presence of the Country Drive Poultry operation. However, the Barans did not enter any specific evidence on the nature, extent, duration or any other aspects of the impacts of rodents on their property. Nor did they establish a linkage between the presence of rodents on their property and Country Drive Poultry's operations.
30. Mr. Durham testified that rats and mice are endemic in the Fraser Valley. However, he did note that spilled feed on poultry farms is an attractant to rodents requiring that farmers such as Mr. Roberts take active measures to control rodents.
31. Mr. Roberts is of the view that the rodent populations evident outside of his barns are not necessarily coming from his property and may well be coming from other properties including the Baran property. He entered as evidence pictures of the Baran property showing tall grass, building materials, stacks of pallets and various other items. In his view, these could harbour rodents and could be a source of the rodents seen on both properties.

32. Turning to consideration of the farm's practices, Mr. Durham noted in his report an external control program was evident and he had been advised bait stations were set out by a professional.
33. Mr. Roberts provided evidence of an on-going and intensive rodent control program. The evidence included copies of 12 monthly site visit reports for the year 2010 from PCO Services Corporation of Burnaby (a pest control company). These reports detailed the actions taken to control rodents, evaluation of rodent activity on the farm and recommended actions for Mr. Roberts to take to further deal with rodent issues. Comments on these reports included statements such as: "serviced outside bait stations", "heavy rat and mouse activity in all stations", "all vegetation kept cut down around buildings", and "vegetation around southwest corner of east barn needs cutting back".
34. Mr. Roberts also presented evidence in the form of a letter from the British Columbia Broiler Hatching Egg Commission ("BCBHEC") that his farm has been audited annually under the CHEQ (food safety) and biosecurity programs operated by the BCBHEC and had successfully passed inspection and been recertified every year. The audits deal with a range of issues including the implementation of effective rodent control practices. Mr. Roberts also testified that the farm had been recertified in 2011 following its most recent audit.
35. Kevin McAllam, a technical feed sales representative from Viterra Feed Products, testified that he visits the Country Drive Poultry farm on a regular basis as a representative of the feed company that supplies the Country Drive Poultry farm. He has been visiting the farm for 10 to 11 years. In his view the rodent populations on the Country Drive Poultry farm are normal when compared to other farms that he visits.
36. The panel accepts that there are rodents on the Baran property. The evidence as to whether or not the presence of rodents on the complainants' property is attributable to the farm's operations is at best marginal consisting only of Mr. Durham's generic comment that spilled feed on poultry farms will attract rodents. While we note the several references to outdoor rodent presence on the invoices of the pest control company, we also note Mr. Durham's evidence that rodents are endemic in the area and that the rodent presence outside could be coming from anywhere. We also have the evidence of Mr. McAllam as to rat populations on the farm being normal in comparison to other farms he visits. We do not find the evidence overall sufficient to establish that there is an increased rodent presence on the complainants' property as a result of the farm's operations. Accordingly, we find the complainants' have failed to establish that they are aggrieved by rodents resulting from the respondents' farm operations.
37. Even if the panel were to accept that the complainants are aggrieved by an increased presence of rodents as a result of the farm's operations, the farm's rodent control program, in the view of the panel, is in accordance with normal farm practice. The evidence before the panel establishes that Country Drive Poultry retains a professional pest control firm to visit the farm on a regular basis to assess rodent activity and to implement appropriate control measures. The evidence also establishes that the program

has resulted in normal rodent populations on the farm. We find that the measures taken are effective and constitute compliance with the previous order made by BCFIRB in 2005. We also find that the rodent control program used by Country Drive Poultry is consistent with normal farm practice.

38. Accordingly, the portion of the complaint dealing with rodents is dismissed.

### *Flies*

39. Kevin and Edward Baran provided evidence that buildings and machinery on their property are routinely infested with flies. It is their view that, because of the close proximity of the Country Drive Poultry barn to their property and the intensive nature of the agriculture operation on the Country Drive Poultry property, most of the flies originate from the Country Drive Poultry property.

