

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF A COMPLAINT ABOUT DUST
AND LIGHT DISTURBANCE ON AN EQUESTRIAN FACILITY

BETWEEN:

DALE MacLEOD dba HOLD FAST GROWERS

COMPLAINANT

AND:

TARA MOBBS dba STAVE FALLS RIDING STABLES

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Corey Van't Haaff, Presiding Member
John Les, Chair
Diane Fillmore, Member

For the Complainants:

Dale MacLeod
Tony MacLeod

For the Respondent:

Tara Mobbs

For the Intervener:

Dr. Susan Thompson
Horse Council of BC

Date of Hearing:

March 9 and 10, 2015

Place of Hearing:

Mission, 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 (the *Act*).
2. Under section 3 of 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 BCFIRB for a determination as to whether the disturbance results from a normal farm practice. Section 6 of the *Act* provides that, following 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 panel must dismiss the complaint. 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 causing the disturbance.
3. The respondent farm, Stave Falls Riding Stables (Stave Falls), is owned and operated by Tara Mobbs and is located at in Mission.
4. The complainant, Dale MacLeod and his brother, Tony MacLeod, operate a horticultural business under the name Hold Fast Growers (Hold Fast), located in Mission.
5. The complainant filed a complaint with respect to dust and light disturbance from the respondent farm.

ISSUE

6. Is the complainant aggrieved by dust and artificial light from the respondent's equestrian facility (riding ring) and if so, do those disturbances result from normal farm practices?

BACKGROUND

7. The complainant and his brother, Tony, own and operate Hold Fast which is in the business of producing ornamental plants, including Ilex (a deciduous holly), hydrangea and lilac. Ilex is grown for its red berries which clump along the branches of the plant. These branches are used in the creation of floral arrangements.
8. The farm property, which includes Dale MacLeod's home in the north-west corner, is adjacent to the respondent's property to the east. The property is approximately 2.61 acres and has farm classification but is not in the Agricultural Land Reserve.
9. The majority of the Hold Fast production area is comprised of the Ilex crop which extends from the centre portion of the property to within 4.5 metres of the property line it shares with the respondent. The field is uncovered except for the portion with

red berries which is netted in the late summer and autumn to protect the berries from birds.

10. The Hold Fast business was started in 2002. At that time, the respondent's property had a grass and dirt riding ring and there were no elevated lights to illuminate the ring.
11. The respondent's property is used as a riding stable where Ms. Mobbs boards horses and gives riding lessons. An uncovered sand riding ring was installed in 2005 and is used by Ms. Mobbs for her riding lessons and by clients who come to ride their horses. The riding ring on its west side abuts the common property line shared with Hold Fast. There are two elevated lights to illuminate the riding ring, one on the southeast corner and one on the northeast corner of the riding ring which were also installed in 2005.
12. The respondent's lot is approximately 5.09 acres and has farm classification but is not in the Agricultural Land Reserve. The *Farm Practices Protection (Right to Farm) Act* applies to land in the Agricultural Land Reserve and land where farming is allowed under the *Local Government Act*. The respondent's property has a shallow well which produces insufficient water for dust control of the riding ring so a tanker truck is used to obtain water to use for dust control.

KNOWLEDGEABLE PERSONS' REPORT AND TESTIMONY

13. Ministry of Agriculture employee, Chris Zabek, P.Ag was engaged by BCFIRB as a knowledgeable person (KP) for this complaint pursuant to section 4(a) of the *Act*. Mr. Zabek was called by BCFIRB to give evidence at the hearing, and his letter dated July 31, 2014 and his December 12, 2014 follow-up report were entered into evidence. It is important to note that the evidence contained in the knowledgeable person's report and presented at the hearing is not binding on the panel.
14. Mr. Zabek testified that when he visited the property on July 18, 2014, he observed a noticeable layer of dust on the Ilex plants located closest to the property line across from the riding ring on the complainant's property. The amount of dust became less noticeable as the distance from the riding ring increased until at a point approximately 12 metres (40 feet) west of the eastern field edge, dust was no longer visible on the plants. He saw little or no dust on the Ilex plants directly west of the livestock-housing facilities nor did he observe dust on other vegetation or structures in other areas of the complainants' property.
15. During Mr. Zabek's site visit, there was no riding activity or blowing dust but he concluded that the sand riding ring was the likely source of the dust given the proximity of the sand riding ring to the dusty Ilex plants.
16. Mr. Zabek observed the elevated light in the southeast corner of the riding ring which is the main source of the light complaint but he did not comment on whether

