

IN THE MATTER OF  
*THE FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT*, RSBC 1996 C. 131  
AND IN THE MATTER OF SIX COMPLAINTS REGARDING A FLY  
DISTURBANCE ON A NEIGHBOURING COMMERCIAL EGG PRODUCER IN  
TERRACE, BRITISH COLUMBIA

**BETWEEN:**

**MARGARET WARCUP  
RODERICK GEE  
ROSEMARY MILLER  
DUNCAN WILLIAMSON  
VALERIE WRIGHT  
DANA KOKKO**

**COMPLAINANTS**

**AND:**

**DAYBREAK FARMS (TERRACE) LTD.**

**RESPONDENT**

## **DECISION**

**APPEARANCES:**

For the British Columbia  
Farm Industry Review Board:

Al Sakalauskas, Presiding Member  
Harveen Thauli, Member  
David Zirnhelt, Member

For the Complainants:

Margaret Warcup, self-represented  
Roderick Gee, self-represented  
Rosemary Miller, self-represented  
Duncan Williamson, self-represented  
Valerie Wright, self-represented  
Dana Kokko, self-represented

For the Respondent:	Saralyn Purdie, respondent counsel Kieran Christison, respondent
For the Interveners:	
City of Terrace British Columbia	David Block, self-represented
British Columbia Egg Marketing Board	Katie Lowe, self-represented
Date of Hearing:	September 14-17, 2021
Place of Hearing	Terrace, British Columbia

## I. INTRODUCTION

1. The British Columbia Farm Industry Review Board (**BCFIRB**) is a specialised administrative tribunal established under the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c. 330 (the **NPMA**). As part of its mandate, BCFIRB hears complaints about farm practices under the *Farm Practices Protection (Right to Farm) Act*, R.S.B.C. 1996, c. 131 (the **FPPA**).
2. Section 3 of the *FPPA* states:
  - (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.
3. If, after a hearing, a BCFIRB hearing panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, the complaint must be dismissed. If, however, the panel determines that the practice is not a normal farm practice, the panel must order the farmer to cease or modify the practice to be consistent with normal farm practice.<sup>1</sup>
4. This decision relates to six complaints filed with BCFIRB under section 3 of the *FPPA*. The first complaint was filed on August 5, 2020. Margaret Warcup, Duncan Williamson, Roderick Gee, Valerie Wright, Rosemary Miller and Dana Koko (together, the Complainants) allege that they are aggrieved by the excessive flies coming from Daybreak Farms (Terrace) Ltd. (Daybreak) and that Daybreak is causing the fly disturbance by not following proper manure management practices.
5. Daybreak is the Respondent in these proceedings and operates an egg layer farm and feed mill located on [REDACTED] in Terrace, British Columbia.
6. The City of Terrace (the City) was granted full intervenor status on April 21, 2021 to participate at the hearing.
7. The BC Egg Marketing Board (the Egg Board) was granted full intervenor status on August 10, 2021 to participate at the hearing.
8. The Complainants and Daybreak are together referred to as the Parties and the City and the Egg Board, the Intervenors.
9. The complaints proceeded to an in-person and Zoom hearing in Terrace from September 14 to 19, 2021 before a three-member hearing panel (the Panel).
10. The Panel wishes to advise the Parties and Intervenors at the outset that although

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<sup>1</sup> Subsection 6(1) of the *FPPA*.

the Panel has fully considered all the facts and evidence submitted in this complaint and the testimony given at the hearing, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

### ***The Hearing Participants***

11. Following a preliminary assessment by regional agrologist, John Stevenson on September 17, 2020, BCFIRB retained Tracy Huppelsheuser and Chris Zabek as “Knowledgeable Persons” (the KPs) to conduct site visits, prepare expert reports and eventually present evidence to the Panel at the hearing. Ms. Huppelsheuser is an Entomologist with the BC Ministry of Agriculture, Food and Fisheries, and Mr. Zabek is a Regional Agrologist and a member of the BC Institute of Agrologists. Ms. Huppelsheuser did not conduct any site visit in 2020 but obtained fly samples from the Complainants. The KPs did not carry out any additional fly studies or site visits, nor did they prepare expert reports, because the Complainants decided to proceed directly to a hearing as soon as possible (discussed further below). Ms. Huppelsheuser and Mr. Stevenson testified at the hearing as fact witnesses only.
12. The Complainants represented themselves and testified about how they are aggrieved by the fly disturbance. They talked about the impact of the flies on the enjoyment of their properties as well as their personal well-being. The Complainants had two witnesses, Robert Dams and Troy Ritter, who live near Daybreak and similarly testified about how they are aggrieved by the fly disturbance. Ms. Warcup and Mr. Gee led the evidence on why the Complainants believe Daybreak is causing the fly disturbance by not following proper manure management practices.
13. Michael Kerwin is an Environmental Health Officer with the Vancouver Island Health Authority. The Complainants called him to testify as a fact witness.
14. Kieran Christison is Daybreak’s owner and its spokesperson at the hearing. Ms. Christison called three witnesses who testified for Daybreak: Peter Versteege, Mark Siemens and Matt Vane.
15. Peter Versteege was Daybreak’s former farm manager and assisted Ms. Christison in preparing for this hearing.
16. Mark Siemens is President of the BC Egg Producers’ Association and a third-generation farmer. He was qualified as an expert in manure management and standard farm industry practices.
17. Matt Vane is a board member of the Egg Board and chairs the Production Management Committee. He was qualified as an expert in manure management and standard farm industry practices.
18. Katie Lowe represented and testified for the Egg Board.

19. David Block represented and testified for the City.

## II. THE ISSUE

20. Are the flies a result of Daybreak's manure management practices and are Daybreak's manure management practices in accordance with normal farm practice?

## III. THE FACTS

### ***History of Complaints with BCFIRB***

21. Mr. Dams, Ms. Warcup and Mr. Ritter filed a complaint with BCFIRB in June 2004.<sup>2</sup> A hearing was held on September 22, 2004 and the BCFIRB hearing panel rendered the decision, *Dams et. al. v. Daybreak Farms Ltd.*, May 20, 2005 (the **2005 Decision**). The hearing panel made orders requiring Daybreak to modify its farm management practices to control the fly population on its farm. Daybreak implemented the recommended modifications but only after the City had it deemed a "declared nuisance" under the *Local Government Act*, R.S.B.C. 2015, c. 1 (the **Local Government Act**).
22. Ms. Warcup and Jason Pike filed a further complaint with BCFIRB in September 2010. On April 11, 2011, Ms. Warcup and Mr. Pike entered into a settlement agreement with Daybreak and the City (the **2011 Settlement Agreement**).

### ***Pre-Hearing Conference Call***

23. A pre-hearing conference call was held on March 17, 2021 (the **PHC**) to discuss the timing of Ms. Huppelsheuser's and Mr. Zabek's site visits, which would have occurred during peak fly season in August 2021. The Complainants were unhappy with the site visits taking place in August and sought an earlier date for them so that the hearing of this matter would take place sooner. The Complainants were advised, however, that the flies may not necessarily be at their peak and any evidence of the fly disturbance may impact the quality of the expert evidence received by the Panel. After discussing these potential risks and whether they accepted them, the Complainants were unanimous in their decision to forego the site visits of the KPs in their entirety. The Complainants indicated that they were prepared to call their own expert witnesses and requested an expedited hearing. On this basis, the hearing was scheduled for September 2021.

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<sup>2</sup> The City initially filed the complaint with BCFIRB. At the outset of the hearing, the BCFIRB hearing panel raised the issue of whether the City had standing to make this complaint to BCFIRB. The parties agreed to amend the complaint so that Mr. Dams, Ms. Warcup and Mr. Ritter became the complainants and the City in turn became an intervenor.

### ***Allegation of Bias and Adjournment Application***

24. On July 23, 2021, BCFIRB received an application from the Egg Board for intervenor status to provide submissions, attend the hearing and answer any questions.
25. On July 26, 2021, BCFIRB asked the Complainants and Daybreak for their position on the Egg Board's intervenor application. Daybreak did not have any objections.
26. On July 28, 2021, Mr. Gee provided a conditional consent on the Complainants' behalf to the Egg Board's application. He raised a concern about the potential for bias because the Panel Chair's LinkedIn profile showed him as Executive Director of the Egg Board. He wrote:

*The complainants must assume the Decisions of the Panel will not reflect any bias in favour of the opinions of BCEMB [Egg Board] representatives or as an organization, and therefore could accept the BC Egg Marketing Board as an intervener should they choose to serve in that role.*

27. On August 4, 2021, the Panel Chair responded and explained the proper course of action that the Complainants must take to support an allegation of reasonable apprehension of bias. He wrote:

*The complainants' submission appears to be an indirect attempt to raise an issue of reasonable apprehension of bias respecting myself as presiding member of this complaint hearing panel. If the complainants are of the view that there is a reasonable apprehension of bias on the part of any member of the hearing panel, the proper course is for them to raise the issue directly with the panel so that a ruling can be made.*

*To support an allegation of reasonable apprehension of bias, a party must point to a prior statement, relationship, or interest that may lead an informed person to conclude that there is a sound basis for apprehending that the person against whom it is made will not bring an impartial mind to bear upon the case. Where a party fails to raise their allegation of reasonable apprehension of bias before the panel, they will be precluded from raising the issue in subsequent proceedings.*

28. The Panel Chair clarified that his LinkedIn profile was out-of-date and he was employed by the Egg Board as Executive Director from August 8, 2007 until his retirement on May 8, 2015. He also removed his LinkedIn profile. He advised the Complainants that if they still wished to allege his participation at the hearing raised an issue of reasonable apprehension of bias, they had until the end of business on August 9, 2021 to provide their submissions. The Complainants did not make any submissions challenging his participation.
29. Subsequently, and contrary to their earlier position of requesting an expedited hearing, the Complainants requested an adjournment of the hearing on August 27, 2021. The Complainants wanted to engage the Office of the Ombudsperson to

undertake a review of “the potential for bias within the FPPA and its complaint process” to ensure they would be participating in “an impartial complaint process of the highest possible standard”.

30. The Panel responded to this allegation of bias on September 2, 2021. The Panel wrote:

*BCFIRB is an independent administrative tribunal, which operates at arm’s length from the BC government. BCFIRB hearing panel members are bound by statute to perform their duties faithfully, honestly and impartially.<sup>3</sup> The panel members in this matter will adjudicate the complainants’ complaints within the parameters of the FPPA and ultimately decide whether the respondent is operating its farm in accordance with normal farm practice (proper and accepted customs and standards as established and followed by similar farms in similar circumstances). The panel members are not at liberty to stray from the tests related to “normal farm practices” established in the FPPA.*

*If the complainants are concerned about the potential for bias or partiality in the BCFIRB complaint process, it is open to them to withdraw their complaint and seek relief through civil court proceedings. However, even in a civil nuisance proceeding, it remains open to the farm to rely on a normal farm practice defence. Section 2(1)(a) and (b) of the FPPA provide that “the farmer is not liable in nuisance to any person for any odour, noise, dust or other disturbance resulting from the farm operation” and “the farmer must not be prevented by injunction or other order of a court from conducting that farm operation” where that farm can demonstrate it has met the requirements articulated in s. 2(2) of the FPPA. One such requirement is that the farm operation be conducted in accordance with normal farm practice.*

31. The Panel further advised the Complainants that section 11(1)(a) of the *Ombudsperson Act*, RSBC 1996, c. 340<sup>4</sup> (the ***Ombudsperson Act***) clearly indicates that the Ombudsperson lacks jurisdiction to intervene while a complaint process before BCFIRB is still ongoing and has not concluded. They were also informed that the Ombudsperson has the power to refuse to investigate a complaint under section 13(c) of the *Ombudsperson Act*<sup>5</sup> if an administrative procedure provides a remedy adequate in the circumstances for the persons aggrieved. The BCFIRB complaint and hearing processes are such administrative procedures that provide a remedy adequate in the circumstances for the

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<sup>3</sup> See section 30 of the *Administrative Tribunals Act*, SBC 2004, c. 45.