40. The Fraser Valley Adventist Academy is located on 48th Avenue, slightly to the east of the Baran and Country Drive Poultry properties, opposite the Twin Creeks equestrian facility. Mr. Baran presented as evidence a letter from the school vice-principal Janet Brock indicating that in 2010 the school was “overrun with flies”.

41. Mr. Stewart Paulson acted as a knowledgeable person for BCFIRB at the hearing in 2005. At that time he was a poultry specialist with the Ministry of Agriculture. He retired from the Ministry in 2010. At the request of the Barans a summons was issued for him to appear at the hearing to respond to questions about information he prepared in August and September of 2010. Both the complainants and the respondents submitted as evidence communications prepared by Mr. Paulson. In an email dated September 22, 2010, Mr. Paulson indicated that he visited the Country Drive Poultry farm on September 21 (“on the way home last night”) to look into the fly problem. He found large numbers of flies outside of the Country Drive Poultry barn and his car was covered with flies. With respect to the fly situation in the Fraser Valley, he stated that “there is no question that this year (2010) is inordinate in having more complaints and more problems than any time in the last 20 years”.

42. Mr. Paulson, Mr. Durham and Mr. Roberts made the panel aware that there is a horse boarding and riding facility (Twin Creeks) to the east of the Baran property. In addition, from time to time, the Twin Creeks property has cattle for the purpose of cattle penning. They separately pointed out that this operation could also contribute to fly populations in the area.

43. Mr. Durham in his report and testimony noted that the farm has implemented a fly control program using parasites placed in the litter at regular intervals to feed on fly larvae and has been getting professional help with the program. Mr. Durham also observed that the farm uses insecticides to spray the fan hoods every morning in the summer to help control the fly population.

44. Mr. Roberts submitted as evidence of his implementation of a fly control program copies of a number of invoices for fly control products purchased in 2010. Products included: fly bait, fly parasites, fly string, Tempo insecticide, Ectiban insecticide, and other materials. Mr. Roberts entered as evidence a factsheet published by the (then) British Columbia Ministry of Agriculture, Food and Fisheries titled "*Management of Flies in Layer Barns*". He directed the panel to a section dealing with biological control that recommends using fly parasites at a rate of 5 parasites per bird. Mr. Roberts testified that he uses 10 parasites per bird during May, June, July and August. When the barns are empty, Ectiban is sprayed on all surfaces in the barn. When parasites are in use, Ectiban is selectively sprayed on walls and ceilings to enhance fly control. Dry baits are also used when birds are in the barn.
45. As noted in the section dealing with rodents, the farm has been audited annually under the CHEQ (food safety) and biosecurity programs operated by the BCBHEC and has successfully passed inspection and been recertified every year. The audits deal with a range of issues including the implementation of effective fly control practices.
46. Mr. McAllam testified that the fly populations on the Country Drive Poultry farm are normal when compared to other similar farms that he has seen. He further stated that there is nothing of any concern with respect to flies inside the barns.
47. The panel accepts that from time to time the Baran family is aggrieved by flies and that the evidence supports that some of the flies come from the Country Drive Poultry property. The question then is whether Country Drive Poultry uses normal farm practices to control fly populations.
48. The 2005 BCFIRB order required that the fly control program be prepared by employing the services of "qualified technical professionals". Mr. Durham's report indicates that there is a "company maintaining the system" and that the producer (Mr. Roberts) is getting professional help with the program. The panel accepts that Country Drive Poultry has implemented an extensive and on-going fly control program. The evidence before the panel is that this program is in line with what is common for many hatching egg farms in the Lower Fraser Valley and that the program is as effective as that seen on similar farms. While there was an increased fly presence in 2010, we conclude that the increase was consistent with the fly situation generally in the Fraser Valley in that year and was the result of the particular weather conditions and not a result of the farm ceasing to be compliant with normal farm fly control practices.
49. We note the complainants' submissions that the farm should be following Mr. Durham's initial recommendation respecting the use of Ectiban. In view of Mr. Durham's subsequent retraction of that recommendation after agreeing it was inconsistent with the Directions for Use which provide that it is not to be applied as a space treatment, we find the farm's use of that product in surface applications and not as a space treatment to be appropriate.

