

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

BETWEEN:

CATHERINE AND MARK EVANS
BEVERLEY FEATHER
JENNIFER AND TOM BRADLEY

COMPLAINANTS

AND:

JOHN DEKLEYNE

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board

Christine Elsaesser, Vice Chair (Panel Chair)
Wayne Wickens, Member
Sandra Ulmi, Member

For the Complainants

Mark and Catherine Evans
Beverley Feather
Tom Bradley

For the Respondent

John DeKleyne

Date of Hearing

October 26, 2004

Place of Hearing

Nanaimo, British Columbia

INTRODUCTION

1. Under the *Farm Practices Protection (Right to Farm) Act* (the “Act”), a person who is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, may apply to the British Columbia Farm Industry Review Board (the “Provincial board”) for a determination as to whether the disturbance results from a normal farm practice.¹ If, after a hearing, the Provincial board is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, the complaint is dismissed. If the practice is not a normal farm practice, the Provincial board is empowered to order the farmer to cease or modify the practice.
2. These complaints were commenced by Mark and Catherine Evans by way of a complaint letter dated July 2, 2003. Subsequently, Beverley Feather and her daughter and son-in-law, Jennifer and Tom Bradley, wrote their letter of complaint dated July 23, 2003 to the Provincial board.
3. At the hearing of these complaints, Catherine and Mark Evans, Beverley Feather, and Tom Bradley spoke on behalf of the Complainants. However, the Panel heard testimony from several other neighbours as well.
4. The Respondent, John DeKleyne, owns the hog farm that is the subject of this complaint. He appeared on his own behalf.
5. This matter proceeded to hearing on October 26, 2004. In the morning before the commencement of the hearing, the Panel visited the neighbourhood where the hog farm is situated in order to place the complaint into context.
6. In order to ensure that all necessary evidence was before the Panel, the Provincial board issued a summons requiring the attendance of Jack Reams, PAg, CAC at the hearing. With the agreement of all parties, the Provincial board engaged Mr. Reams as a knowledgeable person to review and report on the farm practices on the DeKleyne farm.

ISSUE

7. Are the odour, pests (flies and rats), mortalities, waste and manure, animal and general (including aesthetic) farm management operations of the farm conducted in accordance with normal farm practices?

¹ Note that, effective November 1, 2003, the membership of the Farm Practices Board (“FPB”) was fully merged with that of the British Columbia Marketing Board (“BCMB”), and both tribunals were renamed the British Columbia Farm Industry Review Board: see *Miscellaneous Statutes Amendment Act*, SBC 2003 c. 7 and BC Reg. 350/2003.

REMEDIES SOUGHT

8. The Complainants seek an order from the Provincial board requiring the DeKleyne hog farm to cease or modify its practices in regard to:
 - (a) manure management, pest management, mortality and other general (including aesthetic) practices so as to comply with required and accepted practices that are appropriate to this farm.
 - (b) the raising of hogs in an open ventilation barn with a slatted floor over a liquid manure tank so that the farm has an operation more appropriate to its circumstances (including type of animal raised, size, proximity to neighbours).

FACTS

9. Mr. DeKleyne purchased his 40-acre property at 1821 Thatcher Road in 1983. In 1990, he built a new dairy barn which included an office, milking parlour, storage area, solid floor area for cow and calving pens and an under-slat manure pit. The barn is a naturally ventilated structure and is set back 240 feet from Thatcher Road. The Evans' home is located directly across the street from the barn, 30 feet from the roadway.
10. This area of Thatcher Road is rural in nature. There are commercial farm operations and hobby farms nearby. There is a turf farm and nursery as well as horses and cattle in the immediate area. There are 21 residences located within approximately 1000 metres in several directions from the DeKleyne farm.
11. By the spring of 2000 when Mr. DeKleyne sold his dairy herd, he had 50 milking cows and 100 head in total. After selling the herd, Mr. DeKleyne modified the barn for hog production. The slats over the manure pit were replaced with hog slats and penning for feeder pigs was installed. In May 2001, Mr. DeKleyne began producing hogs.
12. In the barn, 80% of the floor is slatted directly over the manure pit. In addition, some of the hogs are kept on a concrete floor with a litter of wood shavings. The litter must be manually cleaned out one to two times per week. Mr. DeKleyne keeps approximately 5-600 hogs in his barn at any given time. He ships approximately 50 hogs/week replacing them with 50 weaner pigs.
13. Mr. DeKleyne spreads most of the manure from his hog operation on the 28-acre field adjacent to his farm. In addition, he buries mortalities (2-3 hogs/month) on the high ground behind his barn and farm buildings.