<sup>4</sup> 11 (1) This Act does not authorize the Ombudsperson to investigate a decision, recommendation, act or omission

(a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted under an enactment, until after that right of appeal, objection or application has been exercised or until after the time limit for the exercise of that right has expired.

<sup>5</sup> 13 The Ombudsperson may refuse to investigate or cease investigating a complaint if, in the opinion of the Ombudsperson, any of the following apply:

(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and, if the person aggrieved has not availed himself or herself of the remedy, there is no reasonable justification for the failure to do so.

complainants.

32. The Panel denied the Complainants' adjournment request on September 2, 2021 because the Panel did not find their reasons for an adjournment reasonable, convincing or compelling given the Panel's interpretation of sections 11 and 13 of the *Ombudsperson Act*. Furthermore, the Panel found an adjournment would cause significant prejudice to Daybreak. The Panel wrote:

*Granting the adjournment, however, will cause significant prejudice to the respondent [Daybreak]. The respondent emphasized that this process has caused a disruptive toll on its business. **More importantly, the respondent is currently prevented from moving forward with modernizing its facilities because the planning staff at the City of Terrace (an intervenor) have rejected requests to hold meetings with the respondent to discuss future planning of the respondent's modernization plans until this hearing has concluded.** Any further delays could have a detrimental impact on the respondent's business. [Emphasis is added.]*

### ***Daybreak's Farm and the Complainants' Residences***

33. Terrace is located in northwest British Columbia's Skeena River Valley. Its climate is that of a rainforest. The area is known to be rainy and have heavy winter snowfalls.
34. Daybreak's farm is located on Eby Street in Terrace. When Ms. Christison's father purchased this 15-acre property in 1992, the egg layer operation had already been in operation since the 1960s. This property has three barns that house approximately 39,000 birds among them. Barn 1 and 2 use the conventional housing system of cages. Barn 3 is made up of two separate free run barns with a shared center wall.
35. Daybreak also runs its own feed mill on a separate 5-acre property that Daybreak leases. The feed mill is currently east of Daybreak's farm, across Eby Street and just north of Vesta Avenue. Daybreak has plans to move the feed mill to its farm's location.
36. Daybreak sells approximately one million dozen eggs per year to 60 customers. Eggs are sold in a geographic area from Topley to Haida Gwaii to Dease Lake. Daybreak's customers include Overwaitea, Loblaws, Sysco as well as mining and pipeline camps within the region. Eggs are also sold directly to customers at Daybreak's farm.
37. Daybreak's farm and its feed mill are not within the Agriculture Land Reserve (**ALR**). Daybreak's farm was previously zoned for intensive agricultural (**AR1**) but the City changed the zoning in 1995. The leased property where the feed mill is located is zoned as semi-detached residential (**R2**) and Daybreak's farm property is zoned as rural (**AR2**). Both properties, however, were "grandfathered" in 1995 and have a "non-conforming use" status under the *Local Government Act*. The current zoning restricts Daybreak's use of its property and farm operation.



38. The Complainants all live on the north side of Vesta Avenue. Their residences are located south of the feed mill and approximately 288 metres east of Daybreak's barns. The Complainants' witnesses, Mr. Dams and Mr. Ritter, live on Dairy Avenue. Their residences are approximately 115 metres directly south of Daybreak's barns. There are large trees that act a buffer between Daybreak's property and Dairy Avenue.

### **Site Visits**

39. The Panel conducted an unaccompanied site visit on September 13, 2021, the day before the hearing commenced, to gain a better understanding of the neighbourhood, including the location of the Complainants' residences in relation to Daybreak's barns and feed mill. The Panel did not receive any evidence during the visit. Any questions arising from the Panel's observations made during its visit were put to the witnesses at the hearing. BCFIRB staff also attended this site visit.
40. During the hearing, the Panel learned of an ephemeral stream that drains mountain water into Spring Creek, which runs into Kalum River and then into the Skeena River. The stream runs underneath Eby Street and behind the feed mill. The stream's distance to Vesta Avenue is less than or the same as Daybreak's barns at approximately 300 metres.
41. One Panel member and two BCFIRB staff members returned to the area not far from the feed mill on September 16, 2021 to view the location of the ephemeral stream, which was dry on that day. The Panel advised the Parties and the Intervenors of this visit the following morning at the hearing.

## **IV. SUBMISSIONS of TRACY HUPPELSHEUSER and JOHN STEVENSON**

42. As previously stated, Ms. Huppelsheuser and Mr. Zabek did not prepare any expert reports because the Complainants chose to proceed directly to an expedited hearing. Therefore, they did not conduct any follow-up site visits nor did they provide any evaluation of whether the fly disturbance complained of resulted from Daybreak's manure management practices. In "Daybreak Farms, Summary of 2020 Site Observations" (the **Site Summary**)<sup>6</sup> prepared by Mr. Zabek for BCFIRB, Ms. Huppelsheuser's states: *In order to confirm that the farm is the source, we would have to collect flies from inside the pits and/or collect manure and raise flies from it. Usually collecting live adult flies in the pits or barns is adequate to demonstrate the farm is the original source.* This did not happen.

### **Tracy Huppelsheuser**

43. In the Site Summary, Ms. Huppelsheuser discusses sending packages of generic yellow sticky card traps to the Complainants and Daybreak in September 2020 so that she could compare the species and abundance of flies at Daybreak's farm

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<sup>6</sup> The Site Summary of Ms. Huppelsheuser's and Mr. Stevenson's observations was prepared by Chris Zabek, Regional Agrologist for the Ministry of Agriculture, Food and Fisheries.

with the Complainants' properties. The yellow sticky cards did not work very well, so the Complainants instead sent her fly strips, which they normally use to gather and remove flies from their properties. Given her examination of the yellow sticky cards and fly strips that the Complainants and Daybreak returned to her, she determined that the flies were almost exclusively house flies, *Musca domestica*. She stated they tend to be a summer fly and reproduce quickly under optimal conditions.

44. Ms. Huppelsheuser's comments about the sticky fly strips in the Site Summary are as follows:

*...However, because the complainants used their own tapes, etc, I do not know how long the traps were up for and cannot assess the density of flies (i.e. how many flies per day were caught). Only one person put a date and location or any information on their traps. I can say that the stickies were mostly saturated with flies but I don't know the length of time that took. I found one reference that states 'a complaint threshold' is 150 flies per 30 minutes caught on a sticky fly strip (flypaper). As I don't have dates and times on the traps I cannot assess this. Based on information from the complainants, it seems the threshold has definitely been met, even if I cannot empirically confirm it.*

45. At the hearing, Ms. Huppelsheuser confirmed the following information, which is also discussed in the Site Summary:

- Factors that impact a fly's life cycle are temperature, moisture in the substrate and food.
- If the temperature is too dry or cold, a fly's life cycle will slow down. Larvae need a high level of moisture to grow.
- A fly's life cycle may take from 7 to 10 days to two months when temperatures are colder.
- Flies breed in growing media such as manure, composted vegetable matter, grass, hay and household scraps.

46. Ms. Huppelsheuser confirmed in cross-examination that an ephemeral stream is a potential breeding ground for flies. She advised that flies do not reproduce in water itself but they will reproduce in the area around the stream, particularly if it has recently rained, the field is recently mowed, or there is decaying vegetable matter, tall grass or puddles.

### **John Stevenson**

47. The Site Summary states that Mr. Stevenson visited Daybreak on September 17, 2020. Before arriving at Daybreak, he drove down Dairy Avenue and then Vesta Avenue. He observed the residences from his vehicle. He arrived at Daybreak at approximately 10:10am.

48. In the Site Summary, Mr. Stevenson provided the following observations:

*Ms. Christison acknowledges that it has been a tough fly year but believes she is doing everything she can to manage flies and be a good neighbour. In general, Vesta Avenue residents appear to be more impacted than Dairy Avenue residents. The significant and frequent rainfall over spring and summer of 2020 made ventilating inside the barns very challenging due to extremely moist air going into the barns. This moist intake air also then combines with the moisture from the birds' respiration. [Emphasis is added.]*

49. Mr. Stevenson also provided his observations about the manure pits underneath each barn as follows:

*...A heavy population of flies was observed in one of the older barns. The manure was dry and of only a few inches accumulation on a concrete floor. No water infiltration was observed. Ms. Christison stated that this barn, for unknown reasons, was challenging to get fly numbers under control. She had hired Orkin to help. High fly numbers were observed on all the walls and flying around. One zapper at the entrance was on and working heavily. The other two barns were both relatively free of flies. No manure accumulations or storages were observed on the property.*

50. At the hearing, Mr. Stevenson explained that farming in the north is challenging because the farms are heavily reliant on “inputs” and “outputs” being trucked into and out of farm operations. He acknowledged the importance of having large scale farms in the north.

## **V. THE COMPLAINANTS' SUBMISSIONS**

### ***Aggrieved by the Fly Disturbance***

51. Having already determined in their own minds that Daybreak is the source of the fly disturbance, the Complainants described how they are aggrieved by the flies in their written submissions and testimony given at the hearing. Their complaints concerned the 2020 fly season but their submissions described the impact of the fly disturbance generally. Although they shared their individual experiences, there are several themes that are consistent among them, including the following:
- They have lost enjoyment of their properties because they can no longer sit outside and relax in their backyards or on their patios/decks because the flies are too intrusive. They cannot enjoy outdoor activities such as yoga or working in the garden. They no longer have barbeques nor can they eat or drink outside because flies land on their food or in their beverages. They cannot socialize with guests outside.
  - It is difficult to enter their houses without flies coming inside. Many complainants added screens to their doors and windows in an attempt to keep the flies from entering but the flies still manage to come inside because their houses are often surrounded by so many flies. Similarly, they have difficulty entering their vehicles without also attracting flies inside.
  - They have lost personal time, which is spent on removing flies and cleaning.

For example, they install, monitor and then dispose of fly traps and dead flies. They have to clean windows and other surfaces regularly, both on the inside and outside of their houses, to remove fly excrement. They also mentioned the time they have spent submitting this complaint to BCFIRB as well as previous complaints to BCFIRB, the City and the Northern Health Authority. Ms. Warcup also complained to the Ministry of Environment.

- They have additional expenses because they have to spend money on cleaning supplies, paint, screens, among other things, that would not necessarily be required in other neighbourhoods.
- Many complainants are deprived of their sleep because they hear flies buzzing at night. Flies sometimes land on their faces or hair, which awakens them. This sleep deprivation has caused some complainants to experience anxiety and depression.
- They are concerned that the flies carry diseases, which present a potential health risk to them, particularly to children and immune compromised adults.
- They believe that the value of their houses has decreased because their neighbourhood is known for having an ongoing fly problem.

52. During cross-examination by Daybreak, the Panel learned the following:

- Two complainants acknowledged purchasing their houses, knowing that Daybreak was already present in the neighbourhood.
- Two complainants acknowledged not being farmers.
- Two complainants agreed that BCFIRB does not handle health-related concerns.

### ***Complainants' Witnesses***

#### **Robert Dams**

53. Mr. Dams has lived on Dairy Avenue for over 20 years. He was a witness at the previous hearing that resulted in the 2005 Decision and stated "*it would behoove the Panel to read the testimony that I provided the last time I was here because the evidence we put forward has not changed.*" Mr. Dams stated that he caught 45 gallons of compressed flies in one summer. He stated that the flies during the beginning of 2021's summer were "*horrible*" but then it improved. He was not certain whether the improvement was because of the dry weather or if Daybreak cleaned up its property.