50. The panel finds that Country Drive Poultry is in compliance with the 2005 BCFIRB order and that the fly control program it has implemented is in accord with normal farm practices. The panel dismisses the portion of the complaint dealing with flies.

### ***Manure Handling***

51. Although the term “manure spreading” was used in the complaint from the Barans, it is evident from the evidence at the hearing that the issue would more correctly be termed “manure handling”.

52. The issues raised by the Barans related to manure handling are dumping of rotten eggs, mortality disposal and dust. The manure handling aspects of these issues are dealt with under the appropriate headings below.

53. The roost cleaning operation on the Country Drive Poultry farm was raised as an issue by the complainants during the hearing. The concern was over runoff generated during the cleaning process flowing off the cement pad where the roosts are cleaned into the surrounding grassed and gravelled area and into the storm drain located there. Runoff from roost cleaning was not raised in the notices of complaint and was not identified as an issue during the pre-hearing conference. Therefore we do not have jurisdiction and cannot deal with runoff in relation to the present complaints. Similarly, the complainants raised an issue with respect to the movement of fill onto the rear of the farm, increasing the height of the property and creating standing water on the complainants’ property. Again this was an issue first raised during the hearing and did not form part of the complaints as filed. Therefore we do not have jurisdiction and cannot deal with this issue in relation to the present complaints.

### ***Dumping of Rotten Eggs***

54. Kevin Baran indicated that he had been concerned that waste eggs were being mixed into manure from the barns and spread on fields north of the barns. He explained that he assumed broken eggs were present after he saw what appeared to be a pile of dead birds outside the barn on a couple of occasions and later saw crows poking at something. His concern is that material such as waste eggs and dead birds in the manure may be an attractant to crows, coyotes and possibly other wildlife and could result in such material being transported by wildlife onto the Baran property.

55. The BCBHEC operates a Small Egg Removal Program. Based on a letter from the BCBHEC that was entered as evidence, it is clear that Country Drive Poultry participates in the program which “removes all small eggs and inedible product from the farm once per week”.

56. Mr. Roberts testified that waste eggs are not spread with the manure onto land, but are removed from the farm through the Small Egg Removal Program.

57. The panel accepts the letter from the BCBHEC and Mr. Roberts evidence and finds that waste eggs are being removed from the property.
58. Based on the evidence, the panel does not find that the Barans were aggrieved by the dumping of rotten eggs onto the Country Drive Poultry property. Further, the panel finds that participation in the Small Egg Removal Program constitutes normal farm practice.
59. The panel dismisses the portion of the complaint dealing with dumping of rotten eggs.

***Mortality disposal (dead carcasses)***

60. The Barans complained that dead birds had been spread with manure onto land on the Country Drive Poultry property and that this attracted crows and possibly other wildlife to scavenge on the carcasses. The Barans are concerned this could result in parts of dead birds being carried onto their property. The Barans' evidence was that spreading of dead birds with the manure occurred a couple of times between 2005 and 2009. They did not provide any evidence to satisfy the panel that this practice is occurring at present or that they are or were actually aggrieved as a result of spreading dead birds with manure onto the Country Drive Poultry property.
61. Mr. Durham stated that the respondent farm composted mortalities from the pullet barn and the resulting compost was spread onto land on the Country Drive Poultry property. While recommending that dead pullets be incinerated, he noted that pullet mortality is usually relatively low and confirmed composting was an acceptable practice. However, there was no evidence presented to the panel that the pullet composting operation was of a nature that resulted in intact dead birds being spread onto land and therefore being an attractant to wildlife.
62. Mr. Roberts testified that, with one exception three to four years ago, dead birds from the breeder barn are incinerated and are not spread with manure. He did acknowledge that there was one time when dead birds were composted because of an unusually high level of mortalities caused by record high outside air temperatures.
63. The panel accepts that dead birds from the Country Drive Poultry breeder barn are not as a matter of usual practice spread onto land, but are instead incinerated. The evidence also establishes that the single instance of composting of a large number of dead birds from the breeder barn because of an unusual event was not ongoing and had occurred a year or more prior to the complaints. In any event, composting of carcasses would be in keeping with normal farm practices. The panel has concluded that the complainants have not demonstrated that they are in fact aggrieved by the spreading of dead birds with manure onto the farm's land and as such we dismiss this portion of the complaint. Even if we were to accept that the Barans were aggrieved by this practice, the panel finds that incineration and composting of dead birds are both in accordance with normal farm practices.