he thought the light was directed toward the MacLeod property. In his July letter, Mr. Zabek suggested the exterior lighting be moved so it would not shine directly toward the MacLeod property to help ease the tensions between the MacLeods and Ms. Mobbs.

17. Mr. Zabek observed that the MacLeod farm appeared neat and well-tended.
18. Mr. Zabek included in his report a photo showing the site layout and one showing the common property line between the complainant's and the respondent's properties including the west side of the riding ring and the Ilex plantings closest to the property line. There were also photos showing dust on the Ilex leaves from two different distances, the location of the south-east elevated light, handmade signs on the respondent's property and signs on the complainant's property.
19. Although Mr. Zabek did not comment on proper and accepted practices of other equestrian facilities, he made the following recommendations to help resolve the complaint and mitigate the impacts observed and described:
 - Utilize water to the greatest extent possible and/or a commercially available dust control product;
 - Erect and maintain a barrier fence utilizing landscape fabric or geotextile fabric or alternatively a vegetative buffer to reduce dust movement;
 - Consider moving riding ring back from property line as a greater setback will ensure greater settlement of dust on Mobb's property;
 - Move exterior lighting so that it is not shining toward MacLeod property;
 - Apply pesticides according to label and only on own property.

COMPLAINANTS' EVIDENCE AND SUBMISSIONS

Dale MacLeod

Dust

20. Mr. MacLeod stated that he had been a grower for 30 years and he has been at the present location since 2002. The majority of the Holdfast production area is occupied by a field of Ilex, including the land closest to the property line shared with the respondent's property.
21. Mr. MacLeod testified that he is bothered by dust from the respondent's farm. He claims that the dust covers his Ilex crop and that there is less sheen on the berries and sporadic growth of berries in the area most affected by the dust. He claims that the excessive dust that accumulates on the plants hinders pollination by bees, resulting in fewer berries and a less attractive product. He said that the crop from the dust area has to be sold at a lower grade at auction. He estimated that the farm loses between \$2,000 and \$3,000 a year as a result of the dust. He claims that

normal precipitation does not remove the dust nor can it be removed with a sprinkler. He said a very heavy rain would be needed to wash off any of the dust.

22. In response to a question from the respondent, Mr. MacLeod stated that he is trained in pesticide use and that he does not spray pesticides on the plants. He has to sell plants that are free of pesticides so he sprays the perimeter around the plants with no pesticide applied directly on the plants.
23. Mr. MacLeod testified that he checked with several riding establishments in the area and found that one used a buffer to deal with dust, another used bark mulch and another with an indoor ring used a product called Whoa Dust to control dust.