54. Mr. Dams is aggrieved by the flies for many of the same reasons as the Complainants, as described in paragraph 51. He acknowledged there was a "*significant improvement*" when Mr. Versteeg was Daybreak's manager.

55. Mr. Dams stated that if Daybreak's property is zoned AR2, then why would he and the Complainants allow Daybreak to entertain doubling production.

56. Mr. Dams confirmed that Ms. Warcup consulted him before submitting her complaint and kept him informed. He did not submit a complaint. He also did not know why none of the other residents living on Dairy Avenue did not join the Complainants in submitting complaints to BCFIRB.
57. During cross-examination by Daybreak, Mr. Dams responded as follows:
- He clarified that he caught 45 gallons of flies over two summers in 2003 and 2004.
  - He confirmed there was an improvement (*i.e.*, less flies) around his house from 2011 to 2019.
  - When his parents bought their property in 1969, the farm at that time was on the east side of Eby Street. He believes the farm encroached on his property when the farm moved to the west side of Eby Street, Daybreak's current location.
  - He was aware of Daybreak's current location when he built his house in 2000. He stated, however, that his family owned their land before the farm was moved to the west side of Eby Street.
58. In response to a Panel question, Mr. Dams stated he is adamantly opposed to any rezoning of Daybreak's property.

### **Troy Ritter**

59. Mr. Ritter lives on Dairy Avenue. He built his house in 2004. While it was being built, there was "*a ridiculous amounts of flies*" in the building.
60. Mr. Ritter is aggrieved by the flies for many of the same reasons as the Complainants, as described in paragraph 51. He testified, however, that when Mr. Versteeg was Daybreak's manager, "*it improved vastly*" and there were days when there were no flies outside. He then stated the flies in 2020 and 2021 were as bad as in 2004.
61. Mr. Ritter would like Daybreak to move to another property.

### **Michael Kerwin**

62. Mr. Kerwin is an Environmental Health Officer, previously for the Northern Health Authority and currently for the Vancouver Health Authority.
63. Mr. Kerwin conducted two inspections of Daybreak on June 23, 2020 and October 19, 2020 because of complaints made to the Northern Health Authority by Daybreak's neighbours. During the June 23 inspection, he noticed "*quite a few*" flies on Daybreak's property. He recommended securely covering up garbage, food and manure to prevent attracting flies into the barns and the neighbouring properties. He also recommended consulting a pest control company to find other strategies to combat the fly problem. During the October 19 inspection, he noticed

only a few flies, far less than what he saw on June 23, because of the cooler weather. He stated the manure pits are typically cleaned every spring and fall but they were cleaned every two to three weeks in 2020 because of the neighbours' complaints. Ms. Christison informed him that the rainy summer contributed to the abnormal reproduction of flies and the high humidity in the barns contributed to fly reproduction. Mr. Kerwin stated that Daybreak's integrated pest management plan (**IPM plan**) was good and consistent with integrated pest management guidelines. He did not see any obvious improvements that Daybreak could implement after his inspections.

64. At the hearing, Mr. Kerwin stated he inspected Daybreak on June 23, 2020 for the primary purpose of confirming that Daybreak was following COVID protocols. He was not familiar with the definition of normal farm practice.
65. During cross-examination by Daybreak, Mr. Kerwin confirmed he did not identify any problems with the IPM plan and it appeared to follow his understanding of best practices.

### ***Normal Farm Practice***

66. Ms. Warcup advised that the Complainants contacted experts but they had limited availability or were in a conflict of interest. Therefore, the Complainants did not present any expert reports addressing whether Daybreak's manure management practices are conducted in accordance with normal farm practices.
67. The Complainants decided they could prove their case by providing a compilation of reference material. In their "Complaint Submission", marked as Exhibit 1, Ms. Warcup provided a "Statement of Resolve", which concluded with a list of 25 references, including articles, guidelines and website links. Mr. Gee similarly included a "Statement of Resolve", which concluded with a list of 30 references, including articles, legislation, BCFIRB publications and dictionary definitions. The Complainants also sought to prove their case through cross-examination of witnesses.
68. Ms. Warcup did not initially think it was necessary "*to walk through*" the Complaint Submission and believed that the Panel would read the material on its own and draw the same conclusion as the Complainants. The Panel Chair asked Ms. Warcup to present what she thought would assist the Panel in rendering its decision.
69. Therefore, at the Panel Chair's request, Ms. Warcup and Mr. Gee reviewed their "Statements of Resolve" at the hearing and highlighted reasons why the Complainants believe that Daybreak's manure management practices are not in accordance with normal farm practices. These reasons included the following:
  - Ms. Warcup stated that Daybreak needs to remove its manure more frequently, particularly in cooler months when flies are less active. Mr. Gee, however, stated that Daybreak should have its manure removed weekly

during May, June and July, which are typically warmer months. They agreed that manure removal should be staggered to preserve beneficial insect populations.

- Daybreak should adopt other best practices, including maintaining the manure's moisture content to less than 30%, inspecting the manure pits to eliminate excess sources of moisture and evaluating the effectiveness of the newly installed exhaust fans.
- The feed mill should be demolished but some Complainants are concerned about relocating it to Daybreak's farm.<sup>7</sup>
- The IPM plan should identify risks that could impact it. As examples provided by Ms. Warcup, Daybreak's first application of wasps was not effective in 2020 and Daybreak's shipment of chemicals was delayed in 2021, which then delayed the fly treatment. The IPM plan also does not detail when to use chemicals to control the fly population and how to use chemicals effectively so that the flies do not develop a resistance to them. Daybreak should also seek ongoing qualified expert advice for its IPM plan.
- Daybreak should set up "terminator type" fly traps along its property line to reduce the number of flies that spread off its property.
- Daybreak should plant a berm or forested buffer on Eby Street.
- Daybreak should ensure surface and ground water close to the barns is draining properly.
- There should be better communication between Daybreak and the Complainants.

70. During cross-examination by Daybreak, Ms. Warcup and Mr. Gee answered on the complainants' behalf as follows:

- Ms. Warcup believes the research submitted by the Complainants is their evidence that Daybreak is not following normal farm practices.
- Ms. Warcup stated that if this Panel's decision does not assist the Complainants, they would consider pursuing other options such as contacting the Ministry of Environment and the Ministry of Health, or selling their houses.
- Ms. Warcup does not support zoning changes at this time and requires more information before she does. She does, however, support upgrades. Mr. Gee supports modernization of Daybreak's farm.
- Ms. Warcup believes the IPM plan should have "*accountability checks*". It does not state, for example, what would happen if the necessary documents are not completed or contain errors.
- Mr. Gee stated the IPM plan should require monitoring of the manure's

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<sup>7</sup> Reasons for their concerns about the feed mill's relocation were not provided.

moisture content and if it exceeds 30%, removing the manure.

- Paragraph 19 of the 2011 Agreement states: *The complainants and the intervener agree to develop a Neighbourhood Fly Control Plan (the **Neighbourhood Fly Plan**) with consultation of professionals.* When asked why this plan was not fulfilled, Ms. Warcup initially stated that she was not certain whether it was a “*citizen responsibility*” to develop this plan but she acknowledged the Complainants did not follow through in preparing it.
- Ms. Warcup acknowledged that the IPM plan was effective between 2011 to 2019 and the flies, manageable.

## VI. THE RESPONDENT’S SUBMISSIONS

71. Daybreak has two barns that have deep pit conventional systems where cages are stacked in a stair step pattern, allowing the manure to drop from the cages to a pit below. The third barn is a free run barn with a single layer floor where the manure similarly drops to a pit below. Except in 2020, Daybreak normally cleans out the manure twice per year in the spring and fall.
72. Before reviewing Daybreak’s submissions at the hearing and addressing its manure management practices, Ms. Christison began by highlighting that the Complainants and the City did not prepare the Neighbourhood Fly Plan as agreed to in paragraph 19 of the 2011 Settlement Agreement.
73. Ms. Christison reviewed the IPM plan, which Mr. Versteegen wrote in February 2011 and that remains in place today. The IPM plan is reviewed annually. The IPM plan states that the main areas where flies potentially breed are the barns, the farm fields on the east and west side, the forested buffer on the south side and the feed mill. The IPM plan discusses the following three types of controls that Daybreak uses:
  - Cultural: Areas in and around the barns are cleaned regularly and manure is properly managed. High sanitation standards are maintained by disposing of dead birds quickly and properly, removing broken eggs immediately, preventing feed spillage, diverting surface water away from the barns through grading and drainage, keeping vegetation mowed around the barns, spraying Roundup close to the barns and not permitting any composting. The manure is kept as dry as possible with exhaust fans. When the manure is removed, the fans are cleaned to ensure optimal air flow. The waterers are inspected daily and if any are leaking, it is repaired immediately.
  - Chemical: Fly baits and selective insecticides are used to kill adult flies. The fly baits are placed in securely fastened containers and are used and changed weekly during fly season. Insecticides are applied inside and outside of the barns where flies congregate. Different types of insecticides are used so that flies do not develop a resistance to the chemicals in them.
  - Biological: Natural fly predators and parasites are released into Daybreak’s



manure pits. Fly predators are insects that actively feed on fly eggs and larvae. Parasites are small, stingless wasps that lay their eggs in fly pupae, which ultimately kills them. The fly predators and parasites are referred to as the “good bugs”.

74. On May 30, 2011, Ms. Hueppelsheuser visited Daybreak to conduct an assessment. Given Ms. Warcup’s testimony that the IPM plan was not reviewed by an expert, Ms. Christison highlighted the following comments made by Ms. Hueppelsheuser as follows:

*Previous to the farm visit, I had received the farm’s Fly Management Plan. I was satisfied that the farm manager had included adequate measures to keep fly populations below nuisance levels. A fly management program must include good sanitation practices and manure management; focusing on “clean and dry”. By way of Fly Management Plan, Daybreak Farms has committed to taking all reasonable steps in this regard.*

75. Ms. Christison provided Daybreak’s pest management records, which show that only good bugs were needed in 2011, 2013, and 2015 to 2018 to control the flies. No chemicals were used in those years. They also show that good bugs and chemicals were used in 2012, 2019 and 2020 to control the flies. Ms. Christison explained that insecticides are sprayed by the electrifying lights and the surrounding walls above the manure pit, which attracts the flies and forces them into the manure pits. The same insecticides are not used for more than a month.

76. Ms. Christison reviewed Daybreak’s Standard Operating Procedures (**SOPs**), which is updated annually. Daybreak staff must read the SOPs and sign off, indicating that they understood its contents. The contents of the SOPs include a pandemic protocol, entry and exit procedures, biosecurity training, barn cleaning and disinfection, a pest control program, among other procedures. The pest control program sets out daily, weekly, bi-weekly and monthly procedures as follows:

- Daily: Clean up any spilt feed and other matter (broken eggs and garbage) that could attract flies. Cover garbage buckets. Remove dead birds and put them into dumpsters. Monitor for flies and spray, if needed. Clean the egg room. Empty the garbage cans/buckets.
- Weekly: Clean the outside areas around the barns, feed mill and dumpster. Mow the grass. Check the fly lights.
- Bi-weekly: Release fly parasites.
- Monthly: Obtain service from Orkin on pest control.

77. Ms. Christison provided Daybreak’s activity logs, which show that the barns are checked twice daily in the morning and after lunch. Ms. Christison stated that animal welfare is very important, so during these checks, staff verify the birds’ overall health, including whether the birds have enough water and feed and if there are any mortalities, among other things. During these checks, if any leaks are

found, they are fixed right away.

