

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF A COMPLAINT ARISING FROM THE OPERATION OF
A DAIRY FARM IN BLACK CREEK, BRITISH COLUMBIA

BETWEEN:

DEBBIE JORY

COMPLAINANT

AND:

BRUCE AND BOB BEACHAM

RESPONDENTS

AND:

COMOX VALLEY FARMERS' INSTITUTE

INTERVENER

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Derek Janzen, Presiding Member
Suzanne K. Wiltshire, Member
Cheryl Davie, Member

For the Complainant:

Peter R. Higgs, Counsel

For the Respondents:

Bruce and Bob Beacham

For the Intervener:

Gerry McClintock, President

Date of Hearing:

November 8, 2011

Place of Hearing:

Courtenay, British Columbia

INTRODUCTION

1. The British Columbia Farm Industry Review Board (BCFIRB) hears complaints about farm practices under the *Farm Practices Protection (Right to Farm) Act* RSBC 1996, c. 131 (*FPPA*).
2. Under s. 3 of the *FPPA*, 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 BCFIRB for a determination as to whether the disturbance results from a normal farm practice. If, after a hearing, a panel of BCFIRB is of the opinion that the odour, noise, dust, or other disturbance results from a normal farm practice, the complaint is dismissed. If the panel determines that the practice is not a normal farm practice, the panel must order the farmer to cease or modify the practice.
3. The complainant, Debbie Jory, initially filed a complaint with BCFIRB in September 2009 with respect to dust, particulate matter from manure spillage, and diesel exhaust caused by the operation of farm vehicles on the respondent dairy farm. She indicated at that time that the disturbances arose after the respondents purchased the strip of property running parallel to and separating her property from the respondent farm and converted the acquired property into a road to access their fields.
4. Following receipt of the initial complaint, BCFIRB retained Joe Taylor pursuant to section 4 of the *FPPA* as a knowledgeable person in the area of dairy farming. Mr. Taylor has experience with dairy operations both large and small and has been a breeder of Holstein cattle for many years. He also holds a class 1 truck operator's licence, has worked as a milk receiver and is an experienced equipment operator. Mr. Taylor conducted a site visit in the Fall of 2009 and completed a report with respect to the respondents' farming practices. Mr. Taylor's report was then provided to the parties in support of settlement discussions. Following those discussions, in May 2010 the complainant and the respondents entered into an agreement to resolve the complaint (the 2010 Agreement).
5. In May 2011, the complainant wrote to BCFIRB indicating she wished to refile her complaint, alleging the 2010 Agreement was null and void due to the failure of the respondents to mitigate the dust. She stated that dust from the road was billowing over her property from farm vehicles entering the farm yard from three directions and that diesel exhaust from the silage bagging area (ag bag site) was coming right into her living room. She felt the 2010 Agreement had failed to address her complaint and she should never have signed it.
6. BCFIRB accepted the appellant's May 2011 letter as a new complaint and held a pre-hearing conference on May 25, 2011. During the pre-hearing conference the issue to be decided on the complaint was agreed as stated below under the heading "Issue".

7. During the pre-hearing conference, the complainant identified the following as her grounds:
 - a) When harvesting, the farm's vehicles generate dust and diesel exhaust all across the Jory's property including onto the organic hops plants when the Beacham's use the access road which runs parallel to the Jory property.
 - b) Farm equipment used on the Ag Bag site coming from three different directions creates dust and diesel fumes onto the Jory property.
 - c) The current buffer is inadequate to contain the dust and diesel fumes.
8. The complainant indicated she sought the following remedies:
 - a) The farm to relocate the Ag Bag site to the north side of the big tree break.
 - b) The farm use the road in the middle of the field (north of the 45 acre field) to access both fields and use the farm road to access the leased fields.
 - c) When the farm vehicles are driving on the road parallel to the Jory's property, that they drive at a speed of 30 km.
9. During the pre-hearing conference the respondents, Bruce and Bob Beacham, replied that the practices on the farm were in accordance with normal farm practices and that they had not breached the 2010 Agreement.
10. The matter proceeded to hearing on November 8, 2011 in Courtenay, BC. On the day before the hearing, the panel visited both the complainant's property and the respondent farm to place the complaint in geographical context. Each party was present on their respective property during the site visits.
11. At the hearing, Mr. Taylor was called and qualified as an expert witness entitled to give opinion evidence with respect to dairy farming. The Comox Valley Farmers' Institute, having been granted intervener status, made submissions.
12. Subsequent to the hearing of this complaint but prior to the release of this decision, panel member Derek Janzen took a leave of absence from the BCFIRB and has subsequently resigned. As such and in accordance with section 7(4) of the *FPPA* this is a decision of the remaining panel members.

ISSUE

13. Are the dust and diesel exhaust fumes blowing onto the Jory property and the truck traffic on the Beacham farm a result of normal farm practices?