SUBMISSION OF COMPLAINANTS

14. The Complainants Catherine and Mark Evans live directly across Thatcher Road from the Respondent's hog barn. They have been in their residence since 1994 and are turf farmers. They have a number of complaints regarding the hog operation. Their primary complaint

relates to odour. They regularly find the odour from the hog farm unbearable; their employees can barely breathe after the manure has been spread. The shape of the valley contributes to the odour problem as there is limited airflow and the temperature inversions which hold odours in, occur regularly. In the 14 months since they began keeping records, from August 2003 to October 2004, they experienced significant odours three to four days/week.

15. The Evans' second major complaint relates to concerns regarding excessive application of manure to the 28-acre field on the DeKleyne property. Not only does this excessive spreading of manure add to the odour concerns, the field lies 10 feet above the aquifer from which all the neighbours draw their water. The Evans are very concerned about possible contamination to their well water. Mr. Evans noted that although Mr. DeKleyne claims to spread manure on a 40-acre field on the Indian Reserve, he had never observed any hauling of manure off the farm. The fact that Mr. DeKleyne buries dead animals on his property raises further concerns about ground water contamination.
16. The Evans also raised complaints with respect to flies and rats. They have seen an increase in these pest populations. With respect to the flies, the Evans did observe that they were alleviated after Mr. DeKleyne implemented an Integrated Pest Management (IPM) Program in 2003 to control the flies. However, in 2004, flies have again returned. The Evans question whether Mr. DeKleyne is properly managing his IPM Program.
17. Beverley Feather has lived in the area for 52 years. During that time, she has raised cows, chickens and other livestock. She notes that she is used to the smell of farming. However, in her letter to the Provincial board, she states that she finds the odours emanating from Mr. DeKleyne's hog farm beyond what people should have to tolerate. These odours have negatively impacted her family's quality of life. She cites examples of two or three occasions during the summer of 2004 when odours were so strong they woke her from sleep.
18. Ms. Feather also has concerns about contamination of the aquifer. She believes that Mr. DeKleyne operated a good dairy operation, but since he began raising hogs, the farm has suffered as he is not around to take care of things. It is Ms. Feather's contention that the hog farm has come in after all the neighbours were living in the area and adversely affected their social lives, their property values, their aquifer and their lifestyle. In her view, this is unfair.
19. Ms. Feather also noted that this year rats were out of control, the worst in her time on the farm. She does concede, however, that she does not know whether they originate from the hog farm.
20. Mr. Bradley concurred with the evidence of the other Complainants. He also stated that although he had built his dream house in the neighbourhood, given the current state of affairs he would not do so now.
21. The Complainants called evidence from other neighbours in the surrounding area. Karl Maxwell, an employee and previous tenant on the Evans' turf farm, testified that he

noticed significant odour from the hog farm approximately three days/week. He also noted that livestock regularly escaped from the DeKleyne farm. Like Mr. Evans, he too had never seen manure hauled from the DeKleyne farm. He observed that the farm was occasionally left unattended for two to three days per week, that manure was not regularly watered in after it was spread, and that the farm had deteriorated since it was a dairy operation.

