

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF A COMPLAINT
REGARDING OPERATIONS AT A BROILER FARM
LOCATED AT 33990 VYE ROAD, ABBOTSFORD, BRITISH COLUMBIA

BETWEEN:

ANITA OLLENBERGER (GEERTSMA)

COMPLAINANT

AND:

ANN BREUKELMAN

RESPONDENT

AND:

BRITISH COLUMBIA POULTRY ASSOCIATION

INTERVENOR

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board

Christine J. Elsaesser, Vice Chair, Panel Chair
Garth Green, Member
Sandra Ulmi, Member

For the Complainants

R. A. (Tony) Wattie, Counsel

For the Respondent

Robert Kuhn, Counsel
Ian Moes, articled student

For the Intervenor

Ray Nickel, President
Rick Thiessen, President,
BC Chicken Growers Association

Date of Hearing

May 16-19, 2005

Place of Hearing

Abbotsford, British Columbia

INTRODUCTION

1. Under the *Farm Practices Protection (Right to Farm) Act* RSBC 1996, c. 131 (the “*Act*”), a person who is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, may apply to the British Columbia Farm Industry Review Board (the “Provincial board”) for a determination as to whether the disturbance results from a normal farm practice. 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. On February 13, 2004, Anita Ollenberger (now Geertsma) filed a complaint with the Provincial board regarding the operations of A&A Breukelman Farms, a broiler operation located immediately adjacent to her property. Subsequent to her filing the complaint, Ms. Ollenberger married Ray Geertsma and he joined her in this complaint. In this decision, the Panel refers to Mr. and Mrs. Geertsma as the Complainants. The substance of the complaint was that the odour, noise, dust and flooding along their property line were not the result of normal farm practices by the Breukelman Farm and should be enjoined under the *Act*.
3. The British Columbia Poultry Association (the “BCPA”) applied for and was given intervenor status in this complaint in support of the Respondent farm.
4. This matter proceeded to three days of hearing commencing on May 16, 2005. In the morning of the first day of hearing, the Panel, the parties and their Counsel attended the Geertsma property and the Breukelman farm in order to place the complaint into context.
5. In order to ensure that all necessary evidence was before the Panel, the Provincial board issued a summons requiring the attendance at the hearing of Rick Van Kleeck, Waste Management Engineer with the then Ministry of Agriculture, Food and Fisheries (“the Ministry”). With the agreement of all parties, the Provincial board engaged Mr. Van Kleeck as a knowledgeable person to review the situation and report on the farm practices on the Breukelman farm.

ISSUES

6. Are the odour, noise, dust, catching operations and other disturbances including flooding and aesthetic issues of the farm conducted in accordance with “normal farm practice”?

FACTS

7. Ms. Geertsma has lived on her approximately one-acre property at 33838 Vye Road in Abbotsford since 1996. Since that time she has spent over \$100,000 in landscaping

the property with the intention of using it for weddings, graduations and similar celebrations. She also had plans to start up a bed and breakfast operation.

8. The Geertsma house is situated 3 m. from the east property line. The master bedroom is on the second floor facing east, overlooking the adjacent property and the Breukelman barns.
9. In 2002, Albert and Ann Breukelman bought the approximately 10-acre property next door and proceeded to build barns for a broiler chicken operation. The barns were built on the west side of the Breukelman property, approximately 20 m. from the property line at the minimum allowable setback. The Breukelman farm consists of two barns parallel to each other, running east and west with doors at each end. The east end of the structure is closed off with an office and utility room such that the entire structure forms a “U” facing the Complainants’ property.
10. The barns ventilate to the inside of the “U”. At one time, there was a dust screen or curtain hung on the west end of the barns. Unfortunately this was damaged and has not been in use for some time. Albert Breukelman passed away in 2003 and the farm is currently managed by his son, Ron Breukelman. Ron Breukelman appeared with his mother at the hearing of this complaint. In this decision, the Panel refers to Ron Breukelman and his mother Ann collectively as the Respondents.
11. The Breukelman farm began operation in the summer of 2002, producing 60,000 birds/cycle. A typical cycle involves the clean-out of the barn, followed by the blowing in of sawdust onto the barn floors for bedding, then the placement of chicks. During the first half of the cycle, there are no feed trucks and fans are not used much as the chickens are small. However, during the second half of the cycle more feed and ventilation are needed. Chickens are usually caught every 38-39 days and sent to the processor. Catching takes about six hours and is done at night when the chickens are more docile. On some occasions, catching may occur over two nights in order to fit in with the processor’s slaughter schedule. After catching, the barns are cleaned out and readied for the next cycle. Clean-out involves scraping the manure to a location in the barn where it is loaded and hauled away by truck.
12. Currently, the catching of the birds and clean-out is done at the west end of the barn, closest to the Geertsma property. Initially, the driveway to the barns was along the west side of the property using the set-back area for access, but this driveway was moved further from the property line as a result of the Geertsmas’ complaints. Instead of being located near the west property line, the entrance to the driveway is now closer to the east end of the barn. The driveway parallels the north side of the barn and then loops around the west end.
13. The properties of both the Complainants and the Respondent are located in the Agricultural Land Reserve (“ALR”) as are all of the surrounding properties in the area.