COMPLAINANT'S PROPERTY

14. The complainant lives on Endall Road in Black Creek. She purchased her 16 acre property in 1999. The property is long, running for a considerable distance along its frontage with Endall Road, and narrow, being about 200 feet wide between the

boundary with Endall Road and the boundary on the opposite side with the strip of land that is now part of the respondents' farm property.

15. The complainant's house is located toward the easterly end of her property and sits approximately 100 feet back from Endall Road and approximately 75 feet from the boundary with the respondents' farm. The portion of the property to the east of the house is treed. West of the house is a large shop building, the rear of which is approximately 20 feet from the property line with the respondents' farm property. Further west is a water reservoir pond about half way between the boundaries with Endall Road and the farm property. To the west of that along the Endall Road boundary is about a half-acre of hops. Going further west and almost right on the boundary with the respondent farm property there is a second reservoir pond. The remainder of the complainant's property is forested.

RESPONDENTS' FARM OPERATIONS

16. The respondents own and operate a dairy farm comprised of several owned (approximately 368 acres) and leased properties.
17. The respondents reside on the home farm, a 67 acre property purchased in 1978, located on Enns Road in Black Creek (the Home farm). The Home farm houses the entire milking herd and all milking operations. The site has various animal housing and equipment storage sheds. There is also storage of silage for animal feed in large durable plastics bags ("ag bags") on this site. The complaint does not relate to activities on the Home farm which is a considerable distance from the complainant's property.
18. In 1997, the respondents purchased an operating dairy farm of 137 acres on Endall Road (the Cedardale farm). This is the farm property that is the subject of the complaint. At the time it was purchased, this farm and the complainant's property were separated by a long narrow strip of land owned by a forest products company.
19. In 2003, the respondents purchased the 7 acre strip of land (the Strip) separating the complainant's property and the Cedardale farm. The Strip is approximately 75 feet wide. It contains an old gravel road that at one time was a logging road. The gravel road intersects with Endall Road just past the south easterly end of the complainant's property where its south easterly and northerly boundaries meet in a point at Endall Road.
20. The gravel road within the Strip has historically been used by various owners of the Cedardale farm for access to Endall Road and as a service road to access the field (Field 1) that runs alongside the Strip to the rear of the farm buildings and ag bag site. Shortly after the respondents acquired the Strip they logged the trees lying beyond the farm buildings and ag bag site along the side of the gravel road adjacent to Field 1. The logged area was planted in grass and is now part of Field 1 and the Strip is now treated as part of the Cedardale farm.

21. The Cedardale farm is home for the young stock and dry cows. There is also silage storage and a manure pit. The farm buildings are located in the south east corner of the property opposite the area where the complainant's property ends in a point at Endall Road. The barn and an old milk parlour sit alongside the Strip and one corner of the barn encroaches on the Strip and was one of the reasons the respondents acquired the Strip. To the other side of the barn buildings is the manure pit and the ag bag site lies to the rear of the barn buildings.
22. The respondents also own another property (approximately 165 acres purchased in 2001) that sits between the Home farm and the Cedardale farm. This farm is referred to as the Poplar farm. The respondents completed a road in 2003 through this farm to link all three farms.
23. In addition, the respondents lease land to the other side of Endall Road to grow forage. They use the portion of the gravel road leading off Endall Road into the Cedardale farm and the ag bag site when working and harvesting this land.

KNOWLEDGEABLE PERSON

24. Mr. Taylor visited both the complainant's property and the respondents' properties in the Fall of 2009. Some of his observations and conclusions with respect to the Cedardale farm are noted below:
 - The respondents have properly maintained, newer model equipment and vehicles that are kept in good order.
 - The ag bag site has pulp mill belting on the ground for the bagger to work on and under the ag bags that store silage. This is a best practice of farmers to keep bags clean and minimize dust and mud.
 - When bagging silage the tractor and trucks operate for the time necessary to fill the bags or finish the crop. The vehicles are not positioned to cause problems but the tractors can only be positioned in one direction when doing this work.
 - In a video shown to him at the time of the site visit, a truck created dust as it was driven from the ag bag site to the Endall Road entrance. At the hearing Mr. Taylor commented that on the day of his site visit he saw no dust as he drove along the road in his vehicle and that he had also seen no dust when he visited the farm on two occasions during Summer 2011.
 - The manure pit was set up by the previous owner and can only be agitated at one end.
 - The manure pit takes about 5 days to empty, meaning equipment would be running during that time. When emptying the manure pit a tractor operates the manure agitator. For the size of storage, this practice is normal and necessary. Another tractor pulling the manure spreader will operate for approximately the same length of time.