22. Catherine Kleijn, a neighbour who has lived on Thatcher Road for 11 years and who owns a greenhouse operation, testified that the odour from the hog farm reaches her farm when there is a north wind. The smell is incredible for two to three weeks after manure is spread if there is no rain or water application. Her greenhouse business has suffered, as customers will not even get out of their cars because of the smell. She was concerned about her property values and her family's quality of life and stated that she never would have purchased her farm if she had known how bad the smell would be. Ms. Kleijn stated that she had expected farm smells and had found the cow manure bearable. However, the smell of pig manure is so bad that it even affects her eyes. She is concerned about the effects on her health and the condition of their well water. She concurs with the observations of her neighbours that manure does not appear to be hauled off the DeKleyne farm and odours are far worse after manure is spread on the field.
23. She, too, had a terrible problem with flies in the summer of 2002. The problem decreased after her husband gave Mr. DeKleyne parasitic wasps for an IPM Program. However, in 2004, there has been a recurrence of flies. In addition, periodically livestock escapes from the DeKleyne farm, damaging her property and nursery stock.
24. George Rintala, a resident of the area since 1940, testified that he had attempted in 2001 to dissuade Mr. DeKleyne from starting up a hog operation. Mr. DeKleyne declined to talk to him about the farm and subsequently, Mr. Rintala received a letter from Mr. DeKleyne's lawyer stating that all further communication was to be through him. Mr. Rintala feels that there are too many animals and too much manure going onto the land. He is concerned about the smell and possible contamination of the aquifer through the excessive spreading of manure and burial of dead animals. His well, which is only 10 feet deep, is located near the DeKleyne farm and supplies four houses. He noted that the strong odour from the hog farm has affected the everyday quality of his life, and he is concerned about the possible decline in his property values. He stated that 90% of the people had been in the neighbourhood before Mr. DeKleyne had moved there.

SUBMISSION OF RESPONDENT

25. The Respondent, Mr. DeKleyne has farmed this property for over 20 years. He believes that he is a very good steward of the land. While he admits to being away from the farm two to three days a week, there is always someone (his hired man or his son) on the property to take care of problems. In addition, his son is moving onto the farm to be even more readily available.
26. Mr. DeKleyne maintains that while 80% of the barn is over the manure pit, because the pit is cool and dark, there is little odour from it. A slatted floor barn is the latest and most modern

way to house hogs, and combined with automated feeding results in only a few hours of work per week to clean the dry pens and load the hogs for slaughter.

27. As for the manure pit, it is emptied twice or more per year, in the spring, after some cuts of hay and then almost completely emptied in the fall. The prevailing winds blow the smell away from the Evans, Feather and Bradley farms. He places notices around the neighbourhood to let the neighbours know when manure will be spread. Mr. DeKleyne did concede that he had not irrigated after spreading the manure this year as his irrigation equipment had broken down. However, he does plan to have it repaired soon. He also conceded that he had taken very few loads (4-5 loads in total) of manure to the Indian Reserve property this year.
28. Mr. DeKleyne agrees that in the past, there had been a fly problem on his farm. However, they have been under control for the last couple of years since parasitic wasps and Blue Streak fly bait were used. Mr. DeKleyne concedes that in 2004, he did not implement an IPM Program every 45 days as recommended. He did it only twice. However, he does not have a problem with flies on his farm.
29. As for rats, Mr. DeKleyne denies any such problem on his farm. He does not see any physical signs of rats in his barn or around his farm. His bait traps appear unused.

SUBMISSION OF KNOWLEDGEABLE PERSON

30. Jack Reams, PAg, CAC attended at the DeKleyne farm to review the farm practices which are the subject of this complaint on October 16, 2003. On the same day, he interviewed Catherine and Mark Evans. In his report, Mr. Reams concludes:
 - (a) The capacity of the manure holding pit is approximately 160,000 gallons. Taking the average manure production of a pig as referenced by the Canadian Farm Building code, the holding capacity of the pit would be 188 days. This means that the manure pit would have to be emptied the equivalent of twice a year. Mr. Reams noted that there was a constant odour emitted from the holding pit.
 - (b) According to acceptable spreading rates, the 28 acres on the home farm and the 40 acres on the reserve allow ample land for the 312,000 gallons of manure to be spread on an annual basis.
 - (c) The area upon which the manure is spread on the 28 acres is set back a minimum of 90 feet from Thatcher Creek on the west and the Nanaimo River on the south.
 - (d) No manure is spread within 200 feet of the domestic well used by the Rintala family.
 - (e) There are no restrictions on keeping pigs in this barn on this farm.