Lights

24. Mr. MacLeod said that the lights used to illuminate the riding ring shine into his property and affect his family's ability to enjoy their property. He specifically mentioned that his wife and grandchildren do not feel comfortable in their hot tub when the lights are on and that the lights shine into his home affecting his sleep. Mr. MacLeod did not comment on how frequently the arena lights are on other than to say that the lights were on continuously the nights of July 15, 17 and 26, 2014. He said the fact that his property is higher than the Mobb's property accentuates the effect of the lights and in his view, the lights do not target the riding ring but target his property and that they should be located in the north-west and south-west corners rather than the north-east and south-east corners.
25. Mr. MacLeod testified that he visited nine riding rings and spoke to owners, managers and clients (none of whom were called as witnesses). From these visits he concluded that other operations controlled dust with water, wetting agents and buffer zones and their arena lights were not invasive to neighbours and only shone on target areas.
26. Mr. MacLeod submitted a USB stick containing photos and videos he had taken which include photos showing the plumes of dust coming from the respondent's property travelling laterally close to the ground, horses riding along the edge of the riding ring closest to the complainant's property, the riding ring with only the portion furthest from the complainant's property wetted down and the two lights from the east edge of the riding ring with one photo showing the reflection of a light in the window of Mr. MacLeod's house.
27. Mr. MacLeod also provided written submissions from various family members and a friend/former boss. As none of these people were available for cross-examination, the panel gives little weight to these submissions.

Tony MacLeod

28. Tony MacLeod testified that there is dust continuously during the day which damages their plants. He said that when they planted their crop, the riding ring had a grass and dirt surface and there were no elevated lights. Once the grass and dirt was replaced by gravel and sand, dust travelled across the property line to the Ilex crop. He believes the dust hinders the ability of bees to pollinate the Ilex plants. He complained that the respondent only watered the three-quarters of the riding ring furthest away from the shared property line. Although he does not reside on the property, he says the lights cause a disturbance.

RESPONDENT'S EVIDENCE AND SUBMISSIONS

Tara Mobbs

Dust

29. Ms. Mobbs, the operator of Stave Falls, testified that the present riding ring was built in 2005. She said that the ring was located in the only available place on her property due to the slope of the back property and the driveway placement. She agreed that the west side of the ring was close to the property line.
30. Ms. Mobbs acknowledged that it is a challenge to keep dust under control during the dry summer months. She feels she has made every effort to minimize the dust. She explained her water supply comes from a shallow well and there is not enough water to use a sprinkler to wet the ring. She said she does her best to reduce dust, not only because of the complaints, but also for the good of the horses and riders.
31. In the summer months, Ms. Mobbs said that she uses a 550 gallon tank which is filled with water obtained off-farm to wet the ring. She said that the riding ring is watered one-half hour before ride times. On really hot days, the ring will be watered morning and late afternoon. She stated that it costs between \$30-\$50 a day in fuel and lost time to go get water, fill the tank, drive back and put the water on the ring. Each watering uses the full 550 gallons.
32. Ms. Mobbs claimed that she has done research on the Internet on the effects of dust on bees and found no evidence that suggests that dust affects bees. She did find reports that stated chemical sprays such as weed killers and pesticides have a great effect on bees. She provided a report on the impact of pesticides on bees.
33. Ms. Mobbs explained that she gives riding lessons in the morning and late afternoon but that people who board horses at her place may ride during the day. She says she has instructed her clients to only use the east end of the ring if the ring is dry.

34. Ms. Mobbs mentioned a dump truck which arrived on the MacLeod property the day before Mr. Zabek's site visit and suggested it may have been the source of the dust Mr. Zabek observed on the plants.
35. Ms. Mobbs testified that she has tried a calcium product to reduce the dust but it was expensive and could be washed away. She also put up a fabric dust barrier to deal with the complainant's dust concerns but that it started to come down over the winter. It had to be removed as pieces of fabric fluttering in the wind scared the horses. She stated that she had checked out Whoa Dust, a fairly new dust-control product that she said is mostly used indoors and would cost her approximately \$1,000 a season to use. Ms. Mobbs said that other products to control dust could not be used outdoors as they would affect the footing of the horses.
36. Ms. Mobbs pointed out that she has recently constructed an eight-foot fence which will be safer for the horses than the fabric barrier. She said it is her intention to extend the fence down to ground level and to add another foot at the top of the fence so it will be a solid ten-foot fence when completed. She also plans to build an 8-foot long return at both ends of the fence. She believes this will mitigate the dust problems.