- The manure spreader and agitator are less than three years old and in good repair. When not in spreading mode, spillage from the type of manure tanker used is almost impossible. The exhausts of the tractors point away from the complainant's property but prevailing winds could affect exhaust direction.
 - The gravel road on the Strip has been used for road access and field access for many years, including by the previous owners of the Cedardale farm. It is used to access the leased fields to the east of Endall Road and Field 1. These fields are a small portion of the respondents' total acreage and using the gravel road for accessing these fields is a good management practice. The complainant's suggestion that another route be used to access the leased fields is not practical as it would entail hauling feed and manure more than 10 km using Endall and other public roads, including a highway, to get to and from the leased fields and the Home farm and then using the farm road connecting the three farms to get to and from the Home farm and the Cedardale farm as opposed to driving some 200 to 400 feet across Endall Road from the leased fields and then into the ag bag site along the gravel road.
 - The barn and old milk parlour building are clean and in reasonable repair. The trucks and irrigation and other equipment parked on the north side of the ag bag site are 250-300 feet from the complainant's property boundary.
25. Mr. Taylor concluded that the respondents operate a well organized, well kept, efficient and modern dairy farm.
26. With respect to noise and exhaust, Mr. Taylor found the farm operations to be "in good order". He noted the respondents have no control over the prevailing winds which blow from the north toward the complainant's property.
27. Mr. Taylor did recognize that dust from vehicles using the Endall Road access to the Cedardale farm was a problem but indicated at the hearing that dust was a usual and normal result of farm operations when it was dry. He listed a number of ways that dust might be dealt with and recommended in his report that the respondents spray the road each spring with magnesium chloride from Endall Road to the west end of the ag bag site or mutually agreed upon area.

2010 AGREEMENT

28. Mr. Taylor's report was provided to the parties in late 2009. Following discussions the parties entered into the 2010 Agreement to resolve the initial complaint.
29. In the 2010 Agreement, the respondents agreed to:
- Use the other two entrances adjacent to the ag bag site as much as possible to reduce the use of the gravel road.
 - Spray with water, calcium chloride or any other suitably effective dust mitigation product: (i) the gravel road within the Strip for a distance of 880 feet

from Endall Road; and (ii) the road leading from the gravel road to the ag bag site for 450 feet from the gravel road.

- Be mindful of reducing speed when entering and leaving the farm yard.
- Replenish the gravel in the farm yard as needed to curtail dust.
- Maintain the three existing tree buffers which act as wind breaks between the farm and the complainant's property to mitigate dust and exhaust fumes.
- Comply with all current guidelines when spreading manure.
- Provide a tentative schedule of upcoming harvest dates and approximate days required for the harvest.

COMPLAINANT'S CASE

30. The complainant stated that she bought her property for hobby farming and now uses it to garden and grow hops, raise honey bees and for her pets.
31. She testified that she was not disturbed by the activities on the Cedardale farm until the respondents bought the Strip in 2003 and removed trees. While she acknowledged that prior to 2003 there were ongoing dairy farming activities, the complainant stated that she noticed a substantial increase in the volume and intensity of farming activity after the respondents purchased the Strip.
32. The complainant described the trucks that drove along the Strip prior to 2003 as being smaller, less frequent and not as loud. She said there was not as much dust and it did not come onto her property. She stated that after 2003, the respondents started running big trucks in and out of the farmyard and the trucks were driven much faster, resulting in dust and diesel exhaust. She estimated the speed of the trucks at 50 to 60 km/hour and said they sounded like an engine running at full tilt. She provided a DVD of trucks driving along the gravel road on the Strip indicating that the portion shown was taken in 2009 but that the dust and pollution were the same.
33. The complainant estimated that trucks bring in grass from various fields to the ag bag site on the Cedardale farm about 1.5 to 2 weeks per month. She indicated that the trucks run for 14 to 16 hours per day, passing her property every 20 minutes. When a truck arrives at the ag bag site the grass is loaded into the bags using a tractor running at full tilt and the truck continues running while unloading. The complainant stated that this results in odour from the diesel exhaust from the trucks driving by and during unloading and from the tractor operating at the ag bag site. She estimated that her house is 80 feet from the trucks driving by on the gravel road, stating she could see them passing, and that her home would be 200 to 300 feet from the ag bag site.
34. The complainant acknowledged that the ag bag site was in the same location prior to 2003 and stated that she did not believe there was any new machinery being used

at the site. However, she noted that prior to 2003 there was more of a buffer. Then, in 2003, the respondents cut down trees and dug a ditch along the side of the road nearest to her property causing some trees to later die. The complainant acknowledged that the tree buffer between her house and the road and between the road and the ag bag yard had not changed.