78. Ms. Christison provided Daybreak's manure removal records showing that manure was removed twice per year from the barns between 2011 and 2019. In 2020, however, Ms. Christison had manure removed nine times because of the Complainants' complaints about flies.

79. Ms. Christison explained that removing manure weekly is harmful to the birds for the following reasons:

- The barn's ventilation system controls the air flow and temperature for the birds. It circulates fresh air around the birds above the manure pits. The air then escapes through the fans. When the barn doors are opened, however, the reverse happens. The ventilation system sucks air from the open doors underneath the birds, which flows over the manure and then escapes through the fans. Therefore, opening the doors stops the air flow and the air becomes hot and stagnant. If it becomes too hot, the birds start dying.
- Manure is removed with a skid steer that roars underneath the birds. This causes them stress that may affect their eggs. For example, the birds may lay "blood eggs" where blood enters the eggs or the eggs may crack internally. These eggs must be discarded.
- Opening the barn doors allows flies from outside to enter into the barns.

80. Ms. Christison provided weather records for Terrace. In particular, she pointed out an article that was on the first page of the newspaper, The Terrace Standard entitled, "*Terrace records wettest spell in over a half-century*". The first three paragraphs of this article state:

*The year between April 2020 and March 2021 was the second wettest in Terrace in more than 50 years, according to an Environmental Canada analysis prepared for The Terrace Standard.*

*Meteorologists compared the accumulated precipitation amounts for each year from April to March stretching back to 1969. There were 1,483.6 millimetres (58.4 inches) of precipitation last year, second only to 1991 when Terrace experienced 1,683 millimetres (66.3 inches) of precipitation.*

*In 2020, precipitation was 320 millimetres (12.5 inches) more than usual, which is 127 per cent of normal.*

81. During cross-examination by the Complainants about Daybreak's farm and manure management practices, Ms. Christison responded as follows:

- Manure is normally removed twice yearly because the good bugs (parasites) need time to burrow into the larvae and lay their eggs into the fly pupae. When manure is removed, the good bugs are also removed. Biological controls are used on the manure and eggs whereas chemical controls are

used on adult flies.

- Manure was removed nine times in 2020 when she thought it was appropriate to do so. When she had the manure removed, she did not have the goal of preventing a fly life cycle from completing because she wanted to give the good bugs time to lay their eggs and trucks also had to be available. Manure is hauled off-site as soon as it is removed from the barns. She changed the manner of distributing the good bugs in 2020 by having them placed on ledges instead of in the manure itself so that the manure could be removed more frequently.
- There are no industry standards for measuring moisture levels in manure besides visual checks.
- Bird carcasses are placed in organic tote bags and stored in organic bins on site. The tote bags are picked up and moved off-site weekly.
- She lives approximately 20 kilometres from Daybreak's farm in Terrace. She stated that 2020 was a very wet year and the mosquitoes and flies were "*bad*" at her house.
- Orkin is Daybreak's pest control service provider and had several conversations with Orkin staff in 2020 about the flies. Orkin staff set up "max force" fly traps at Daybreak in 2020. These fly traps are sprayed with a chemical so that the flies are attracted to them, traps them to prevent them from reproducing and kills them. Orkin staff advised that the best way to reduce fly development is to remove the manure but they did not state how often to remove it.
- The field between Eby Street and north of Vesta Avenue is not cut more often because preventing flies from developing in the manure is her primary focus. She did not have any documents indicating when the grass in this field was cut in 2020.
- The ground level of Daybreak's barns is concrete.
- Any spilt feed and debris from the feed mill is cleaned up at the end of each day of use.

82. In response to Panel questions about Daybreak's farm and manure management practices, Ms. Christison responded as follows:

- To her knowledge, there is no feed additive that would change the manure to the extent of reducing flies from developing in it.
- She applied for a site-specific bylaw amendment so that she could modernize Daybreak's farm but she decided to withdraw her application after the second reading because she did not feel comfortable capping her quota increase. (Discussed further below under the section, "The City of Terrace Submissions".)
- She needs to modernize Daybreak's ageing barns by replacing the deep pit

systems. She would like to replace the oldest barn with a new barn.

- The City's staff did not want to talk to her about modernizing Daybreak's barns because the staff wanted to wait for the BCFIRB hearing to conclude.
- She intends to move the feed mill to Daybreak's property and tear down the existing one. BC Hydro has to install underground power to accommodate a new feed mill.
- She conceded that given the legislative changes that already prevent her from renovating the cages in her deep pit systems, it would be the "*death of her business*" if the Complainants oppose any rezoning and the City does not grant her a permit to modernize. (The legislative changes are discussed further in the section, "The BC Egg Marketing Board Submissions".)
- She has considered moving Daybreak's farm but it is difficult to find a location that is designated intensive agriculture and has the necessary amenities such as 3-phase power.

### ***Daybreak's Witnesses***

#### **Peter Versteege**

83. Peter Versteege is Daybreak's former manager. He worked at Daybreak from October 2010 to January 1, 2020. He stepped down as manager in June 2018. Ms. Christison then assumed this role. He has lived on Dairy Avenue next to Daybreak's property since October 2010.
84. Mr. Versteege confirmed he wrote the IPM plan in 2011 and represented Daybreak during negotiations that resulted in the 2011 Settlement Agreement.
85. After the Complainants submitted their complaints, Mr. Versteege met with the neighbours and told them that Daybreak's modernization plan, includes new ag-production technology that would not only enhance Daybreak's farm operation but also dramatically improve the IPM plan.
86. At Ms. Christison's request, Mr. Versteege reviewed Daybreak's fly control and manure management practices in 2020. He examined whether Daybreak consistently followed the IPM plan, why Daybreak's farm experienced such an increase in flies in 2020 and what contributed to this increase. He prepared a report dated June 29, 2021, which he discussed at the hearing. His comments are as follows:
  - On reviewing Daybreak's 2020 records, Mr. Versteege concluded that Daybreak followed the IPM plan. He then added that Ms. Christison took further steps to deal with the surge in flies by significantly increasing the amount of spraying, quadrupling the number of good bugs and having the manure removed more often. Ms. Christison also consulted pest control experts like Orkin for advice on how to handle the increased fly population. These experts confirmed that the IPM plan included adequate measures to

control the fly population to below nuisance levels and Daybreak had done everything possible to keep the fly population under control.

- In his opinion, the weather caused the fly population to increase in 2020. The year started off as cool but then turned into a “very wet” spring, summer and fall. He also researched the average amount of precipitation in Terrace for the past 30 years on websites. The records show that Terrace had higher than usual precipitation in 2020. This includes not only the amount but also the number of days of precipitation.
- He mentioned that he and his wife are avid gardeners and their annual spring gardening chores were substantially delayed in the spring of 2020 because of the wet weather and his lawn turned into moss for the first time.
- He provided nine letters from residents who live in various areas of Terrace but not in proximity to Daybreak’s farm. Eight residents confirmed that they experienced an increase in flies in 2020.
- He mentioned that Vesta Avenue is surrounded by fields and a nearby creek, which he stated is a good breeding ground for flies.

87. Mr. Versteege identified a “few possible reasons” why the IPM plan may not have been as effective for controlling the increased fly population in 2020 as follows:

- The good bugs that Daybreak previously received are only effective above 16 Celsius.
- Ms. Christison had only recently learned that she received a mixture of five different varieties of good bugs. Some varieties are more effective in cooler weather whereas others are better above 25 Celsius. As the temperature stayed cool until late May, he assumed that only 20% of the good bugs were effective at the beginning of the fly season.<sup>8</sup>
- The fly population is replaced by flies entering the barn when the barn doors are open. The doors are open all day when manure is removed. In 2020, manure was removed nine times whereas it is normally removed twice yearly.

88. Mr. Versteege stated that after the BCFIRB hearing panel issued its 2005 Decision, Daybreak purchased another property that was in a more secluded area of Terrace so that Daybreak’s farm could be moved from its existing location to the new location. The City, however, did not give Daybreak the time it needed for the move, so Daybreak was forced to upgrade its farm as required by the orders in the 2005 Decision. The upgrades cost over \$1.2 million, so Daybreak no longer had the resources to move the farm or the feed mill. Daybreak eventually sold the other property it had purchased.

89. Mr. Versteege confirmed that Daybreak undertook more upgrades between 2010

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<sup>8</sup> There was no direct evidence from Ms. Christison or Mr. Versteege to support this assumption.

and 2019, including a new drainage system to drain runoff water away from the barns, additional concrete slabs, new siding on the grading facilities, additional exhaust fans in the barns, a new egg collection system in one of the barns, a new roof and new gutters. The current feed mill will be taken down and a new one build near the barns. A concrete pad is already in place. Daybreak has spent approximately \$350,000 for the new feed mill.

90. During cross-examination by the Complainants, Mr. Versteegen responded as follows:

- The new feed mill will reduce feed spills because the building will be enclosed and have enclosed bins. Trucks will no longer be needed because the feed will be piped directly from the mill into the barn.
- He implemented the IPM plan in 2011 and updated it in 2015 to indicate that the drying fans were replaced with additional exhaust fans. The drying fans became obsolete and the exhaust fans are bigger and more effective. He confirmed he did not assess the IPM plan itself but reviewed it to determine whether Daybreak was following it. He stated the IPM plan was effective between 2011 and 2019 because Daybreak did not receive any complaints from the Complainants.
- He was previously a management consultant and assisted many companies in improving their management programs. He is not an agrologist.
- He acknowledged that different websites have different data on the weather.

91. In response to questions by the City, Mr. Versteegen responded as follows:

- The City issued building permits in 2017 and 2019 for the construction of the new feed mill. He explained that the feed mill was not completed before 2019 because BC Hydro wanted a right of way over Daybreak's entire property to install the power lines from the 3-phase power poles on Daybreak's property line to its generator building. Mr. Versteegen was not prepared to give BC Hydro a blanket right of way. Ms. Christison's father was also the main contractor for the new mill. When he passed away in September 2018, the construction was postponed.
- The property that Daybreak purchased in 2007 to relocate is located north of Kitsumkalum. He believed that moving Daybreak's farm from its current location would have been a long-term solution to ending the complaints about flies.

92. In response to Panel questions, Mr. Versteegen responded as follows:

- He confirmed that maintaining the area around ephemeral stream is not Daybreak's responsibility given the stream does not run through its properties on Eby Street. He believed the stream has multiple owners because it runs through several properties.
- He stated the ephemeral stream is a breeding ground for flies because it is

surrounded by vegetation that is not maintained.

- Since he is not prepared to give BC Hydro a blanket right of way, he must have a survey completed showing where BC Hydro would install the power lines on Daybreak's property and thereby limit its right of way to that area only. The survey has not yet been done. He advised, however, that BC Hydro is willing to work with Daybreak and Daybreak has already spent \$110,000 to have 3-phase power brought from Halliwell Avenue to Daybreak's property line.

93. Mr. Versteegen provided additional information about the ephemeral stream the following day. He stated the private properties have culverts allowing the stream to drain but some culverts are blocked. He mentioned that there has been an ongoing dispute between two neighbours about one neighbour's blocked culvert. The water from this blocked culvert flows onto the property behind the feed mill. About three years ago, there was a flood. He and another homeowner had to divert the water away from the feed mill and Vesta Avenue properties with tractors.

### **Mark Siemens**

94. Mark Siemens grew up on a family farm that had numerous deep pit barns. He has 15 years of experience running six different farm operations for four different owners. Of his 15 years, he has 14 years of full-time management experience with deep pit systems. He has been the Chair of the BC Egg Producers' Association for six years. The Panel qualified him as an expert in manure management and standard farm industry practices.