- (f) The barn is located 240 feet from the street, with the Evans' house set back 30 feet from the road, directly across the street on the north side of Thatcher Road.
 - (g) The health of the pigs on the day of inspection was outstanding. They were clean, well cared for and growing well.
 - (h) There was ample space for the average size of the pigs housed in the facility.
 - (i) The smell of ammonia within the barn at the time of inspection was penetrating.
 - (j) On the day of inspection there were 550 hogs, 30 beef brood cows, 10 beef bred heifers, 30 suckling calves, 25 ewes, 65 chickens and three horses on the farm.
 - (k) It was agreed by all parties that flies were a very bad problem in the summer of 2002. However, an IPM program of using parasitic wasps greatly reduced the problem in 2003.
31. Upon reviewing the farm, it was the opinion of Mr. Reams that Mr. DeKleyne was meeting the requirements of "normal farm practice." However, Mr. Reams felt that the Regional District should not have allowed a dairy barn to be converted to a hog barn given the proximity and number of neighbours. Given the proximity of neighbours, while Mr. DeKleyne may be carrying out "normal" practices for hog production, Mr. Reams made a number of recommendations for improved farm management practices to mitigate the odour and unsightliness complaints of the neighbours:
- 1. Continue to adequately and generously bed those six pens of pigs on solid concrete floors with sawdust...Continue to spread this manure and sawdust as it leaves the barn during the week only.
 - 2. Do not stir the manure or spread liquid manure on weekends. Continue to spread on **all** lands at acceptable rates using the pivot irrigation system to mitigate odour while spreading on the home farm.²
 - 3. When spreading manure, empty the holding area at one time in as short a time frame as possible. Do not spread continuously for an intermittent period, i.e. three weeks.
 - 4. Investigate the use of products to reduce the odour in the manure pit which is the major contributor to the cause of the complaint.
 - 5. Clean up the entire front of the farmstead, removing all equipment, debris and slats to an "out of sight" area. Plant the area to grass or lawn and do not let the weeds grow up as viewed during the inspection.
 - 6. Continue to bury the dead pigs on the high ground behind the buildings.
 - 7. Continue to use an IPM program which includes parasitic wasps to control flies during the fly season.
32. It was apparent from Mr. DeKleyne's testimony at the hearing that he did not feel compelled to follow these "recommendations". As he is away from the farm during the week, manure

² It should be noted that Mr. Reams was of the mistaken understanding that Mr. DeKleyne was regularly hauling manure to an off-farm site located on the nearby Indian Reserve. Hauling occurred on only one occasion. All the manure produced by this operation is currently spread on the 28-acre field.

continues to be applied on weekends. The manure pit is emptied when it needs to be emptied as opposed to when the field may require manure. After spreading, the manure is not watered in as the irrigation equipment is broken and has been broken for more than a year. The dry manure spreader is broken and as such litter and manure is being stockpiled. Some minor clean up has been done but the farmstead still appears unkempt. There is still broken down machinery, weeds and long grass about the property. Despite his neighbour's assistance in setting up the IPM Program in 2003, Mr. DeKleyne has not been introducing parasitic wasps every 45 days as required. As a result, flies are again a problem.

33. During his evidence, Mr. Reams strongly recommended to Mr. DeKleyne that he take advantage of the Environmental Farm Plan ("EFP") Program set up by Agriculture and Agri-food Canada, the BC Ministry of Agriculture, Food and Fisheries and the BC Agriculture Council. This voluntary program was set up to assist farmers in managing the various environmental issues which may occur on farms. The program involves an assessment by a person that has taken the required training to be an EFP Planner. Government funds have been made available to assist farmers in implementing any changes resulting from the EFP process. While it would appear to be worthwhile for Mr. DeKleyne to take his farm through the EFP process, given the voluntariness of the program the Panel cannot make any direction in that regard.

DECISION

34. A complaint under the *Act* involves a two-step analysis. First, a panel must be satisfied that the complainant is aggrieved by odour, dust, noise or some other disturbance emanating from a farm operation. If the complainant fails to establish that he is aggrieved, the complaint must be dismissed without need to consider whether the alleged source of the grievance results from a normal farm practice. If however, the panel finds that the initial threshold question has been met, it must go on to make a determination as to whether the grievance results from a normal farm practice.