35. The complainant stated that the 2010 Agreement did not resolve her problems, adding that she has not perceived any change in the dust pattern and the farm has failed to advise her when work will be occurring.
36. The complainant stated she has developed anxiety as a result of the disturbances caused by the respondents' farming operations. Since she does not have air conditioning she leaves the windows open for fresh air and if there is any farming activity, all the dust and exhaust comes inside her house. In the summer months (June to October), she takes her dogs and leaves her property because the noise, dust and pollutants are too great.
37. The complainant submits that proximity is a factor to be taken into account in determining normal farm practice and that what may be considered normal farm practice in one context may not be normal farm practice in another because of proximity, citing three cases: *Parker v Maciel*, BCFIRB May 9, 2006; *Baran v Roberts*, BCFIRB September 30, 2005; and *Ollenberger v Farm Practices Board and Alan Farm Ltd.* SCBC Oct. 17, 2006.
38. The complainant argues that it is not normal to practice intense farming at such a close proximity to neighbours as is the case here with trucks driving only 80 feet away from her house for months. The trucks used for harvesting and hauling grass to the ag bag site create dust and pollution that linger in the air and disperse throughout her property. The trucks are loud and travel fast. She argues that the previous agreement between the parties was breached because the trucks continue to travel at excessive speeds and the respondents have failed to give notice of their farming activities. The ag bag site operations also result in emissions.
39. The complainant submits that the frequency with which the trucks travel along the road and the prevailing winds are also factors. Had there been no tree clearing there would have been more of a buffer. The operations on the Cedardale farm are not normal farm practices because of the proximity of the complainant's house and property.
40. The complainant submits that alternate routes exist that could be used and the ag bag site could be moved.
41. The complainant seeks an order that the respondents:
 - Relocate their ag bag site to the far (north east) side of the large tree wind break which lies beyond the present ag bag site on the Cedardale farm.

- Use the road up the middle of the fields on the far side of the field (Field 2) lying next to Field 1 when harvesting Field 1. Use the farm road linking the three farms and public roads to access the leased fields. Not use the gravel road on the Strip at all.
- Maintain a speed of 30 km when driving farm vehicles on the gravel road.

RESPONDENTS' CASE

42. The respondents submit that all their farm operations are carried on in accordance with normal farm practices.
43. Bruce Beacham testified that only 30% of the silage harvested from the farm properties goes to the Cedardale farm ag bag site because only young heifers and dry cows are kept there. The remainder goes to the Home farm which also has an ag bag site.
44. He indicated that Field 1, because it is irrigated, is cut 4 times per year. Cutting takes a day or a part of a day each time and it takes only part of a day to spread manure on the field. In total, Field 1 is therefore worked about 4 days per year. He also stated that the respondents had tried to reduce truck traffic to the extent possible by adding an entrance at the rear of the ag bag yard from Field 1 and also by adding an exit at the far end of Field 1 going out to the middle road running down the side of Field 2 furthest from the Jory property. He estimated that 60% to 70% of the time the gravel road would be used when working Field 1 rather than these alternate routes.
45. Bruce Beacham testified that the Endall Road access to the Cedardale farm has been the same since at least 1976 when he first viewed the farm. He stated the gravel road within the Strip has been used by the respondents for the same purposes and with the same frequency since they purchased this farm in 1997.
46. He confirmed that the trees running alongside Field 1 between the field and the gravel road to the rear of the barns and ag bag site were logged so Field 1 could be widened up to the road edge. However, the treed area on both sides of the gravel road along the barns and ag bag site was not cleared but left to mitigate sound and dust from the operations and this area of the Strip remains unchanged. He confirmed that a ditch was put in along the side of the road nearest the Jory property to catch runoff and eliminate erosion but that this did not involve clearing trees. Since the only cleared area is now in grass and part of Field 1, he submits the clearing did not increase dust.
47. Bruce Beacham's evidence was corroborated by the individual hired by the respondents to clear trees who testified that the area he cut was on the field side of the gravel road to the rear of the barns and ag bag site. He added that he also removed some underbrush on the other side of the road when putting in the ditch at the high point where the ground rises. He indicated the ditch was needed to deal with water draining from the Jory property. He stated he also removed junk,

including an old car body, from 3 major dumpsites along the side of the road nearest the Jory property.