Lights

37. With respect to the light complaint, Ms. Mobbs stated that she hired a professional installer to put in the lights to illuminate the riding ring. He was instructed to install 400 watt bulbs on 25-foot poles angled toward the ring at a 45-degree angle. She could not verify the angle herself but she says she has no reason to think the installer failed to carry out her instructions. She said she was sure the lights were 400 watts. It is her opinion that as the MacLeod's house was 200 metres from the lights, the lights could not shine that far.
38. Ms. Mobbs says she was told that the lights could not be installed on the west side of the ring as the ground did not provide sufficient stability. She said that the light on the south-east side of the ring near the gate lights up that area for the safety of the horses. In her view, if that light were moved, it would create shadows in the ring which would be a problem for the horses. She hopes that the fence will help to keep the lights from shining into the MacLeod's property.
39. Ms. Mobbs explained that it is expensive to run the lights and that she uses them sparingly. She has them on in the winter in late afternoon when she is giving lessons. She testified the lights may be on at night if there is an emergency such as a horse in distress or if predator animals are in the vicinity threatening foals. She said the fact she has not had to change the lights since they were installed is an indication they are not frequently used. In response to the complainant's allegation, she was unable to explain why the lights might have been on the nights of July 15, 17 and 26, 2014 as it is not her practice to leave the lights on all night.

40. Ms. Mobbs said that because of the conflict with the complainant, she trucks horses over to an indoor arena in the winter to avoid using the lights after 6:00 PM.
41. Ms. Mobbs provided a letter from the complainant's lawyer which had been sent to one of her clients. In this letter, the lawyer acknowledges Ms. Mobbs' measures to mitigate dust, including watering the track. She provided photos that included images of the lights, her arena, the previous dust barriers, the dump truck on the MacLeod property and photos relating to watering the ring. She also provided written submissions from various clients, some of whom were called as witnesses. The submissions from people not called as witnesses will be given little weight as they were not available for cross-examination.

Alicia Harper

42. Ms. Harper testified that she has run a riding stable for 11 years in the vicinity of Ms. Mobb's property. She said she drives by the Mobb's property frequently and has never seen the riding ring lights on. She acknowledged that the lights could have been on at other times. Her own riding ring is covered but with open sides; it is in close proximity to her neighbour. She uses 9 high power lights that are visible to her neighbour approximately 200-300 feet away. She stated that in the summer she does not water her ring more than once a day to minimize the dust.

Sherri Roberge

43. Ms. Roberge testified that she has been one of Ms. Mobbs' students for the past 8 or 9 years. She said that she has seen the riding ring watered frequently to reduce dust. She confirmed that she has been instructed to only ride on the watered areas. She further testified that she goes by Ms. Mobbs' property frequently at night and has only seen the lights on once at about 7:00 PM.
44. In response to questions from Tony MacLeod, Ms. Roberge replied that she usually rides early in the day but has seen the ring being watered in the afternoon. She said she does not ride near the fence as requested by Ms. Mobbs and stays about 20 plus feet away from it.

Audrey Roberge

45. Ms. Roberge testified that she has been a student of Ms. Mobbs for about 6 years with usually weekly lessons. She said that on various occasions, she has seen sprinklers set up to water the ring. She has seen the ring soaked as much as it could be to reduce dust. She also saw the fabric barrier that was installed to minimize dust. She lives about 6 houses down from the Mobbs' property and she said she has never noticed the riding ring lights on.
46. In response to a question from Dale MacLeod, Ms. Roberge acknowledged that she has ridden close to the fence and that she has seen other riders do so. She agreed

that riding near the fence sometimes creates dust but not if the ring has just been watered.

Rena Remak

47. Ms. Remak testified that she has been student of Ms. Mobbs for over 7 years and she has helped out with feeding the horses and cleaning the barns. She explained that the ring gets hosed down in the dry weather before anyone rides. She believes the watering is adequate to keep the dust down. She remembered one year when a salt product was used to deal with the dust. She said that she lives in the neighbourhood and goes by the Mobbs' property at least twice a day and has never seen the arena lights on.