## *Dust*

64. Edward and Kevin Baran assert that there is on-going intrusion of dust and other pollutants into their air space. The sources of dust of concern are from the exhaust fans on the east side of the barn and from the manure cleanout and loading operations.
65. With respect to the exhaust fans, the Barans provided evidence that the 2005 BCFIRB order was not fully complied with as, until recently, a few fans were not equipped with hoods.
66. The Barans indicated that they have built a berm and planted a cedar hedge on the berm, on their side of the property line, in an attempt to intercept dust and prevent it from entering further onto their property. Their view is that this should not have been needed because the problem was generated by the Country Drive Poultry barn and should have been controlled on the Country Drive Poultry property.
67. The Barans ask that filters be installed on all fans on the east side of the barn to remove dust so that it cannot move onto their property. If that cannot be done then all fans on the east side of the barn should be removed.
68. The Barans entered into evidence a report prepared in 2007 by the Lower Mainland Region of the British Columbia Ministry of Environment titled "*Assessment of Ambient PM<sub>10</sub> Levels Adjacent to a Poultry Barn Operation*". PM<sub>10</sub> is defined in the report as "particulate matter having an aerodynamic diameter of less than 10 micrometers". The report concludes that the "poultry operation activities are likely causing an increase in the ambient levels of PM<sub>10</sub> above levels recorded at nearby background sites". Among the recommendations of the report is "That the Ministry of Environment support the development of a Best Management Practices document created by industry and other relevant stakeholders with the intent to encourage mitigation of poultry barn emissions".
69. This Ministry of Environment report was evaluated by Mr. Paulson when he was the Poultry Industry Development Specialist with the (then) Ministry of Agriculture and Lands. His view was that "the data is (sic) too confounded to be used as the basis of the conclusions and recommendations made".
70. Ms. Foyle, knowledgeable person in the field of air emissions from poultry operations, indicated that installing filters on fans was not recommended as they clog and are inefficient for the barn itself. She indicated that research on the subject of air emissions from poultry operations is on-going. Mr. Roberts echoed Ms. Foyle's comments that filters cannot be used because of clogging.
71. Mr. Roberts acknowledged that he was not in full compliance with the 2005 BCFIRB order because hoods were not installed on at least two fans until after the 2010 Baran complaint was filed. He stated that this was because the close proximity of feed storage and handling equipment prevented the use of conventional hoods. He has recently installed two custom designed hoods. While the feeding equipment does prevent the

outlets from these hoods from being pointed directly towards the ground, they are pointed downward. We note the complainants' submission that the one hood points toward the front of the barn but observe that this appears to be the only possible configuration and does satisfy the requirement for hoods.