95. Mr. Siemens visited Daybreak on April 29, 2021.

96. Mr. Siemens testified as follows:

- He reviewed the IPM plan and the SOPs and concluded that Daybreak's pest and manure management practices exceed standard farm industry practices. He stated that the level of detail in Daybreak's record keeping and regularity of treatment are "*beyond anything*" he has seen in facilities he has managed or visited. He added that the IPM plan is more detailed than any plans he has received from agrologists. In specific reference to the IPM plan, he stated, "*It's an exceptional plan and well implemented.*"
- Regular removal of manure, especially on a short-term basis is essentially admitting defeat to an ongoing fly problem because the manure needs time to settle in a deep pit barn. This is only done as a last resort to handle a "*bad situation*". There are also animal welfare concerns because removing manure causes stress for the birds and impacts air quality inside the barns.

97. During cross-examination by the Complainants, Mr. Siemens responded as follows:

- The "Start Clean Stay Clean" program requires farmers to manage pests.

(This program is discussed further under the section, “The BC Egg Marketing Board Submissions”).)

- He has had a fly infestation on his farm operation that resulted in complaints from neighbours. He stated that a deep pit barn with cross ventilation is difficult to manage in adverse climate conditions. Managing fly infestations is “*nearly impossible to manage if the climate is not working in your favour.*” His house is within 100 feet from his farm operation and the nearest neighbour is within 200 feet.
- He confirmed that similar to Daybreak, there are houses in close proximity to farms in Abbotsford. He stated that the BC Egg Producers’ Association and the Egg Board try to “*keep the peace*” between farmers and neighbours when the climate is causing pest management problems.
- He replaced his last deep pit barn last year so that all of his barns now have a conveyer belt system where manure is removed every other day. He advised that the belt system has significantly reduced the fly population on a regular basis and has also made managing any infestation much easier.
- Agrologists and pest management companies use three to four days as a guide for a fly’s life cycle.
- Measuring the moisture content is not commonly done because in a deep pit system, the goal is to keep the manure as dry as possible and measuring does not assist in the drying process.

98. In response to Panel’s questions, Mr. Siemens responded as follows:

- The Production Management Committee of the Egg Board attempts to resolve disputes between a farmer and neighbour.
- Approximately 10 to 15% of additional space is needed to convert from a deep pit barn to an enriched barn. (Discussed further under the section, “The BC Egg Marketing Board Submissions”).)
- The egg industry continues to grow.

### **Matt Vane**

99. Matt Vane has been an egg producer for almost 10 years. He is a member of the Egg Board and the Chair of its Production Management Committee, which gives him the opportunity to visit egg facilities. The Panel qualified him as an expert in manure management and standard farm industry practices.
100. Mr. Vane visited Daybreak on April 29, 2021 with Mr. Siemens. Mr. Vane prepared a site visit report.
101. Mr. Vane testified as follows:
- He agreed that Daybreak is following normal farm practices in pest and manure management practices.



- Compared to similar farms, Daybreak is a “*leading example*” and meets or exceeds standard industry practices.
102. During cross-examination by the Complainants, Mr. Vane responded as follows:
- His farm, which is located in Chilliwack, has two shallow pit (free run) barns and one barn with a conveyer belt system. Manure removal in a shallow pit barn is similar to a deep pit barn.
  - His closest neighbour is about 100 feet from his farm operation. He previously had a discussion with neighbours about flies but none of them made any formal complaints to BCFIRB. He stated, “*Where there is manure, there are flies.*”
103. In response to Panel questions, he responded as follows:
- When the Egg Board receives a complaint, members of the Production Management Committee and staff visit the farm to assess the complaint and ensure the egg producer has proper industry practices in place.
  - If an egg producer is a “bad actor” and fails to follow programs in place, this producer would fall out of good standing with the Egg Board. As a consequence, this producer may not be allocated additional quota or allowed to participate in any programs.
  - He confirmed the statement in the site visit report stating, “*Modern equipment allows for the use of manure dryers and belt systems which dramatically reduces the potential for fly populations to reach uncontrollable levels.*”

## **VII. THE BC EGG MARKETING BOARD SUBMISSIONS**

104. Katie Lowe is a Professional Agrologist and the Executive Director of the Egg Board. Ms. Lowe presented her written submissions of August 20, 2021 at the hearing. Her submissions discuss the requirements that all registered egg producers must fulfill for industry programs and the types of housing systems for birds.
105. The Egg Board has authority under the *NPMA* and the BC Egg Marketing Scheme to “*provide for the effective promotion, control and regulation of the production, transportation, packing, storage and marketing of the regulated product within the Province, including the prohibition of such production, transportation, packing, storage and marketing in whole or in part.*” The Egg Board issued a Consolidated Order, which outlines the rules and regulations that all producers must follow.
106. The Consolidated Order has two “On Farm Programs”, the “BC Poultry Biosecurity” and “Start Clean Stay Clean” programs. A section of each program requires producers to have pest management plans.
107. When a farm is audited, the producer receives a report that may include corrective

actions that the producer must complete before the farm is re-certified or passes its audit. A producer generally has 30 days to complete any corrective actions. A producer, who remains non-compliant, will be subject to a disciplinary process and may lose the ability to produce eggs.

108. The BC Poultry Biosecurity program has been a mandatory program since 2007. The program requires producers to have “*an effective documented pest control program that is designed to reduce existing pest populations and prevent further establishments of pests. During the inspection of the premises, there should be no evidence of pests and there should be bait stations or other control measures visible.*”<sup>9</sup> The Egg Board conducts two assessments per year. The results are pass or fail.
109. The egg industry’s national agency, the Egg Farmers of Canada implemented the Start Clean Stay Clean program in the late 1990s. This program is based on points and a producer must score 95% (or 215 points) to pass its audit and maintain certification. The fly section in the audit checklist total 11 points and are considered “major” elements, which means the producer has 30 days to complete any corrective actions. The fly section includes examining the chemical or biological controls, the egg collection system, the floor, the egg conveying system and the equipment. A producer could lose some points in the fly section but still pass the audit provided points are not lost in other sections of the audit checklist. It is unlikely that a producer could lose all points in the fly section and not have to take corrective actions in other sections of the audit checklist. The Start Clean Stay Clean assessment is conducted yearly by an Egg Board producer liaison officer, and every three years by an Egg Farmers of Canada auditor.
110. The Canadian egg industry has the following five types of housing, all of which meet the requirements of the *Code of Practice for the Care and Handling of Pullets and Laying Hens* (the **Code of Practice**):
  - i. Deep pit conventional system or belted conventional system:
    - Daybreak has a deep pit conventional system that is described in paragraph 71. Ms. Lowe stated that manure is normally removed once per year.
    - A belted conventional system has a manure belt between each row of vertically stacked cages. The belts are cleaned once or twice per week to prevent manure build-up. Ms. Lowe stated that manure is removed two to three times per year.
  - ii. Enriched system: An enriched system has the same equipment found in a conventional system but has additional apparatus that is intended to allow hens to express their behaviour. This includes perches, a defined nest area, a scratch mat and dust bath. Enriched cages are larger than

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<sup>9</sup> Excerpt from the BC Poultry Biosecurity Program audit checklist.

conventional cages. All enriched systems have manure belts.

- iii. Free-run system: A free-run system allows the birds to roam freely inside a barn.
  - iv. Free-range system: A free-range system allows birds to roam freely inside a barn and have access to an outdoor pasture or range area.
  - v. Organic system: An organic system is a free-range system with specific organic density requirements.
111. Canada is transitioning from deep pit and belted conventional systems, so by July 1, 2036, all hens must be housed in enriched or non-cage systems that meet the Code of Practice. The Egg Board's Consolidated Order has a further requirement that already applies to cages, stating: "*as of July 1, 2016 no new construction, retro-fits, renovations or add-ons of conventional cages will be approved by the Board. Exceptions will be made for those producers who have verification of already commenced construction or cages on order.*"
112. Ms. Lowe advised at the hearing that by 2032, the cages in a deep pit or belted conventional system must increase from 67 square inches to 90 square inches. Producers will therefore need 1½ times more space for their current allotment of hens.
113. Given the current requirements of the Consolidated Order and the upcoming changes in legislation, Ms. Lowe stated that producers are already removing their conventional systems from their barns. She advised that in 2019, 69% of the barns in BC had conventional systems whereas in 2021, that percentage is now 49%.
114. In response to questions by the Complainants, Ms. Lowe answered as follows:
- Inspections are announced. If the Egg Board receives a complaint, an inspection may happen unannounced.
  - She did not know Daybreak's scores in 2019 and 2020, but she stated they would have been above 95% otherwise the Egg Board would have known that Daybreak needed to take corrective action.
  - She agreed that intensive farming may take place outside of the ALR and in more residential areas.
  - As of July 1, 2016, a producer cannot add a new conventional system or renovate an old conventional system. Therefore, if a conventional system needs to change, it has to be removed completely and comply with the upcoming requirements that hens must be housed in enriched or non-cage systems by July 1, 2036.
  - The inspection reports are not public documents.
115. In response to questions by Daybreak, Ms. Lowe answered as follows:

- The Egg Board and other commodity boards think there should be producers in each of BC's regions to sustain the food supply.
  - Most producers that have deep pit systems only remove manure once per year.
  - She agreed that there are other farms in close proximity to neighbours like Daybreak.
116. In response to a question by the City, Ms. Lowe advised that the Egg Board conducts a number of spot checks if it receives complaints. An Egg Board inspector carried out a spot check on Daybreak's farm in 2020 after it received complaints about flies.
117. In response to a Panel question, Ms. Lowe confirmed that given the upcoming requirement that cages must be 90 square inches by 2032, the producer will have to expand its production system to keep the same number of birds. All non-conventional systems require more land base.

#### **VIII. THE CITY OF TERRACE SUBMISSIONS**

118. David Block is the Director of Development Services and testified for the City. He has worked for the City for more than 17 years and has held his current position since 2012. At the hearing, Mr. Block reviewed the City's submissions and discussed Daybreak's current zoning and zoning restrictions.
119. The City is interested in finding a solution that would allow Daybreak to continue its current operations and eliminate ongoing complaints to the City from Daybreak's neighbours about fly infestations. As an Intervenor in these proceedings, the City would like to know whether Daybreak's manure management practices comply with industry standards. Mr. Block emphasized that this issue is not about zoning or rezoning, and added that this hearing was not the forum to discuss rezoning or future land use of Daybreak's property.
120. Mr. Block stated the egg farm was established over 40 years ago under previous municipal land use and zoning designations, allowing it to operate under the permitted use of intensive agriculture (AR1). After several zoning bylaw and official community plan amendments adopted by City council since 1995, Daybreak's property is no longer zoned as AR1. It is now zoned as rural (AR2), which does not permit intensive agriculture.
121. Daybreak has been operating since 1995 under a "non-conforming use" status under provincial legislation. More particularly, section 528 of the *Local Government Act* states:
- 528 (1) Subject to this section, if, at the time a land use regulation bylaw is adopted,
- (a) land, or a building or other structure, to which that bylaw applies is lawfully used, and

(b) the use does not conform to the bylaw,  
the use may be continued as a non-conforming use.

122. Section 530 of the *Local Government Act* sets out the restrictions on increasing a non-conforming use of land. It states:

530 In relation to land, section 528 [*non-conforming uses*] does not authorize the non-conforming use of land to be continued on a scale or to an extent or degree greater than that at the time of the adoption of the land use regulation bylaw.

As a non-conforming use, Mr. Block stated that Daybreak cannot intensify its operations.