35. Section 1 defines "normal farm practice" as follows:

"normal farm practice" means a practice that is conducted by a farm business in a manner consistent with

- (a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and
- (b) any standards prescribed by the Lieutenant Governor in Council,

and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b).

36. The Provincial board has considered the meaning of "normal farm practice" and "proper and accepted customs and standards as established by similar farm businesses under similar circumstances" on a number of occasions. In determining whether a complained of practice falls within the definition of *normal farm practice*, the panel looks to whether it is consistent with *proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances*. This analysis involves a close examination

and weighing of industry practices but also includes an evaluation of the context out of which the complaint arises. This evaluation may include many relevant factors such as the proximity of neighbours, their use of their lands, geographical or meteorological features, types of farming in the area, and the size and type of operation that is the subject of the complaint.

37. This Panel accepts that the Complainants have met the threshold question of being aggrieved by the Respondent's farm management practices. The relative proximity of the Complainants to the Respondent's farm and the ongoing nature of their complaints establishes sufficient personal interest in the subject matter of the complaint.
38. Having found the threshold question met, the Panel must determine whether the odour, pests (flies and rats), mortalities, waste, animal and general (including aesthetic) farm management operations result from normal farm practice. The Complainants' evidence with respect to normal farm practice involved a comparison of the present circumstances on the DeKleyne farm to when it was a dairy farm; they also drew on their own experience as farmers. There was little evidence with respect to normal farm practice of similar farms in similar circumstances except for a larger hog farm mentioned by Mr. Bradley which used dry litter and regular clean out to manage manure. In this circumstance, there was very little odour.
39. The Panel also had the benefit of hearing from Mr. Reams, a knowledgeable person on hog farming. Mr. Reams has a B.Sc. degree in Animal Science from the University of Idaho and was a hog farmer for 21 years (1967-1988). He was a hog breeding stock salesman and a credit manager for Agro Pacific Industries. In this capacity he has visited hog farms throughout the province. He is also a past President of the BC Pork Producers Association. Although Mr. Reams was of the opinion that while Mr. DeKleyne was generally following normal hog farming practices, he was strongly of the view that the Regional District should never have given a licence for a hog farm in such close proximity to neighbours. Mr. Reams also noted that there was adequate manure spreading capability on the farm *if* the land on the Indian Reserve was being used as well as the area around the farm. However, Mr. DeKleyne conceded during the hearing that he had only hauled manure on one occasion for half a day. In his recommendations, Mr. Reams emphasised the need for increased management on the farm, including increased sensitivity to when manure is stirred or spread, proper management of the IPM program to control fly populations and clean up of clutter from around the farmyard.
40. Despite receiving the benefit of Mr. Reams' expertise, Mr. DeKleyne chose not to implement these practices. As originally conceived, Mr. DeKleyne wanted this to be a low cost, self-sufficient operation, requiring only a couple of hours of work a week. Hogs are mechanically fed, liquid manure is stored in the below slat manure tank and emptied twice a year. The field on which the manure is spread produces four cuts of hay. Hogs are shipped weekly and new weaner pigs are introduced. Mr. DeKleyne's son works three hours on Tuesdays and Saturdays, loading pigs and cleaning barns. An older gentleman takes the pigs to Port Alberni for slaughter and then picks up and delivers weaner pigs for rearing.