Matthew Dejong

48. Mr. Dejong, President of the Mission Horse Club, agreed that dust is an issue for horse riding rings. He stated that he waters in the morning but only on show days. It takes 4,000 gallons to fully water his ring. He said that on a summer day, there will be some dust if there is no further watering. He testified that his nearest neighbour is 1,000 feet away. When asked why he waters the ring, he replied that he does it as a gesture of good will so as not to affect the neighbours with excessive dust as opposed to benefiting horses and riders.

June Madison

49. Ms. Madison testified that she has been a client of Ms. Mobbs' for 11 or 12 years. She stated that she has boarded horses at several different places. She said they all had sand surfaces and they all had dust. She said the other riding stables mostly used a tank and sprinkler system and would water daily in the summer.
50. Ms. Madison explained that she had been instructed not to ride near the fence when the ring was not watered. She said she does not ride along the fence line when it is not watered and noted that her riding enjoyment is impacted by not being able to ride along the fence line.
51. Ms. Madison acknowledged that she has seen the ring lights on from time to time, usually in the dark winter months between 4:00 and 6:00 PM. When observed from Centre Street, the lights point down to the arena. She estimated that the lights were at roughly a 45-degree angle. In other facilities she has used, lights appear to point at the floor at what looks a 45-degree angle but she is not sure.
52. When asked about the neighbours of the other riding stables she has used, Ms. Madison responded that most of the neighbours had acreages and the horse rings were next to yard areas. Some of the outside rings had lighting and the lights would often be on from 4:30 to 8:00 or 8:30 PM. in the winter. They could be on later if riders were returning home from a show.

Yance Heriot

53. Mr. Heriot testified that he has worked for 5 years at the Mobbs' stable. He said he is responsible of taking care of the horses and maintaining the property. He said that one of his duties is to minimize dust from the ring. He explained that it takes him approximately two and a half hours to drive to the water source, fill the 550 gallon tank and return. He then waters the ring a half hour before lessons start. He said that he sometimes waters twice a day and then has to use more than one tank of water. He stated that he gets the ring wet enough to form puddles. He waters the eastern three-quarters of the ring first as this is most convenient and does not water along the fence line on the first go. He said riders are instructed to stay within the boundary of the wet sand. He said he waters the remaining quarter of the ring on the second load and that it gets watered as much as the other part of the ring. He acknowledged that it would cut down on dust if he watered the western portion of the ring first but he said that not many people ride along the fence line.
54. Mr. Heriot said that he hopes to complete the fence by the end of March. Upon completion, it will be a ten-foot high solid fence running the entire length of west side of the ring with eight-foot sections at right angles to the fence at the north and south sides of the ring.
55. Mr. Heriot believes that the lights are 400 watts. He stated that if the lights were 1000 watts, they would give off a bright white light while the lights in question give off a dull white light. He takes the electrician's word for the wattage. He said he seldom uses the lights except for night lessons. When hauling horses home late at night he uses the north light. He says he would not miss turning off the lights at night as they are right beside the safety rope. He turns the lights off last thing as he passes by.

Intervener Evidence and Submission

56. The Horse Council of BC was represented by Dr. Susan Thompson, Vice President of Education. The Horse Council serves over 23,000 members on 13,600 properties. Dr. Thompson explained that commercial equine facilities have a significant direct and indirect economic impact in the province. She stated that riding arenas (rings) are central to most horse operations as a place for students, for training horses and for inexperienced riders. She said the siting of a riding ring will depend on the substrate of the area and its slope and that is important to have the ring within sight view for safety.
57. Dr. Thompson said she has seen natural, usually vegetative, buffers used in many areas but she has not seen a barrier that had been built, such as a fence. She said that there was one place that had grown a cedar hedge as a barrier for dust which was effective. She stated that dust is endemic to a horse operation and that the dust at her place was such that her mother would not move into a trailer on her property.