123. Section 531(1) places restrictions on altering or adding to buildings or other structures:

531(1) Subject to this section, a structural alteration or addition must not be made in or to a building or other structure while a non-conforming use is continued in all or any part of it.

As a non-conforming use, Mr. Block stated that Daybreak cannot build new buildings.

124. Mr. Block confirmed the City intends to work with Daybreak to support improvements to the existing barns and authorize rehabilitation or conversion of the older barns and equipment.
125. Mr. Block stated the City supported Daybreak's proposal to relocate the feed mill from its current location to Daybreak's farm property. The City determined that relocating the feed mill would improve, but not intensify, Daybreak's operations. The City issued building permits in 2017 and 2019 for the construction of the new feed mill, which was supposed to take place before removing the current feed mill. Daybreak has not yet completed this project under the building permits issued by the City.
126. Mr. Block explained that Daybreak applied for a "site specific" bylaw amendment in 2020. This amendment would have permitted intensive agricultural use on Daybreak's current property but it would have limited Daybreak's quota increase to 60,000 laying hens. He confirmed the quota limit was the only restriction. He acknowledged, however, that after public hearings, this application may not be successful. He then clarified that approval of any application is ultimately made by City council after examining all the available information.
127. Mr. Block acknowledged that the Egg Board would like more farms in rural communities throughout BC.
128. Mr. Block advised that a City Bylaw Compliance Officer (the **BC Officer**) conducted two site visits of Daybreak's farm. On her first visit of June 26, 2020, the BC Officer wrote:

*We were permitted to tour the property and take photos. Flies were very abundant and terrible in the “old barn” but we did not witness anything that was out of the ordinary. The grass had been mowed around the barns and the feed mill but tall grass did still remain on both properties.*

129. On the BC Officer’s second visit on July 30, 2021, she wrote:

*As I drove the property at [REDACTED] Eby I did notice that the flies were minimal and the grass in fact had been cut whereas my last visit I was not able to get out of my truck due to the flies. I also completed a site visit at [REDACTED] Eby where the feed mill is located and found the grass to be trim and clean. Flies were also minimal at this property.*

130. In response to questions by Daybreak, Mr. Block answered as follows:

- He and other City planning staff told Ms. Christison that given the zoning and community plan amendments in 1995, it is the City’s intention that Daybreak’s property become conforming.
- He agreed that Daybreak’s property was not limited by zoning restrictions from 1949 up until 1995.<sup>10</sup> He was not working at the City in 1995, but he stated that City council decided at that time that Daybreak’s property would be needed for growth and community needs, which resulted in the zoning change to AR2. He confirmed the City instigated this change.
- In response to whether the City intended to “push out” Daybreak with the zoning amendment, he agreed that this would be “a good result of that zoning”.
- He stated the north side of Dairy Avenue already had houses and believed they were constructed in the late 1970s or 1980s.
- The City started subdividing the south side of Dairy Avenue in the late 1990s. The last lot was sold in about 2005.
- He confirmed the property in the ALR is in the floodplain near the Skeena River and agreed that none of the farms in the ALR are intensive agricultural farms. Not being an expert, he could not comment on whether the floodplain would be a problem for flies.
- He agreed that Daybreak cannot build any new buildings and would have to modernize old barns that he acknowledged cannot be upgraded. He stated this has been the status since 1995.
- He clarified that the City supports Daybreak in making improvements so that it is following normal farm practices but the zoning prohibits Daybreak on expansion.
- He stated that Daybreak needs to seriously consider relocating its farm so that it can grow and expand in the future. He mentioned that rezoning is an

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<sup>10</sup> The Daybreak property was farm property at that time but Daybreak did not begin operating as an egg layer operation until the 1960s.

option but land use history does not support rezoning.

- He did not know what discussions took place in 1995 between the previous owner of the egg farm and the City.
- He had no knowledge of the building permit issued in about 2012 allowing Daybreak to build the free run barn.
- He stated that the Vesta subdivision should not have been approved with the feed mill where it is.

131. In response to Panel questions, Mr. Block answered as follows:

- He confirmed that the BC Officer did not check the ephemeral creek during her two site visits.
- He did not believe the City would expropriate Daybreak's property despite the City's intention to "*push out*" Daybreak.
- He stated that meeting with Ms. Christison to discuss modernization and expansion of Daybreak's farm was not a worthwhile use of City's planning staff's time while this BCFIRB matter is ongoing because modernization and expansion require rezoning. When pressed on the mutual exclusivity of the BCFIRB matter and a rezoning application, he responded that Daybreak did not have a rezoning application currently before the City. He then acknowledged that he and the City's planning manager decided it would be "*a futile process*" to meet with Ms. Christison at this time. When asked whether Ms. Christison would have to wait until the Panel rendered this decision, he conceded City staff would meet with her the week following the hearing.
- He stated that the City council would weigh all considerations, including the public's comments, when determining whether to grant a rezoning application.
- He confirmed that City staff would recommend against rezoning a property from AR2 to AR1. He clarified that the City discussed and supported in 2019 was a site specific use added to the AR2 bylaw.

## **IX. ANALYSIS and DECISION**

132. A complaint under the *FPPA* involves a two-step analysis. First, a hearing panel must be satisfied that the Complainant is aggrieved by odour, dust, noise or some other disturbance emanating from a farm operation. If the Complainants fail to establish that they are aggrieved, the complaints must be dismissed without need to consider whether the alleged source of the grievance results from normal farm practice. If, however, the hearing panel finds that the initial threshold question has been met, it must go on to make a determination about whether the grievance results from a normal farm practice.

**Are the Complainants aggrieved by odour, dust, noise or some other disturbance emanating from a farm operation?**

133. This Panel is guided by the decision, *Sharpe v. McLaughlin*, January 13, 2015 (the **Sharpe Decision**) for the first step of the analysis where the hearing panel wrote:

*Section 3 of the Act requires the complainant to establish that she is aggrieved by a disturbance that results from a farm operation as part of a farm business. This language involves three components that must be satisfied before the panel considers the issue of what is “normal farm practice”: (a) the matter complained of must actually be a “disturbance” within the meaning of the Act, (b) the disturbance must have sufficient personal impact on the complainant as to meet the definition of “aggrieved”, and (c) there must be a sufficient connection between the disturbance and the farm as to conclude that the disturbance results from the farm operation.*

134. To the three components in the Sharpe Decision may be added a fourth, namely, whether the operation complained about is a “farm operation conducted as part of a farm business”. It is clear that Daybreak operates an egg layer operation as a farm business.
135. The first two components in the Sharpe Decision are straightforward to answer. There is evidence of a fly disturbance within the meaning of the *FPPA* and this fly disturbance has had a sufficient personal impact on the Complainants, as described in paragraph 51, to meet the definition of “aggrieved”.
136. The difficulty arises with the third component, which requires that there must be a sufficient connection between the fly disturbance and Daybreak’s farm that allows the Panel to conclude that the fly disturbance results from Daybreak’s operation. The Complainants made assumptions about Daybreak’s operation based on their previous experience, which resulted in the 2005 Decision and the 2011 Settlement Agreement in two instances. Between 2011 and 2019, neither the Complainants nor the other neighbours submitted any complaints against Daybreak about flies. However, when the fly population increased significantly in 2020, which then had a corresponding impact on the Complainants’ personal enjoyment of their properties, they concluded that Daybreak had to be the source of the flies. They assumed that Daybreak’s manure management practices are not in accordance with “normal farm practices” based on the extensive research they submitted to the Panel.
137. The general legal principle puts the onus on the Complainants to prove their case. In *Clapham v. Monga*, September 22, 1997, the hearing panel discussed this legal principle at paragraph 25: “...*Because the process is initiated by a complaint, the onus is on the complainant to produce evidence and make submissions in support of the complaint.*”
138. More specifically, the Sharpe Decision confirms that the Complainants have the onus of proving there is a sufficient causal connection between the disturbance



and the farm operation. Although the hearing panel in the Sharpe Decision found that while some of the disturbances complained of in that case (involving a mixed livestock and poultry operation) were clearly the result of farm practices, it was not convinced that all of the alleged disturbances were so caused. At paragraph 81, the hearing panel wrote:

*In the circumstances, the panel concludes that there is little evidence of an increased rodent population in the area as alleged by the complainant. **While the farm's feeding practices or garbage on the property could be an attractant, there is in our view insufficient evidence linking the rodents, either on the complainant's property or those being caught by her cat, with the farm.** Consequently, the panel finds that there is insufficient evidence to conclude that the complainant is aggrieved by an increase in rodents that result from an operation conducted on the farm.*  
[Emphasis is added.]

Although a BCFIRB hearing panel does not apply a rigid causation test, there must be a sufficient connection to satisfy the statutory test.

139. It is worth noting that BCFIRB staff provided guidance to the Complainants about proving their case before the hearing and even during it. They were also informed of the implications of not having KPs visit Daybreak and prepare expert reports during the PCH. The Complainants chose to forego the site visits of the KPs and proceed to an expedited hearing. They also stated at the PCH that they would hire their own expert, which they did not do. They then sought an adjournment alleging “*bias within the FPPA and its complaint process*”, which the Panel dismissed.
140. On September 9, 2021, BCFIRB staff provided the Parties and Intervenors with an “Order of Presentation” to assist them in their presentation of their respective cases. It stated that Ms. Warcup and Mr. Gee would present evidence on normal farm practices. At the hearing, they seemed confused by this and claimed this hearing was different from the one that resulted in the 2005 Decision. Hearings under the *FPPA* are conducted in the same manner. In this matter, the significant difference is that the hearing panel in the 2005 Decision had the benefit of hearing from KPs who conducted site visits and prepared expert reports. Although it was their prerogative to forego the site visits of any KPs for this hearing, the Complainants must now accept the consequences that they have failed to prove there is a *sufficient connection* between the fly disturbance and Daybreak’s operation.
141. The Complainants expected the Panel to read the reference material on its own and believed the Panel would draw the same conclusion as them that the flies are a result of Daybreak’s manure management practices. This was presumptuous of the Complainants given they had the onus of proving their case. They cannot deflect this responsibility onto the Panel. Furthermore, although the Panel may make inferences, we cannot speculate. The hearing panel in *Re Lim*, 2017 BCSECCOM 196, wrote at paragraph 85:

*...We may make inferences, we cannot speculate. **In drawing inferences,***

***we must ensure that we do not assume a fact that has not been proven and that any inference we make is reasonable based on the facts that have been proven. [Emphasis is added.]***

142. Proving Daybreak was the source of the fly disturbance would have required an expert, such as Ms. Huppelsheuser, to collect flies from inside the pits and/or collect manure and raise flies from it and compare these flies to the ones collected by the Complainants. Collecting live adult flies from inside the pits or barns and conducting a comparison would have allowed the Panel to determine whether Daybreak was the original source of the flies. This did not happen, so the source has not been proven. The Panel cannot simply assume Daybreak was the source.
143. The Panel is not saying that Daybreak was not the source of the flies complained of in 2020. The Panel's finding is that the Complainants did not provide sufficient evidence connecting the fly disturbance with Daybreak's farm operation. The Panel also relies on additional reasons discussed in the following paragraphs for its finding.
144. During the Panel's site visit of September 13, 2021, the Panel members noticed very few flies in and around Daybreak's operation, including the barns. They saw the flies in the traps but they were not troubled by any flies buzzing around them while they toured Daybreak. At the feed mill, the Panel members saw that the grass was cut and the area around the mill itself was tidy. They did not see any garbage or other debris lying on the ground near it. Similarly, they noticed very few flies.
145. It was by happenstance that the Panel learned of the ephemeral stream that runs underneath Eby Street and behind the feed mill. Mr. Stevenson noted in the Site Summary that the Vesta Avenue residents appear to be more impacted by flies than the Dairy Avenue residents. It is noteworthy that the stream's distance to Vesta Avenue is less than or the same as Daybreak's barns at approximately 300 metres. Daybreak, however, is not responsible for this stream. It does not flow through its farm property or leased property. Although Mr. Block did not know who is responsible for this stream, Mr. Versteeg believed the owners of the individual properties through which the stream runs are responsible for it. He explained that these properties have culverts, many of which are blocked.
146. On September 16, 2021, a Panel member returned to the area to see the ephemeral stream. The Panel member saw very tall wet grass, puddles, bear excrement, garbage, overgrown vegetation of all types, including dead vegetation, in and/or around the stream. The area around the stream was very wet. Given Ms. Huppelsheuser's testimony, the foregoing conditions present an ideal breeding ground for flies. There was in fact an abundance of flies buzzing in that area, which the Panel member did not experience during the site visit of Daybreak's farm and feed mill. Had Ms. Huppelsheuser been retained to conduct a site visit and collect flies from Daybreak's farm, it would have been insightful if she had also collected and assessed flies from the area around this ephemeral stream. This

evidence would have assisted the Panel to determine whether the fly disturbance complained of was indeed a result of Daybreak's farm operation.