41. The Panel has considered each of the complaints. The most significant complaint relates to odour. The Panel accepts Mr. Reams' evidence that while approximately 90% of hog farms use a slatted floor over a manure pit, these operations are not generally found with neighbours in close proximity. Mr. Reams is of the opinion and the Panel agrees, that there is no question that rearing pigs on slats over an open manure tank causes significant odours. The Panel specifically rejects Mr. DeKleyne's opinion that raising pigs on litter is what generates the bulk of the odour.
42. This complaint is reminiscent of an earlier complaint before the Provincial board regarding a duck operation, *Westcreek Citizens Society v. Vane Investments Ltd.*, August 25, 2003. In that complaint, a panel of the Provincial board concluded:
 89. This whole situation is unfortunate. Mr. Vane wanted to use his agricultural land for an agricultural purpose, a laudable goal. He investigated his options. Conventional poultry production was too expensive, requiring the purchase of quota. With the encouragement of Ken Huttema and Rob Vane, Mr. Vane embarked on his duck business. While Ken Huttema was aware of complaints against his own brother's operation, his encouragement to Mr. Vane was likely fuelled by his needs as a processor for more product to service his markets. As this was a part-time venture, Mr. Vane opted for a manure management system which was less labour intensive and less costly, a wet system. This system involved the use of a slatted floor over a cement storage tank with manure being emptied every six months. Twelve chimneys were installed to ventilate the manure tank and the barn. *Unfortunately, according to Dr. Miner, he could not imagine a better barn design for producing odours.* [emphasis added]
43. Thus, in an attempt to find a cheap agricultural use for his property, Mr. DeKleyne has unwittingly created an efficient odour production unit. Unfortunately, Mr. DeKleyne's barn does not have the benefit of adequate space or a vegetative buffer. As such, his neighbours, many of whom are in close proximity, are regularly bothered by strong odours. They report that their day-to-day lifestyles have been affected, businesses have been negatively impacted, and sleep has been disrupted. The magnitude and frequency of these complaints satisfies the Panel that it is not proper and accepted practice for this farm to be operated in such a fashion so as to expose neighbours to invasive and overwhelming odours without taking reasonable steps aimed at mitigating those effects.
44. The scale of a farm operation, small distances, prevailing winds, vegetation and topography can make a huge difference to a neighbour's exposure to odour. While a hog operation could be located on a small acreage, that operation must be of an appropriate size and must employ proper management practices. In a situation like this, where the hog farm is located so close to neighbours, practices that produce intense odours that may be acceptable on larger acreages or in an area where other livestock operations are present, are not appropriate or reasonable. In fact, the combination of the location of the barn on the site coupled with the nearness of neighbours leads the Panel to the conclusion that farm management practices should meet, if not exceed, the practices seen on larger operations sited on larger properties.
45. The Panel appreciates that there are always odours, even very significant ones, associated with intensive hog production. Such odours alone are not sufficient to support a valid complaint under this *Act*. However, the Panel concludes that this is not a typical hog farm. In most hog farms, the minimum consideration for neighbours is reflected in their siting, location and scale.

Here, circumstances relating to the size of operation, the siting of the barn, the proximity of neighbours and the application of manure to fields, cause odours on this farm to exceed the tolerance limits of a reasonable neighbour. Proper and accepted standards require that reasonable steps be taken by the farmer to mitigate those effects.

46. The Panel has concluded that this farm is not managed to the higher standard required, given its proximity to many neighbours. Mr. DeKleyne was quite candid that he spends two to three days a week away from the farm. Machinery has been broken down for long periods of time; irrigation equipment does not work; and the dry manure spreader is broken. Mr. DeKleyne has not kept up his IPM Program nor has he implemented the recommendations of Mr. Reams. While some minor yard clean up has been done, the farmyard is largely in the unkempt condition present when Mr. Reams visited in October 2003. Livestock routinely escapes from the Respondent's property. There are often lengthy delays in capturing escaped livestock and in some cases minor property damage has resulted.
47. The Panel finds that the Respondent must exercise greater diligence in his farm management practices. While an open ventilated barn where 600 hogs are reared over slats may be normal farm practice in some situations, because of the proximity of surrounding houses, this number of hogs combined with the particular barn layout creates unacceptable odour levels. Accordingly, the Panel orders the Respondent to cease producing hogs until he retains and receives the appropriate technical assistance to modify his manure management from a liquid to a dry system. Before commencing production, the Respondent must have systems in place for appropriate barn clean out as well as the storage and spreading of manure. The Panel is of the view that implementing a dry manure management system will go a long way to lessen the acute nature of the odour as it presently exists. However, even after these mitigation steps are taken, the Panel recognises that odours may still persist. But proper and accepted practices require no more or less than the taking of reasonable steps to attempt to ameliorate the negative impact.
48. The Panel also finds that the odour problem is amplified by Mr. DeKleyne's application of manure to his fields. Given that the application of manure does not appear to be dictated by the fertility needs of the soil but rather by the need for space in the manure tank, the Panel finds that the spreading of manure on the farm's field also does not accord with normal farm practice. Further, when manure is spread there is no attempt to water it in as suggested by Mr. Reams. Because of the existence of a shallow water table, Mr. DeKleyne needs to be sensitive to the potential for contamination and diligently follow proper manure spreading techniques over a large enough land area. As set out above, the Panel orders the Respondent to retain and receive the appropriate technical assistance to develop an appropriate system for the storage and spreading of manure.
49. As for the complaint with respect to flies, the Panel finds that the Respondent's farm management practices relating to fly control do not follow normal farm practices. Mr. DeKleyne conceded that he had not been replacing the parasitic wasps every 45 days as required in his IPM Program. As a result, in 2004 flies again reached unacceptable levels in the neighbourhood.