48. Bruce Beacham disputed the complainant's evidence as to the speed of the trucks. He testified that the maximum truck speed was 25 km/hour. His son was the driver of one of the trucks and was well aware of the need to keep the speed at or below 25 km/hour. The driver of the other truck was advised not to exceed 25 km/ hour. He stated that most of the time the trucks were driven at less than 25 km/hour.
49. He also testified that prior to the 2010 Agreement the respondents had watered the road when using it for hauling silage. In accordance with the 2010 Agreement, the respondents put calcium chloride on the road in 2010 and 2011. They also added fresh gravel to the road and ag bag area in 2010 and 2011, as well as watering the road on very hot days.
50. Bruce Beacham's evidence regarding truck speed was confirmed by the driver of the second truck who testified that he had been told to keep the speed down to 25 km/hour or less and that he did so. If there was more dust than usual he would be told to slow down more. He also confirmed that he had been instructed to use alternate entrances when consistent with efficiency and did so. He confirmed that he had also worked on the gravel road to apply dust control.
51. Bob Beacham also testified and confirmed that he and his father had taken various steps to mitigate dust from the Cedardale farm operations, beginning with watering the road, then by continuing to water, applying calcium chloride and reducing vehicle speeds. He considered these measures to have been fairly successful in mitigating dust from the operations.
52. Both Beachams stated that it would not be efficient to use another entrance to access Field 1 or the ag bag site when harvesting.
53. Bruce Beacham stated that there is not much he can do about exhaust from his machinery. He explained that there are only a few minutes during bagging when silage is not being put into the bag and that it is necessary to keep the tractor running to operate the bagger. The truck that is unloading also needs to keep running for the 6 to 8 minutes it takes to unload in order to operate the truck's hydraulics. He stated that when emptying the manure pit, the tractor needs to run to operate the agitator and the pumper is there for only a few minutes while loading.
54. He also stated that the complainant's request to move the ag bag site would be costly because of the need to excavate and gravel the suggested relocation site. As well, the present ag bag sight is operating at maximum capacity and the suggested relocation site is not large enough. Relocating the site would also result in a loss of efficiency and take productive farm land out of use.
55. The respondents called two dairy farmers operating in the area who testified that dust arises and is unavoidable from time to time in the course of their operations. Both stated that they take no dust control measures. Both also stated that they use

diesel vehicles and equipment to harvest and haul crops from the field to the farm. Both indicated they try to make their farms as efficient as possible.

56. The respondents argue that the complainant had unreal expectations about the “country life.” She didn’t do her homework as to what farming activities actually entail, such as operations seven days a week, use of various types of equipment and vehicles, smells and noise.
57. The respondents submit that that their farm operations accord with normal farm practice. They have not turned a blind eye to the complainant’s aversion to dust but are taking mitigation measures consistent with maintaining efficiencies on the farm. They have taken measures to minimize traffic on the road adjacent to the complainant’s property and to ensure their trucks operate at 25km/hour or less. They have implemented dust control measures. With respect to exhaust, they run modern, well-maintained equipment of a type normally used by other dairy farms. The respondents argue that in fact they have done more than what most farmers in the area normally do.
58. The respondents argue that relocation of the ag bag site as suggested by the complainant would be costly, not solve the complainant’s problem and might even make it worse because to get sufficient room not much of the proposed new ag bag site would be behind the tree break and the bag yard would then be mostly in full view with no wind break.
59. The respondents request that the complaint be dismissed.

INTERVENER’S SUBMISSIONS

60. The Comox Valley Farmers’ Institute made submissions and its president, Mr. McClintock, responded to questions from the complainant. The executive of the Institute visited the farm to see the nature of the operation in relation to the Jory home. The Institute notes that both properties are in the ALR with the Jory property mostly treed with limited agricultural production and the Beacham property operating as a large expanding dairy operation. Prior to 1997 when the Beachams purchased the Cedardale farm as a going concern dairy farm, the previous farm owners milked about 65 cows, housed young stock in the barns and operated an ag bag site at the present location. The house that Mrs Jory resides in is located close to her property line adjacent to the end of the barns and ag bag yard. Trees on the Beacham property left along their property line form a limited buffer to the house.
61. The Institute advises that a modern dairy gets up to 4 cuts of grass each year and the best quality feed is then put up with an ag bag system that utilizes a tractor to run it.
62. The Institute submits that the present ag bag site is the most logical site to store silage for the cattle housed at the Cedardale farm. Moving the ag bag site to the other side of the wind break away from the barns would not provide sufficient area

without clearing the trees there. Relocation to this area also presents the risk that any runoff of silage effluent could enter the main ditch feeding into the Black Creek system. The Institute submits that moving to a more remote location would be very inefficient. Relocation of the entire heifer and dry cow barns to some other location on the farm is not a realistic option to alleviate the complained of dust and fumes. The present location of the barns makes for shorter hauling of forage, corn and manure from this end of the farm. In addition the fact that the respondents farm the leased fields across Endall Road would still require trucks to pass by the Jory home. The expense of relocation would strain the operations and might lead to the respondents exiting the dairy business.

63. The Institute submits that the respondents carry on a modern well run dairy operation and that they strive to keep up high standards in all aspects of the farm. In its view, the respondents have taken more steps to try and mitigate the problems experienced by the complainant than any other good neighbor would have done. The Institute notes that trees have been left as a buffer along the boundary and the road has been graveled with good material. A culvert has been installed to permit access to the bag yard from the field end. Dust suppression materials have been put on the road and it has been watered to keep the dust down. The Institute submits that there is no way to reduce exhaust fumes but notes that newer tractors meet the latest exhaust emission standards. The Institute encourages the respondents to continue to try to minimize the impacts on the complainant in future “by keeping their operations as timely as possible, maintaining the buffer, and using appropriate dust control measures when required”.
64. The Institute submits that the complaint should be dismissed.

ANALYSIS.