147. Unfortunately, the Panel did not have the benefit of this type of evidence. Therefore, we cannot conclude that the Complainants are aggrieved by a disturbance resulting from a farm operation conducted as part of a farm business.

### ***Proximity of the Complainants***

148. It is undisputed that the Complainants and other neighbours live close to Daybreak's farm and/or feed mill. However, this is not unusual. Mr. Siemens and Mr. Vane confirmed that they have observed houses in close proximity to many farms. Mr. Siemens' closest neighbour is within 200 feet (about 61 metres) from his farm operation in Abbotsford whereas Mr. Vane's closest neighbour is about 100 feet (about 30½ metres) from his farm operation in Chilliwack. Their neighbours are in closer proximity to their farms than the residents on Vesta Avenue and Dairy Avenue to Daybreak's farm. Mr. Siemens and Mr. Vane have received complaints about flies from neighbours but none resulted in complaints to BCFIRB.
149. Ms. Lowe further confirmed that intensive farming may take place outside of the ALR and in more residential areas.
150. Mr. Dams stated that his family owned their land before Daybreak moved from the east side to the west side of Eby Street. The timing of when a complainant or farm came to a neighbourhood is a relevant consideration before BCFIRB in complaints. However, who is "first in time" is not determinative because it would unduly limit the establishment of new farms. Furthermore, there is no such "first in time" principle in the *FPPA*.
151. Before doing so, however, the Panel highlights paragraph 77 of the 2005 Decision where the hearing panel encouraged the neighbours to work together to implement a fly management strategy because the solution to controlling flies was not just Daybreak's responsibility. The hearing panel wrote:

*However, directing the Respondent to make modifications is not the end of the story. Flies may originate from a number of sources and may travel considerable distances. Accordingly, the entire neighbourhood must be vigilant in implementing a fly management strategy. Mr. Johnstone offered his services to determine the origin of the flies within the community. Although this Panel does not have jurisdiction to order the neighbourhood to take any particular action, it is clear that the solution to fly control lies not just with the Respondent. Potentially, the farm could implement the directions below and this neighbourhood may still have a problem with flies. The whole neighbourhood must do its part in eliminating attractants which encourage flies. Accordingly, the neighbours are encouraged to work towards a neighbourhood solution.*

The neighbours did not carry out the above recommendation at that time.

152. Ms. Warcup and another person filed a complaint in September 2010, which led to the 2011 Settlement Agreements. Paragraph 19 required the Complainants and the City to develop a Neighbourhood Fly Plan. Although Ms. Warcup initially stated that she did not think it was a “*citizen responsibility*” to develop this plan, she acknowledged that it was a binding agreement despite the Complainants and the City not following through in preparing it. The City and the Complainants must accept responsibility for not fulfilling a binding obligation that they agreed to do. If they had, other potential breeding grounds such as the ephemeral stream, the culverts, the surrounding vegetation and grass could have been addressed. Instead, they lay complete blame on Daybreak’s manure management practices for the increase in fly population in 2020.
153. The Panel notes that Ms. Warcup was a complainant in the 2005 Decision and signed the 2011 Settlement Agreement on behalf of the neighbours. She has been the leader in starting complaints against Daybreak. She emailed the neighbours asking them to prepare complaints on how they were aggrieved by the flies in 2020 based on the unproven assumption that Daybreak was the source. Her initiation of complaints to BCFIRB, the City, the Northern Health Authority and the Ministry of Environment have created animosity from the Complainants and other neighbours towards Ms. Christison and her farm. This animosity was evident at the hearing. Some of the complainants were blatantly rude to Ms. Christison when they were questioning her or she was questioning them. In the Panel’s view, this animosity was unwarranted given Ms. Warcup’s own failure to work with the City to prepare the Neighbourhood Fly Plan. If Ms. Warcup would like the communication to improve between the Complainants and Ms. Christison (Daybreak), regularly submitting complaints against Daybreak does not assist in fostering an environment of open communication.
154. The Panel hopes the Complainants and the City will do their part by following through in preparing the Neighbourhood Fly Plan.
155. Having concluded that the Complainants failed to demonstrate that they are aggrieved, this decision could end here. However, given the history of complaints made against Daybreak and the involvement of the Intervenors, the Panel will analyze whether Daybreak’s manure management practices are in accordance with normal farm practices.

**Are Daybreak’s manure management practices in accordance with normal farm practices?**

156. Section 1 defines “normal farm practices” 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).

157. In determining whether a complained of practice falls within the definition of “normal farm practice”, a hearing panel looks at whether it is consistent with “proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances”. This analysis involves a close examination and weighing of industry practices as well as an evaluation of the context out of which the complaint arises. The context may include factors such as the proximity of the neighbours, their use of their lands, geographical features or weather conditions, and the size and type of operation that is the subject of the complaint.
158. Where the disturbance exceeds the tolerance levels that a reasonable neighbour should be expected to endure, the farmer will be required to take mitigation measures that go beyond accepted industry practices. This contextual analysis involves asking what, if any, reasonable steps the farmer should take to mitigate disturbances resulting from the farm operations on neighbours. This sometimes referred to as the “good neighbour principle”: see *Holt v. Swart*, January 12, 2016 at para. 96; *Harrison v. Mykalb*, January 20, 2013 at para. 66; *Ollenberger v. Breukelman*, November 18, 2005 at para. 62; and *Eason v. Outlander Poultry Farms Ltd.*, March 10, 2000 at para. 69 to 70.
159. The Panel must determine whether Daybreak’s manure management practices are in accordance with normal farm practice. As part of this analysis, the Panel will evaluate contextual factors to determine whether Daybreak needs to take additional measures than what industry standards may dictate. The Panel has already discussed the proximity of the Complainants to Daybreak’s farm and/or feed mill. The Panel will also evaluate the weather conditions and comment on Daybreak’s current zoning issues.

### **Manure Management Practices**

160. The Complainants’ evidence on manure management practices was based on the conclusions they drew from reading the various articles or publications that they submitted to the Panel. Although the Panel acknowledges the time and effort that the Complainants spent in compiling their reference material, it was of limited use. Many of the articles or publications are from different jurisdictions and do not make any reference to BC’s farming practices. The Complainants required reports of KPs who would have assessed whether Daybreak’s manure management practices follow normal farm practices in BC. As stated in paragraph 141, the Panel cannot draw inferences from unproven facts.
161. Ms. Warcup and Mr. Gee stated that Daybreak needs to remove its manure more frequently but their recommendation on when Daybreak should remove its manure conflicted in their “Statements of Resolve”. Ms. Warcup stated Daybreak needs to

remove its manure more frequently during the cooler months when the flies are less active whereas Mr. Gee stated manure should be removed weekly during May, June and July, which are typically warmer months. In their closing submissions, they suggested that Daybreak should remove manure at least every three months. Despite these inconsistent recommendations, the Panel had the benefit of hearing from Daybreak's witnesses on this point. The Panel heard the following:

- Mr. Kerwin, who was the Complainants' witness, stated that manure pits are typically cleaned every spring and fall.
- Ms. Christison advised that the manure in Daybreak's deep pits is removed twice per year because the good bugs (parasites) need time to burrow into the larvae and lay their eggs into the fly pupae. When manure is removed, the good bugs are also removed. From 2011 to 2019, Daybreak's manure was removed twice per year and there were no complaints about flies. She had the manure removed nine times in 2020 because of the Complainants' complaints about the increase in fly population. Her testimony was confirmed by Mr. Versteege.
- Ms. Christison explained that opening the barn doors to remove the manure is harmful to the birds because the air flow is stopped and the air becomes hot and stagnant. This lack of ventilation was also confirmed by Mr. Versteege. If it becomes too hot, the birds start dying.
- Ms. Christison described that the manure is removed with a skid steer that roars underneath the birds and causes them stress. They may lay blood eggs or eggs may crack internally. These eggs must then be discarded and cannot be sold.
- Ms. Christison stated that opening the barn doors allows flies from outside to enter into the barns. Mr. Versteege clarified that the barn doors are open all day when manure is removed.
- Mr. Siemens advised that regular removal of manure is only done as a last resort because it is admitting defeat to an ongoing fly problem, causes stress for the birds and impacts the air quality inside the barns.
- Ms. Lowe informed us that the "BC Poultry Biosecurity" and "Start Clean Stay Clean" programs require egg producers to have pest management programs. She did not know Daybreak's scores in 2019 and 2020 but confirmed that Daybreak scored above 95% and did not need to take any corrective action.
- Ms. Lowe stated that manure is only removed once per year in a deep pit system such as Daybreak's.

Given the above evidence, the Panel is not convinced that more frequent manure removal is consistent with normal farm practice or the answer to controlling the fly population on Daybreak's farm.

162. Mr. Gee suggested that the manure's moisture content should be maintained at less than 30% and the pits inspected to eliminate excess sources of moisture. On these points, the Panel heard the following:

- Daybreak's activity logs show that its barns are checked twice daily in the morning and afternoon. Ms. Christison advised that during these checks if any leaks are found, they are fixed right away.
- Ms. Christison confirmed there is no industry standard for measuring moisture levels in manure besides visual checks.
- Mr. Siemens advised that measuring moisture content in a deep pit system is seldom done because this does not assist in the drying process. The goal is to keep manure as dry as possible. In this regard, Mr. Versteegen advised that drying fans were replaced with exhaust fans because they are bigger and more efficient.

Given the above evidence, the Panel finds that measuring moisture content is not an industry standard and does not assist in the drying process.

163. Ms. Warcup suggested changes to the IPM plan such as identifying risks that could impact it, detailing when and how to use chemicals to control flies and having a qualified expert review the IPM plan on an ongoing basis. The Panel is unclear on how identifying risks would improve the IPM plan. Ms. Warcup's first example was that Daybreak's first application of wasps was not effective in 2020. According to the "Biological Control" section of the IPM plan, although the effectiveness of a release program may only become apparent after six to eight weeks, fly parasites are released throughout the season. As for the delay in chemical shipment in 2021, Daybreak has no control over delays but unsurprisingly, given the global pandemic, many industries have experienced shipment delays. Although the spraying was delayed, it still occurred. The Panel heard the following about the IPM plan:

- Ms. Warcup acknowledged that the IPM plan was effective between 2011 and 2019. During this timeframe, Mr. Dams and Mr. Ritter also stated there was a "*significant improvement*" and "*it improved vastly*", respectively.
- Mr. Kerwin stated the IPM plan was good and consistent with integrated pest management guidelines. He did not see any obvious improvements that Daybreak could implement after his inspection.
- Ms. Christison stated that IPM plan is reviewed annually and includes three types of controls: cultural, chemical and biological. The chemical section explains how fly baits are used, how insecticides are applied inside and outside the barns, and that different types of insecticides are used so that the flies do not develop a resistance to the chemicals in them. Daybreak's pest management records show that chemicals were not needed in 2011, 2013 and 2015 to 2018 to control the flies.
- Ms. Christison advised that Orkin is Daybreak's pest control service provider and she had several conversations with Orkin staff in 2020. Orkin staff set up

“max force” fly traps at Daybreak in 2020 to help combat the increase in fly population. They also confirmed that the IPM plan included adequate measures to control the fly population to below nuisance levels and Daybreak had done everything possible to keep the fly population under control.