58. In her written report, Dr. Thompson stated that she could not speak to what is typically done about a buffer along a fence line of an arena. Other factors, such as the location of the arena in relation to other active areas of the facility, would need to be considered. Dr. Thompson offered one example of a horse operation which had a dust complaint from its neighbour and the two parties consulted and the horse operators adjusted their practices to lessen the effect on the neighbour. She stated that facility set ups can vary widely so it is a challenge to quantify “normal”.
59. Dr. Thompson explained that watering a riding ring is necessary but does not eliminate all dust. She said she waters frequently but there is still dust. Sometimes chlorides are used to deal with dust but that they do not do a perfect job and they have an effect on the horses. She stated that sand is the most popular surface and that bark is not very safe. She talked about a mixture of sand and felt but she said it was expensive and, although the felt can reduce the dust to some degree, it blows away easily. Another option she discussed was hog fuel but she said it is harder to water as the water drains through. In response to a question from the panel, she said there is a product called Soil Moist that absorbs water and releases it as necessary but she said it works best with wood fibre and she does not know how it would work with sand. In her opinion and based on the evidence heard, Ms. Mobbs was doing everything she could to control dust.
60. In her report, Dr. Thompson addressed the light complaint. In her view, optimal lighting requires specific pole spacing, wattage and height to ensure safety for horses and riders. Light poles can range in height from 20 feet to 60 feet depending on the type of riding and the size of the arena. She said that installation factors include ground stability to ensure the pole stays in place in all types of weather. She stated lights are set and angled to reduce shadows, glare and to avoid shining directly in riders’ eyes. She reported that bulb wattage is typically 200 to 1000 watts with the average being 400 watts. She explained that horses are prey animals and they spook easily so bright lights are needed to reduce shadows. It is a safety issue that riders see each other and can anticipate the direction in which the other riders are going to move. Dr. Thompson said that the Horse Council has not received any complaints about lighting but she recognized that it could be an issue. In a survey of other horse farms in the Fraser Valley, she said that all the farms surveyed had lights deliberately angled or shielded to minimize glare and to keep illumination in the desired area.
61. In response to a panel question, Dr. Thompson testified that she has seen other operations with riding rings close to the property line. She said smaller operations are more likely to have rings on the property line. She admitted that she had no direct knowledge of abutting properties. She said that she has seen golf courses abutting a riding operation but she is not aware of a situation of neighbours with an intensive horticultural operation on the other side of a riding ring, as in this complaint.

ANALYSIS AND DECISION

62. Under section 3 of 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 BCFIRB for a determination as to whether the disturbance results from a normal farm practice. If 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 causing the disturbance.
63. A complaint under the *Act* involves a two-step analysis.
64. The first part of the test is whether the complainant has established that he is aggrieved by dust and light coming from a farm operation conducted as part of a farm business.
65. The complainant's evidence is that he is aggrieved by the dust and light from the respondent horse operation. The KP confirmed the presence of dust on the leaves of the plants closest to the riding ring and the photos provided in his report confirm this finding. The Growfast horticultural operation loses money each year due to reduced quality of its plants caused by dust. The panel rejects the suggestion by Ms. Mobbs that a dump truck driving onto the complainant's farm the day before the KP visit may be responsible for the dust. The evidence of Ms. Mobbs and Dr. Thompson confirms that dust is a normal part of a riding operation and there is no suggestion that the dust on the Ilex leaves was a one-time occurrence. The panel accept the evidence of the KP that dust was heaviest on the leaves nearest the riding ring and lessened as the distance from the riding ring increased.
66. The photos provided by Mr. MacLeod demonstrate that the lights seen from his property are bright. One photo showed a light reflecting in a window of his house, although it is difficult to determine the orientation of the lights. Mr. MacLeod testified that the lights are disturbing to his family, particularly when they are in their hot tub, and that their sleep could be disturbed.
67. The panel finds that the complainant has met the threshold of demonstrating that he is aggrieved by dust and light disturbance from the respondent farm.
68. Having concluded that the complainant is aggrieved by dust and light disturbance, the panel must then determine if, at the time of this complaint, the disturbances complained of resulted from a farm operation being conducted in accordance with normal farm practice. It is important to note that the analysis involves not only an examination of industry practices followed by similar farms under similar circumstances but also includes an evaluation of the context out of which the complaint arises. This evaluation may include factors such as the farm's proximity to neighbours and the use of their lands, geographical or meteorological features