65. The complaint was filed pursuant to s. 3(1) of the *Act*. That section provides as follows:

3(1) If a person is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, the person may apply in writing to the board for a determination as to whether the odour, noise, dust or other disturbance results from a normal farm practice.
66. A complaint under the *Act* involves a two-step analysis. The first step involves standing; a complainant must establish that they are aggrieved by the odour, noise, dust or other disturbance that is the subject of the complaint.
67. In the present case, the evidence establishes that the use of trucks, tractors and other equipment in connection with the operation of the ag bag site, and the fertilization and harvesting of the forage crop on Field 1 give rise to dust and diesel exhaust fumes. The evidence is that the prevailing winds blow across the Cedardale farm toward the complainant’s property. The complainant testified that dust and diesel exhaust fumes blow onto her property causing her to be aggrieved and that the trucks travelling along the road are loud. We accept that the complainant has

satisfied the first step of establishing that she is to some extent aggrieved by dust, diesel exhaust fumes and noise from truck traffic as a result of the identified farm operations on the Cedardale farm. However, as discussed below we do not accept her assertion that these disturbances have significantly increased in volume and intensity since 2003.

68. The initial step having been satisfied, the panel must go on to make a determination as to whether the disturbances complained of result from normal farm practices.

69. Section 1 of the *Act* defines normal farm practice:

"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).

70. It is subparagraph (a) of that definition that is pertinent in the present case. In various decisions, including those cited by the complainant, 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". The 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.

71. We agree with the complainant's submission that proximity is a factor to be considered in assessing what constitutes normal farm practice in this case. The Jory property now shares a common boundary with the Cedardale farm. This is often the case with respect to many of the complaints brought under the *FPPA* and in and of itself does not establish the need for a change in usual industry practice. Here the complainant's residence is about 80 feet from the gravel road along which farm vehicles travel to access the ag bag site and Field 1 and about 200 feet or more from the ag bag site itself. In the present case, the direction of the prevailing winds is also a factor to be considered, as are the size and type of the operations that are the subject of the complaint. It should be noted that, with the exception of the removal of trees in the area beyond the ag bag site on the field side of the gravel road after 2003, the tree buffers remain intact. This is discussed in more detail below.

72. The present complaint is a new complaint and the question of whether or not the respondents breached the 2010 Agreement is not before us. Further, the 2010 Agreement does not establish normal farm practice but merely reflects an agreement between the parties to resolve the initial complaint.

73. Harvesting forage crops, driving trucks, operating an ag bag site, emptying a manure pit and applying manure to fields are all usual practices of a dairy operation. The evidence establishes that not only are the respondents' practices on the Cedardale farm in keeping with the practices of similar dairy farms in the area but that the respondents operate a modern, well organized, well kept dairy farm and maintain high standards. In isolation then, the farm operations on the Cedardale farm that give rise to the disturbances complained of would clearly meet or exceed industry standards.
74. The evidence also establishes that the respondents have taken steps in addition to the usual practices of other dairy farmers in the area. For the most part these steps were taken by the respondents following the initial complaint as an attempt to resolve that complaint by entering into the 2010 Agreement. The evidence in our view establishes that the respondents have continued to perform their obligations under that agreement except for the requirement to provide the complainant with a tentative schedule of upcoming harvest dates and approximate days required for the harvest. The question for us is whether the additional actions the respondents have taken are sufficient in view of the proximity of the complainant's property, the prevailing winds and the size and type of the farm operations that are the subject of the complaint for those operations to be considered normal farm practices.
75. We observe that in bringing the initial complaint, the complainant focused upon the respondents' acquisition of the Strip to the extent that the acquisition itself appeared to be an underlying reason for the complaint. The complainant wrote that the respondents had turned the Strip into a road to access their fields even though they "have hundreds of acres". However, the evidence establishes that the gravel road within the Strip had existed and been used for many years by the different owners of the Cedardale farm both for access to the farm from Endall Road and for access to Field 1. In fact the gravel road's existence and use had long preceded both the complainant's acquisition of her property and the respondents' acquisition of the Strip in 2003. The complainant no longer maintains that the respondents turned the Strip into a road after they acquired it. Now she asserts that it was the cutting of trees and the building of a ditch plus an increase in the "volume and intensity" of farming activity along the gravel road within the Strip after 2003 that gave rise to her problems with the operations of the Cedardale farm.
76. We have considered whether there was a significant change in the respondents' use of the gravel road after the Strip was acquired and conclude there has not been. Fertilizing and harvesting Field 1 are activities that were carried out using the gravel road both before and after 2003. Similarly the gravel road was used for access to and from the ag bag site, barns and facilities located near the road's junction with Endall Road both before and after 2003.
77. The evidence does establish that following the acquisition of the Strip in 2003, the respondents removed trees but only those on the field side of the gravel road beyond the rear of the ag bag site to expand Field 1. No trees were cleared in the area of the Strip lying between the gravel road edge and the complainant's property

and, with the exception of the ditching and cleaning up of old dump sites, no changes were made to this area. The tree buffer on both sides of the road from the Endall Road entrance to the rear of the ag bag site also remains unchanged.