72. The panel also notes the complainants' submissions that a new 50 inch fan has been installed. The evidence establishes that this fan has a hood that points straight down and the fan is located furthest to the rear of all the fans. Mr. Roberts argues this fan was located as far away as possible from the complainants in order to exhaust as much air as far away as possible from their residences.
73. Mr. Roberts indicated that he has made significant efforts to minimize dust during the manure cleanout operation. Manure is never removed from the barn and stored outside. It is always piled inside the barn near the cleanout doors. During the manure loading operation, barn fans are turned on to create negative air pressure inside the barn so that air moves through the doors into the barn preventing dust from exiting the barn through the doors. Manure is moved from the barn onto trucks using a portable conveying system. The intake end of the conveyor is just inside the doors of the barn and the outlet end of the conveyor is equipped with a structure to direct manure straight down into the trucks thereby minimizing the generation of dust outside. Mr. Roberts acknowledges that, although these measures reduce dust, they do not eliminate it.
74. Bruce McTavish was qualified as a technical expert in the areas of soils, vegetation and environmental farm planning. He prepared a report titled "Health Assessment of Buffer Hedge Along East Property Boundary of Country Drive Poultry Farm" which was entered as evidence. The report noted that the trees in the hedge are in a very healthy state. However, the trees are being threatened by infestations of blackberries and morning glory. The report recommended that the Roberts and Barans work together to eradicate and control these invasive species to preserve the health of the hedge.
75. Mr. Roberts explained that he had more recently extended the hedge further along the property line toward the rear of the property, but these more recent plantings would take some time to grow in size.
76. Ms. Foyle testified that tree buffers can never be 100% effective in removing dust. The effectiveness is governed by site specific air movement conditions and the design of the hedge. It is important to understand wind patterns and to use appropriate tree species.
77. The panel accepts that the Barans are aggrieved by dust generated by the farming operations on the Country Drive Poultry property. The question before the panel is whether or not the dust generated and the dust abatement practices used on the farm are in accordance with normal farm practices.
78. Although the evidence before the panel establishes that Country Drive Poultry is currently in compliance with the 2005 order of BCFIRB with respect to hooding all fans, the panel finds that since fan hoods were not installed on all fans until recently, the farm

was not in full compliance with the 2005 order at the time of the September 2010 Baran complaint and, therefore, was not at that time following normal farm practice.

79. The 2005 FIRB order requires the “Use of a tarp system over the truck and clean-up area when cleaning out the barns ...”. The panel finds that the current system used during the cleanout and manure removal operation, although different from this order, is also consistent with normal farm practice.
80. The panel accepts that the hedge between the Country Drive Poultry and Baran properties is critical to reducing the movement of dust onto the Baran property. The testimony of Mr. McTavish is that the health and therefore, future effectiveness, of the hedge is being threatened by blackberries and morning glory on both sides. We find the farm has complied with the 2005 order to maintain the health and growth of the hedge and has gone further by recently extending the hedge to the north. Accordingly, we agree that the farm’s installation and maintenance of the hedge buffer are consistent with normal farm practice. However, as the hedge is now threatened by invasive species on both sides, the panel urges the Roberts and Barans to cooperate in developing and implementing an on-going hedge health maintenance program.
81. The operation of the incinerator was mentioned from time to time during the hearing and in Mr. Durham’s report. However, the disturbances complained of and the issues to be decided at this hearing did not include operation of the incinerator. Rather, at the time the complaints were made the complainants appeared to be under the impression the incinerator was not being used indicating in relation to mortality disposal they had not seen the incinerator running for years. While the evidence of Mr. Roberts establishes the farm uses the incinerator, since there was no complaint filed in relation to emissions resulting from use of the incinerator we do not have jurisdiction and cannot deal with the operation of the incinerator in relation to the present complaints.

## CONCLUSION

82. Section 6(1)(b) of the *Act* provides BCFIRB the authority to order a farm to modify its practices to be consistent with normal farm practices. Equally, the *Act* requires that BCFIRB dismiss the complaint if the disturbance results from normal farm practices.
83. The panel finds that the disturbances related to rodents, flies, manure spreading, dumping of rotten eggs and mortality disposal (dead bird carcasses) result from normal farm practices and, therefore, the portions of the complaint dealing with these issues are dismissed. Even if the panel were inclined to do so, the *Act* does not allow the panel to restate the 2005 order with respect to these issues in the absence of a finding that a practice is not a normal farm practice.
84. With respect to the dust issue, the panel finds that the Country Drive Poultry farm was not in full compliance with the 2005 order respecting fan hoods. Since we agree with the previous panel that in these circumstances, normal farm practice requires Country Drive Poultry to use fan hoods, to the extent it had not installed hoods at the time the first of the