- Mr. Versteegen wrote the IPM plan in 2011 and updated it in 2015. He did not assess the IPM plan itself but reviewed it to determine whether Daybreak was following it. After reviewing Daybreak’s 2020 records, he concluded that Daybreak followed the IPM plan.
- Ms. Hueppelsheuser reviewed the IPM plan in May 2011. She stated, “*I was satisfied that the farm manager had included adequate measures to keep fly populations below nuisance levels*” and “*By way of Fly Management Plan, Daybreak Farms has committed to taking all reasonable steps in this regard.*”
- Mr. Siemens stated that the level of detail in Daybreak’s record keeping and regularity of treatment are “*beyond anything*” he has seen at other facilities.
- Mr. Siemens stated the IPM plan is more detailed than any plans he has received from agronomists and stated, “*It’s an exceptional plan and well implemented.*”

Given the above testimony, the Panel is not convinced that any changes are required to the IPM plan. It details when and how to use chemicals in addition to including cultural and biological controls and it has been reviewed by experts.

164. Ms. Warcup stated there should be continued attention to draining water close to the barns. Mr. Versteegen advised that Daybreak has a new drainage system to drain runoff water away from the barns, a new roof and gutters.
165. The Panel considered the following additional comments made by Daybreak’s experts:
- Mr. Siemens reviewed the IPM plan and the SOPs and stated that Daybreak’s pest and manure management practices exceed standard farm industry practices.
  - Mr. Vane stated that Daybreak is following normal farm practices in pest and manure management practices. He further stated that Daybreak is a “*leading example*” and meets or exceeds standard industry practices.
166. Finally, Mr. Versteegen advised that Ms. Christison took additional measures to combat the increase in fly population in 2020 by increasing the amount of spraying, quadrupling the number of good bugs and having the manure removed nine times. Ms. Christison also changed how she distributed good bugs in 2020 by having them placed on ledges instead of the manure itself. The Panel finds that by taking these measures to mitigate the increase in fly population in 2020, she acted reasonably and in accordance with the “good neighbour principle”. Ms. Christison only recently learned that some varieties of good bugs are more effective in cooler weather whereas others are better above 25 Celsius. The Panel is confident that



Ms. Christison will consider the type of good bugs to use, going forward. No further direction is required from this Panel.

### ***The Weather Conditions***

167. The only significant change in 2020 was the weather. Whether the Panel relies on Mr. Gee's weather data or Mr. Versteegen's, what is clear is that 2020 was an exceptionally wet year for Terrace. The article in the Terrace Standard stated the year between April 2020 and March 2021 was the second wettest in more than 50 years according to an Environment Canada analysis. Mr. Versteegen came across as credible when he described that his annual spring gardening chores were substantially delayed in 2020 because of the wet weather and his lawn turned to moss for the first time. He provided letters from residents who live in other parts of Terrace and confirmed experiencing an increase in fly population in 2020. Ms. Christison has no control over the weather and given Ms. Huppelsheuser's testimony, it is understandable that the excessive rain contributed to the increase in fly population.
168. Mr. Siemens advised that managing fly infestations is "*nearly impossible to manage if the climate is not working in your favour.*" The rainy weather did not work in Ms. Christison's favour but the Panel has already found that given the circumstances, Ms. Christison acted reasonably and as a "good neighbour" in trying to mitigate the fly disturbance for the Complainants.
169. Given the totality of the evidence heard, the Panel's review of the IPM plan, the SOPs and Daybreak's records, the Panel finds that Daybreak's manure management practices are in accordance with, if not exceed, normal farm practices.
170. The Panel wishes to make clear to the Complainants that the legislature made the fundamental policy decision in the *FPPA* that the right to farm in accordance with normal farm practice prevails over the disturbances caused by farming – even extreme disturbances. It is not our role to apply the *FPPA* as if it were a nuisance statute, which was an argument put forward by the Complainants. The Panel has found the Complainants failed to make a substantial connection between the fly disturbance and Daybreak's farm operation, but even if we found the Complainants were aggrieved by Daybreak's manure management practices, the right to farm prevails unless on the contextual analysis, modification is required to be consistent with normal farm practice. The Panel has found no basis on a contextual analysis to require Daybreak to modify its manure management practices because in the Panel's view, its practices fall within, or exceed, the definition of normal farm practice.

### ***Daybreak's Current Zoning Issues***

171. The Panel does not have any jurisdiction over the City and cannot tell the City what to do on zoning matters. The City and Ms. Christison must work together to find a solution to Daybreak's current zoning issues.

172. The Panel spent five days in Terrace, four of which were dedicated to the hearing. During the hearing, the Panel heard testimony from Ms. Lowe about legislative changes that will force egg layer operations to increase the size of their cages and remove their conventional systems. The Panel also heard from Mr. Block about the restrictions on Daybreak's ability to expand or upgrade because of its non-conforming status. Given the amount of time spent at the hearing on zoning, the Panel would like to share observations on some of the testimony it heard about Daybreak's zoning generally and the zoning issues Daybreak faces.
173. At the outset, Mr. Block initially stated that this hearing was not the forum to discuss rezoning or future land use of Daybreak's property. If rezoning and normal farm practices are mutually exclusive issues, it remains unclear why he and his planning staff refused to meet with Ms. Christison while this BCFIRB matter remained ongoing. If Mr. Block and the City planning manager decided it would be "*a futile process*" to meet with her before this hearing had concluded and perhaps, this decision is issued, it would appear that they are treating the rezoning and normal farm practices as connected issues.
174. Daybreak was previously zoned AR1 but this zoning changed to AR2 in 1995. When changes are made to legislation, there is normally an intent for that change and that intention is documented so that anyone in the future can verify why this change happened. Ms. Christison and Mr. Versteeg had no knowledge of why Daybreak's zoning changed. Mr. Block confirmed the City initiated this change and advised that the City council decided in 1995 that Daybreak's property would be needed for growth and community needs. He did not provide any documentary evidence of the City council's deliberations showing the council's intention at that time and why the council concluded that Daybreak's property would be needed for growth. It is unknown whether the council considered the potential importance that Daybreak's egg production would be to the egg supply chain in northwestern BC. Without any documents evidencing the City council's intention in 1995, some would say the change appears arbitrary.
175. It is also unclear whether the City is truly interested in finding a solution that would allow Daybreak to continue its current operation while eliminating further complaints to the City about fly infestations as Mr. Block initially stated, because he then stated that Daybreak needs to seriously consider relocating its farm. Despite acknowledging that farms are needed in rural areas, he also agreed the City's intention to "*push out*" Daybreak would be "*a good result*" of the zoning change to AR2 and that the current intention is for Daybreak's property to become conforming.
176. In specific response to Mr. Block's comment that Daybreak needs to consider relocating, Ms. Christison advised it is difficult to find a location allowing intensive agriculture with the necessary amenities. It is worth noting that after the hearing panel issued the 2005 Decision, Daybreak purchased property outside of Terrace

in a more secluded area so that any fly problem would no longer cause an issue for the neighbours and Daybreak's current property could have become conforming. A new egg facility would have understandably taken time to build. The City did not work with Daybreak at that time and had Daybreak declared a deemed nuisance. After spending \$1.2 million on the modifications set out in the 2005 Decision, Daybreak could no longer afford to build a new facility and sold its property. This may have been short sighted on the City's part but there is nothing that can be done now.

177. There is ALR land in the floodplain but Mr. Block confirmed that none of the farms are intensive agricultural farms. It is unknown whether any properties are for sale in the ALR, but Ms. Christison is reluctant to move to a floodplain given she could be faced with an increased problem in controlling flies. Furthermore, given the devastating flooding in the Lower Mainland in November 2021, it seems unlikely that any farmer would willingly move to a floodplain now.
178. Mr. Block advised that with the current zoning, Daybreak cannot build any new buildings and would have to modernize its old barns. He then acknowledged that the old barns cannot be upgraded. However, he could not explain why the City granted Daybreak a permit to build a new free range barn in 2012 despite being in his current position at that time.
179. Ms. Christison's anxiety over what will happen to Daybreak was palpable at the hearing. She is undoubtedly concerned about whether the City will grant her a site-specific bylaw amendment that will allow her to modernize Daybreak's barns. Mr. Block already stated that he and the planning staff would recommend against rezoning from AR2 to AR1. If not, she will witness the "*death of her business*" because the legislative changes already prevent her from renovating her conventional deep pit systems. Given the Egg Board's Consolidated Order that applies to cages and came into force on July 1, 2016, she cannot renovate her existing old conventional systems. They have to be removed completely and comply with the legislative changes that increase the cage size by 2032 and require hens to be housed in enriched or non-cage systems by 2036. If she is going to build a new feed mill, she needs to know whether she can modernize and expand her barns without reducing or limiting her quota. Mr. Block and his planning staff must understand that one (a new feed mill) cannot happen without the other (modernized barns). Ms. Christison cannot carry on in a piecemeal fashion. She needs to know now what the "bigger picture" will be for Daybreak before she spends any more money. There has already been a considerable amount of money spent on Daybreak's barns and infrastructure to date.
180. Ms. Warcup's and Mr. Gee's commented that they support upgrades and modernization, respectively. It seems logical that any site-specific bylaw amendment or rezoning permitting Daybreak to modernize would improve its farm practices. As Mr. Vane stated, "*Modern equipment allows for the use of manure dryers and belt systems which dramatically reduces the potential for fly*

*populations to reach uncontrollable levels.”* The Complainants want the potential for less flies in their neighbourhood. Allowing Daybreak to modernize would undoubtedly assist.

## **X. CONCLUSION**

181. By enacting the *FPPA*, the Government of British Columbia determined it is the public interest to protect the economically important industry of agriculture and support farmers throughout BC because of the intrinsic value in farming.
182. The *FPPA* gives farmers following normal farm practices and not contravening land use regulations, health and environmental legislation, protections from certain bylaw enforcement, court injunctions and nuisance lawsuits. The *FPPA* does, however, create an expectation that farmers take reasonable steps, where appropriate, to mitigate the impact of their farm practices on neighbours. The Panel has found that Daybreak’s farm operation is meeting, if not exceeding, normal farm practices.
183. It is not in the public interest to close down farms arbitrarily. If Daybreak is forced to shut its doors because it lacks the support from the City and the Complainants, this would undoubtedly have a devastating impact on the egg supply chain in northwestern BC. The price of eggs and egg related products will inevitably increase given Daybreak produces one million dozen eggs per year for northwestern BC. These consequences were certainly not the intention of the legislators when the *FPPA* was enacted.

**XI. ORDER**

184. The complaints are dismissed.

185. There is no order as to costs.

Dated at Victoria, British Columbia this 12<sup>th</sup> day of January, 2022

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**



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Al Sakalauskas, Presiding Member



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Harveen Thauli, Member



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David Zirnhelt, Member