78. Since the area cleared of trees is on the field side of the gravel road and this area is now in grass, we consider it unlikely that the removal of these trees would have resulted in an actual increase in noise, dust or exhaust fumes from vehicles travelling along the gravel road. However, the fairly narrow line of trees removed on the field side of the road may have acted somewhat as an additional windbreak to lessen the effect of the prevailing winds in carrying dust, noise and exhaust fumes from vehicles on the road toward the portions of the complainant's property lying opposite where the trees were removed. As well, the ag bag site has become more visible from that part of the complainant's property lying to the rear of the ag bag site. The trees removed may also have provided some additional buffer with respect to exhaust fumes and sound from vehicles working at the ag bag site being blown toward that part of the complainant's property. However, we note that the part of the complainant's property potentially affected is either treed or used for agricultural purposes. The ag bag site remains screened from the complainant's residence by the tree buffer left in place on both sides of the gravel road from Endall Road to the end of the ag bag site. Since the tree buffer remains unchanged in this area, we find that the tree removal noted above would have little impact on this part of the complainant's property. The complainant also says that the ditch put in along the side of the gravel road nearest to her property caused some trees to die. While this may have been the case, the evidence did not in our view indicate any significant die back. We accept the evidence of the individual hired to clear the trees that trees were not cleared between the road and the Jory property.
79. The complainant's dust and noise complaints are attributed to the trucks that drive along the gravel road a short distance from the Endall Road access before turning off to access the ag bag site and the trucks that drive back and forth on the part of the gravel road running from the entrance to the ag bag site along Field 1. Mrs. Jory complains that the trucks are driven at excessive speeds (50 to 60 km/hour) and submits that we should prefer and accept her evidence with respect to speed. The complainant submits the excessive truck speed is another instance of the respondents' breach of the 2010 Agreement, as well as failure to follow appropriate farm practices given the proximity of the gravel road to her property.
80. We find the evidence of the Beachams, as corroborated by the individual hired to drive the second truck, to be more reliable as to truck speeds, and prefer it to that of the complainant. We accept that prior to the time of the present complaint, the respondents had already given firm instructions in response to the initial complaint and in keeping with the 2010 Agreement that the trucks used on the Cedardale farm be driven at 25 km/hour or less. We also accept that the respondents have been and continue to actively supervise truck operations to ensure compliance. With respect to the DVD showing trucks travelling along the gravel road, we observe that we were not able to establish speed from this evidence although it did not appear to us to be excessive. As well, we note that the activities shown on the DVD were

identified by the complainant to have taken place in 2009 prior to the 2010 Agreement which called for reduced truck speed and the application of calcium chloride to allay dust. Finally we note that for trucks going from the leased fields into the Cedardale farm, the distance travelled is short and involves a right turn onto Endall Road, followed almost immediately by a left turn off Endall Road onto the gravel road leading into the Cedardale farm and then a right turn very shortly thereafter into the ag bag yard. For trucks leaving the ag bag site to return to the leased fields the journey is reversed. The short travel distances and turns make the complainant's reported speeds of 50 to 60 km/hour unlikely in our view.

81. Mrs. Jory also complains that the new trucks now in use are larger and louder. However, the evidence in our view does not clearly establish a significant difference in size, although the pictures Mrs. Jory directed us to did show an older and a newer truck that were slightly different in model and/or make. The evidence does establish that the new trucks now used by the respondents are tandem trucks of a size and type (although different in make, model) to those used by other local dairy farmers. While Mrs. Jory may perceive the new trucks as being louder, whether this is the case is difficult to determine on the evidence before us. However, we note Mr. Taylor's observation that the trucks are in good operating order. We also note, in reference to the diesel exhaust complaints, the Institute's observation that newer model vehicles would meet more recent exhaust emission standards.
82. With respect to how frequently trucks travel the gravel road alongside Mrs. Jory's property, we accept the evidence of the respondents that adding together days and part days, in total approximately 4 days per year would be spent in fertilizing and harvesting Field 1. We also accept Mr. Beacham's evidence that 60% to 70% of the time the gravel road would be used to access Field 1 for these purposes. Mrs. Jory also complains of the frequency of the trucks travelling into the ag bag site from other fields using the Endall Road entrance. The evidence establishes that the gravel road alongside the Jory property would be used for this purpose in connection with fertilizing and harvesting the leased fields which lie to the other side of Endall Road. We note however that the respondents also have an ag bag site on the home farm and that only 30% of silage is bagged at the Cedardale farm ag bag site. Overall the complainant estimated that trucks travel the gravel road a total of 1.5 to 2 weeks per month. This estimate of 1.5 to 2 weeks per month appears to us to be on the high side unless the complainant is including part days as full days, since the length to harvest a field will depend on weather, size of field, first or later cut, and other factors. We do note that while harvesting, the trucks using the gravel road to access the Cedardale farm ag bag site would pass by frequently, about every 20 minutes.
83. We have also considered the measures already taken by the respondents to minimize the impacts of the farm operations that are the subject of this complaint. These mitigation efforts are:

- Tree buffers maintained except for the treed area added to Field 1 to the rear of the ag bag site.
 - Dust control measures implemented with respect to gravel road and road to ag bag site in accord with 2010 Agreement, including application of calcium chloride, water and fresh gravel.
 - Vehicle speed reduced to 25 km/hour or less.
 - Use of equipment and vehicles that are well maintained, in good repair and to a large extent relatively new and therefore able to meet more current emission standards.
 - Use of alternate routes where practical and efficient to access ag bag site while harvesting.
 - Use of pulp mill belting under the bagger and bags to reduce dust and mud.
84. The complainant's requests that the ag bag site be relocated and that instead of the gravel road alternate routes be used to access the ag bag site and Field 1 were viewed by Mr. Taylor and the Institute as impractical and unrealistic options to alleviate the complained of disturbances. We agree and also consider these complainant requests to be impractical and unrealistic options.
85. As well, we have concluded that it is neither normal farm practice nor practical to require the respondents to give notice with respect to the anticipated dates upon which the complained of farm activities might occur since many factors dictate the timing of such activities and there may be frequent scheduling changes. When appropriate, BCFIRB has in other cases recommended that farmers and neighbours work at creating effective two way communication as a means of dealing with their disputes. In that vein, we encourage the respondents when possible to inform the complainant of periods when they anticipate high truck use of the gravel road or ongoing operations at the ag bag site and manure pit so that she can take steps to minimize the impact of noise, dust and exhaust fumes. However, we recognize that this may not always be feasible because of the unpredictable nature of this type of farming.
86. Finally with respect to the issue of proximity, which underlies the entire complaint, we observe that this complaint is not analogous to a situation where a farmer chooses to site a chicken barn 50 feet from the property line as seen in the Ollenberger and Baran decisions referenced by the complainant. Nor is it analogous to a situation where a farmer chooses to operate a propane cannon close to the property line and in the direction of a neighbour's home as seen in the Parker decision. The respondents and others before them have carried on a dairy operation on this farm for many years. Apart from the minor tree clearing referred to above there has been little change in land use. Further as set out in paragraph 83 above, the respondents have shown some threshold of consideration for their neighbor and modified their operations accordingly.

87. While we can appreciate that the Cedardale farm operations may be disruptive to the complainant's desire for a more pastoral rural lifestyle, as observed in the BCFIRB decision of *Feehan v Ferguson*¹ at paragraph 71, "...people buying property in the Agricultural Land Reserve need to understand that agriculture is the primary activity of the area and that agriculture involves animals and animal sounds. It may also involve smells and dust from the operation...." To this we can add, agriculture also often involves the use of equipment and vehicles that may be loud and emit exhaust and that such activities are often of necessity carried out seven days a week. The *Feehan* decision goes on to note in the same paragraph:

...Unfortunately, the seeming tranquility of rural areas is attractive to families until they experience the realities of farming, at which time they often feel betrayed. The *Farm Practices Protection (Right to Farm) Act* was put into place to provide a balanced approach to give neighbours a venue to complain when aggrieved by farming practices. At the same time, it protects farmers from these complaints when they are carrying on "normal farm practices" and taking reasonable actions to mitigate neighbour complaints.

88. Taking into account the proximity of the complainant's property, including the remaining tree buffers, and the prevailing winds, our findings as to the nature and level of the farming activities on the Cedardale farm and the measures already taken by the respondents to mitigate the effects of dust, diesel exhaust fumes and traffic noise arising from the farm operations, we conclude that the disturbances complained of result from normal farm practices.
89. It is important to note that our finding is based on the measures already taken by the respondents as set out in paragraph 83 above to minimize the disturbances that are the subject of this complaint. It will thus be necessary for the respondents to continue these measures for their operations on the Cedardale farm to continue to be in accordance with normal farm practices. To state this another way, despite the suggestion by both the Institute and the respondents that the practices of the respondent farm exceed normal farm practices, in all the circumstances of this case, the respondent farm is doing what is necessary to meet normal farm practices.

CONCLUSION

90. We find the dust and diesel exhaust fumes and noise from the truck traffic arising in the course of the farm operations on the Cedardale farm to be a result of normal farm practices.
91. Section 6 of the *FPPA* provides that a panel must dismiss a complaint if the panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice.

¹ [*Feehan v Ferguson* August 17, 2010](#)

92. We dismiss the complaint.

Dated at **Victoria, British Columbia**, this **31st day of August, 2012**.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per

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Suzanne K. Wiltshire, Member

A handwritten signature in black ink, appearing to read "Cheryl Davie", written on a white background.

Cheryl Davie, Member