present complaints was filed in September 2010, its dust management practices fell short of normal farm practice. However, the panel observes that in all other respects the respondent farm was following normal farm practice and was in compliance with the other 2005 orders concerning dust reduction. The panel further finds that the farm subsequently achieved full compliance with the 2005 order respecting fan hoods. The panel concludes that the dust management practices were in accordance with normal farm practices by the time of the hearing. However, since Country Drive Poultry's practices were not fully in accord with normal farm practice at the time the first complaint was filed in September 2010, the panel considers it appropriate to make an order to ensure ongoing compliance with respect to the use of fan hoods.

## **ORDER**

85. To address the dust issue, the panel orders the respondents to:

1. Install fan hoods on all fans on the breeder barn to reduce dust surrounding the farm.
2. Ensure that hoods remain in place on all fans and that any new fans have hoods in place immediately following installation and before such fans are put into operation.

## **OTHER MATTERS**

86. The Barans made references to issues of human health, environmental contamination, fisheries resources, building siting approval by local government and poultry biosecurity. These issues are not within the jurisdiction of BCFIRB. The jurisdiction of BCFIRB under the *Act* is limited to addressing noise, dust, odour and other disturbances emanating from farming operations that are the subject of a complaint and to decide whether or not these disturbances result from normal farm practices. The Barans will have to approach the agencies responsible for these other issues if they want them to be addressed. In addition, the Barans have asked BCFIRB to undertake inspections to ensure compliance with any order this panel may issue. BCFIRB does not have this jurisdiction. The *Act* gives BCFIRB the power to make determinations of normal farm practice. It can dismiss a complaint if it results from a normal farm practice or it can order a farm to cease or modify a practice to be consistent with normal farm practice. These are the actions that BCFIRB has taken in rendering this decision. Section 6.1 of the *Act* allows a party in whose favour an order has been made to file an order with the Supreme Court. Once filed, an order has the same force and effect as if it were a judgment of the Supreme Court allowing a party access to contempt of court proceedings.

87. It is clear to the panel that the proximity of the Baran property, and Kevin Baran's house in particular, to the breeder barn reduces the potential for any disturbances to be abated by geographic separation. This highlights the issue of siting of structures in the ALR. Many nuisance issues can be reduced or eliminated simply by maximizing the geographic separation between the source of the nuisance and those potentially impacted by the nuisance. Neither the siting of the Country Drive Poultry breeder barn nor the later siting of Kevin Baran's house appear to have acknowledged this reality. Therefore, although the panel found that many of the issues in the Baran complaint are as a result of normal farm

practices, there remains potential for these practices to contribute to concerns on the part of the Barans and conflict between the Roberts and the Barans. The panel sees a cooperative approach to addressing these issues as the only way for the potential for conflict to be reduced. Some cooperative measures identified by the panel include:

- a. a joint plan to maintain and enhance the hedges on both properties.
- b. regular communication between the parties to ensure, whenever possible, that practices that could create a nuisance (e.g. barn cleanout and roost cleaning) are done at a time when nuisance can be minimized.
- c. communication from the Barans when they have an issue of particular concern so that the Roberts are aware of the issue and, if feasible, can take action to reduce the impact.

88. Written material from Mr. Durham, Ms. Foyle, the British Columbia Ministry of Environment, Mr. Paulson and Mr. McTavish were entered as evidence at the hearing. These items contain information and recommendations that may be of value to both the complainants and the respondents.

89. The panel feels that it is important for all to understand that the *Act* recognizes that, even when normal farm practices are followed, there is potential for these practices to cause a disturbance. This is the reality of living in close proximity to farming.

Dated at Victoria, British Columbia, this 5<sup>th</sup> day of March 2012.

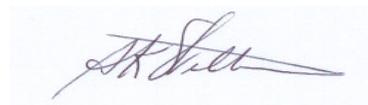
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