50. Although the primary pest complaint related to flies, the Panel also heard evidence of rodent problems in the area. Unlike the flies, it is unclear that the Respondent's farm is the source of the rodent infestation. Bait trays in the Respondent's barns appear untouched. Given that the Panel cannot make a finding of where the rodent problem originates, this aspect of the complaint is dismissed. The Panel also heard complaints during the hearing about escaped livestock. As this was not part of the original complaint, the Panel declines to make any ruling on this issue.
51. With respect to the complaint about the Respondent's burial of dead hogs on the farm, the Panel accepts Mr. Reams' evidence that this is a normal farm practice. As long as the mortalities are buried on high ground, the Panel is satisfied that there should not be any impact on ground water. This aspect of the complaint is dismissed.
52. The Panel found that while Mr. DeKleyne's farm could use some cleaning up to visually improve the area and therefore improve relationships with the neighbours, the aesthetics of the farm were consistent with normal farm practice. This aspect of the complaint is dismissed.

ORDER

53. Given that we have found a breach of the *Act* insofar as the farm management practices complained of result in excessive odour and fly problems, s. 6(1)(b) of the *Act* confers upon the Panel the jurisdiction to order the farm to modify the practice in the manner set out in the order to be consistent with normal farm practice. Normal farm practice with respect to the odour and to pest control requires the implementation of reasonable measures to attempt to mitigate these problems.
54. Accordingly, and pursuant to s. 6(1)(b) of the *Act*, the Panel orders the Respondent to cease operating his hog farm until he modifies the manure management practices to reduce odour, as follows:
 1. The Respondent is to consult qualified technical professionals ("professionals"), to determine:
 - a) the maximum number of hogs that can be raised in the current facility and on this acreage;
 - b) an appropriate dry manure management system, including the storage and disposal of manure;
 - c) any manure management system implemented needs to be sensitive to neighbours; stirring or spreading of manure on weekends is to be avoided;
 - d) the maximum number of other livestock which can also be raised on this acreage;
 - e) an appropriate IPM program to control flies throughout the fly season.
 2. In choosing the necessary professionals, the Respondent can rely on a person certified as an EFP Planner without the approval of the Provincial board. If the Respondent wishes to retain a professional not certified as an EFP Planner, the

Respondent will require the prior approval of the Provincial board before engaging this person.

3. The Respondent must provide the Provincial board with the professionals' certifications that systems and programs pursuant to clause 1 of this Order have been implemented in accordance with their recommendations, together with a proper plan to maintain and monitor those systems and programs.
55. In making the foregoing direction to cease operating until modifications are made, the Panel understands that it may take some time before all hogs currently on the farm are shipped. However, the effect of our order is that until such time as the modifications are made, no new weaner hogs are to be brought onto the current facility. The Panel is also aware that it may take time to get the necessary professionals in place. Accordingly, within 10 days of receiving this decision the Respondent is ordered to provide a schedule to the Provincial board of when hogs will be shipped and the date by which the facility will be empty and the name of the professionals retained in accordance with paragraph 54(1) above.
56. The complaints with respect to rats, general aesthetics and the potential threat of contamination of groundwater by burial of mortalities are dismissed.

Dated at Victoria, British Columbia, this 28th day of January, 2005.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
Per

(Original signed by):

Christine J. Elsaesser, Vice Chair
Wayne Wickens, Member
Sandra Ulmi, Member