(such as prevailing winds), other types of farming in the area, and the size and type of operation that is the subject of the complaint.

69. 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).

70. It is clear from the evidence of various witnesses that the creation of dust is a normal part of a horse operation. The testimony of Ms. Mobbs, Dr. Thompson and Mr. Dejong confirmed that it is accepted practice for equestrian operations to work to control the dust caused by horses in a riding ring. The panel accepts the testimony of these witnesses that the most common means of controlling the dust, and probably the most effective, is to soak the riding ring with water. While there are products on the market to control dust, the evidence was that they were mainly used on indoor rings. Dust needs to be controlled in the interest of riders, the horses and particularly, in consideration of neighbours. Mr. Dejong's evidence was that he waters his riding ring as a goodwill gesture as, without watering, dust would travel to his neighbours, 1000 feet away.

71. The panel finds that it is proper and accepted practice for horse operations to take the necessary measures to control dust, in the interest of the horses, the riders and to ensure that neighbours are not affected by excessive dust. The panel also finds that Ms. Mobbs waters her ring according to these proper and accepted practices.

72. However, our analysis does not stop here as we must determine whether there are any contextual factors which are relevant to the determination of what is normal farm practice for this particular farm. In this case, the proximity of the complainant's Ilex plantings to the common property line is a contextual factor relevant to our determination of normal farm practice. It is clear from the evidence that watering has been insufficient to prevent a significant amount of dust from accumulating on the Ilex leaves on the complainant's property.

73. The panel notes a previous BCFIRB panel's comments on the need for farmers to consider the impact of their farm operations on their neighbours. In the decision of *Eason v. Outlander Poultry Farms Ltd.*, March 10, 2000, the panel stated:

69. A normal farm practice means a practice conducted in accordance with "proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances". Applying that test to these facts has been

difficult in the sense that these circumstances are quite unique Nevertheless, implicit in the test... is the existence of practices showing some threshold of consideration for one's neighbours,

70 In our opinion, it is not proper and accepted practice for farmers ... to conduct farm operations in such a fashion so as to expose their neighbours to invasive and overwhelming odour, as arise in this case, without taking reasonable steps aimed at mitigating those effects.

74. Consistent with the comments in the *Eason* decision, normal farm practice for this equestrian operation must show some “threshold of consideration” and include a consideration of the impacts of one’s farm operations on neighbours and taking reasonable steps to mitigate disturbances resulting from the farm operations.
75. The panel recognizes that Ms. Mobbs is a responsible operator of her horse operation. It was clear from the evidence of her witnesses that they are satisfied with her operation. She has made efforts to keep the ring watered but because she is in such close proximity to the property line and because of the significant impact the dust has on her neighbour, the panel finds that further measures are necessary to bring her dust management practices into line with “normal farm practice”.
76. Given our conclusion that normal farm practice for this farm requires further action, the panel agrees with the KP that some further barrier is required to reduce dust movement. Given the respondent’s evidence that she previously installed a fabric barrier fence but it deteriorated and became a safety hazard for horses and riders, we do not agree that a fabric barrier is an appropriate buffer. However, the respondent has, on her own initiative, constructed a wooden fence and indicated her intention to extend the fence by two feet (by adding an additional foot at the bottom and the top) and installing eight foot returns on either end of the fence to lessen the movement of dust toward the MacLeod property. The panel is satisfied that the installation of this fence, as long as the bottom board goes down to the ground, will act as a buffer or barrier reducing the migration of dust onto to the complainant’s property especially given the complainant’s videos showing the lateral movement of dust, relatively close to the ground.
77. Turning now to consider the light disturbance, the panel accepts that the use of lights to illuminate riding rings is an accepted practice in the equestrian industry. The evidence is that it is usual for outdoor rings to have lighting to allow for late afternoon and early evening classes and riding and to be available in the case of an emergency. The panel accepts from the evidence of Ms. Mobbs and Dr. Thompson that it is important for the safety of riders and horses that the whole ring is lighted so there are no shadows to spook the horses.
78. The complainant suggested that the lights were not properly angled toward the centre of the riding ring. Other riding operations in the area had their lights shining only on target areas and their lights were not invasive to neighbours. The complainant did not call any witnesses (operators of other horse operations, or neighbours of those operations) or provide a factual basis through his own

testimony to support this conclusion. There was no evidence that he had in fact been on neighbouring properties adjacent to riding rings at a time when lights were on nor were there photos from these other rings. While there may be a horizontal component to the lights which causes the light disturbance to the MacLeod family, the panel accepts the evidence of the respondent and her riders that the lights properly illuminate the riding ring.

79. Based on the evidence provided, the panel finds that it is proper and accepted practice for equestrian operations to use lights to illuminate riding rings and the installation of lights on the respondent's property (height of poles, the wattage of the lights and siting) are within the average range. While the complainant may have preferred that the lights be sited in the north-west and south-west corners directed away from the MacLeod property, Ms. Mobbs testified that the ground in those areas was not stable enough to support the poles.
80. The evidence of Ms. Mobbs and Dr. Thompson was that as arena lights are expensive to operate and operators try to keep the use to a minimum. The panel accepts Ms. Mobbs evidence that she uses lights sparingly, usually in the fall and winter late afternoons when she is giving lessons and in the case of an emergency. To avoid conflict with the complainant, Ms. Mobbs also trucks horses to an indoor arena if riding is to occur after 6:00 PM. even though there was some evidence that other equestrian operations may use lighting until 8:00 or 8:30 PM.
81. The panel heard the complainant's evidence about the riding ring lights being on all night July 15, 17 and 26, 2014. The respondent did not recall these dates and could not offer an explanation. However, given Mr. MacLeod's evidence that he has been monitoring the lights since 2005, three incidents of lights being left on all night does not on balance outweigh the considerable evidence in support of the respondent's occasional use of the lights during the fall and winter season.
82. The panel concludes that Ms. Mobbs' use of lighting for her equestrian operation accords with the proper and accepted practices of other such operations. In considering whether there are any contextual factors which are relevant to the determination of what is normal farm practice for this particular farm, we have considered the proximity of the MacLeod's residence. Mr. McLeod's house is located approximately 120 m (~ 400 feet) from the light which causes him the greatest disturbance and his property is higher accentuating the effect of the lights. As indicated above, while the panel finds that the light is targeted downwards to the riding arena, there may some horizontal component to that light which results in the disturbance to the complainant.
83. Taking into account the proximity of the complainant's house to the lights, the elevation of the complainant's property as well as the seasonal and occasional use of the arena lights into the early evening as part of our contextual analysis, we have concluded that the disturbance caused by the arena lights results from a farm

operation being conducted in accordance with normal farm practice. As such, we dismiss this aspect of the complaint.

ORDER

84. The panel orders the respondent to complete the installation of the fence on the common property line between the respondent's and complainant's property with an additional foot at the top, additional wood at the bottom to bring the fence to ground level and eight foot returns on either end of the fence with the construction to be completed within sixty days of the date of this decision.
85. The panel orders the respondent to maintain the fence on an ongoing basis as necessary.
86. The panel dismisses the complaint with respect to the light disturbance.

Dated at Victoria, British Columbia this 16th day of June, 2015.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member



John Les, Chair



Diane Fillmore, Member