SUBMISSION OF KNOWLEDGEABLE PERSONS

14. Rick Van Kleeck, P.Eng., Waste Management Engineer with the Resource Management Branch of the Ministry, at the request of the Provincial board and with the consent of the parties, visited the locations involved and made recommendations to remedy the situation. Mr. Van Kleeck's engineering degree is from the University of BC. He has worked for the Ministry for 28 years. Mr. Van Kleeck and Satwinder K. Bains, then a member of the Provincial board visited the site on August 19, 2004 and met with the Complainants and the Breukelmans. Mr. Van Kleeck subsequently prepared a report dated March 11, 2005 setting out his observations and recommendations.
15. Mr. Van Kleeck noted that dust becomes a problem on the Respondents' farm beginning half way through the eight-week cycle and continuing to worsen until the birds are shipped. Clean-out of the barns results in bad odours and a lot of dust. Mr. Van Kleeck also noted that noise associated with the catching and shipping of birds at the end of the growing cycle was also a problem. Truck traffic (at that time) servicing the barns entered the Breukelman property down a driveway adjacent to the Geertsma property just below their bedroom window.
16. Mr. Van Kleeck made some recommendations to reduce the dust, odours and noise:
 - Use a fence/curtain to reduce the amount of dust and odours reaching the Geertsma property. Mr. Van Kleeck was not optimistic that this would make a great deal of difference. He also suggested the use of disposable filters on the fans and installation of wet cyclones to remove most of the dust and odour from the exhaust although he conceded that these options were costly and not used locally.
 - Relocate the driveway to another location to allow the present driveway location to be used as a buffer from noise and dust and odours.
 - Relocate the bird removal to the east end of the barns. This could be a problem because of the location of the gas line and the minimal space to accommodate the forklifts required to load the birds.
 - Inform Ms. Geertsma well in advance of the dates for bird placement, bird removal and barn manure/litter clean out.
17. Mr. Van Kleeck noted that when he first saw the location of the Breukelman barns he expected that there would be problems because of their close proximity to the neighbours' home.

ARGUMENT OF THE COMPLAINANTS

18. The Complainants argue that the odour, dust, noise and flooding that has occurred as a result of the operation of the Breukelman chicken production facility is unbearable and goes well beyond what should be considered normal farm practice. They argue that the Respondents located their barns to cause the greatest problem and then compounded matters by having the catching area on the west end of the barn. It is their contention that this is not normal farm practice and the resulting dust, odour and noise is not typical of normal farm practice. As a result of the foregoing complaints, the Complainants maintain that their property has been devalued and they can no longer enjoy it.
19. Because the catching of the chickens is done at night and the Complainants' bedroom is 3 m. from the property line, the resulting noise is unbearable and makes sleep virtually impossible. Ms. Geertsma states that during catching she must use sleeping pills and move from the master bedroom to a room on the opposite end of the house.
20. After the chickens are caught, the barns are cleaned out and the barn doors are often left open for a period of time, resulting in unbearable odours and dust. The Respondents initially used a dust curtain but no longer and as a result, the Geertsmas have an unacceptable amount of dust falling on their property. The Complainants maintain that because the configuration of the barn sends dust and odours directly to their house, Ms. Geertsma is unable to run a bed and breakfast, nor can she take in boarders as she had in the past. She does not feel confident about booking special events such as graduations and weddings as she cannot be sure what the dust and odours will be like on any given day.
21. Ms. Geertsma has suffered a sore throat, sinus problems, and watery eyes which she attributes to the dust coming from the Breukelman barns. Her observation is that these problems are worse in the latter half of the birds' cycle.
22. The Complainants say that no one from the Breukelman operation approached them prior to construction about the location of the barns. The barns are an eyesore and obliterate the Geertsma's view of Mount Baker. Initially, no trees were planted as a buffer along the property line. The Geertsmas approached the Breukelmans and offered to, and in fact did, plant large cedars along the property line. These trees were not maintained and have since died or been removed or moved to a location further along the property line where they no longer act as a screen. To replace these trees, the Breukelmans planted small deciduous trees again with no consultation with the Geertsmas. The Complainants are concerned about the leaves that will be produced by these deciduous trees as well as the need for further raking and burning.
23. The Complainants raise two minor issues, garbage left on the Respondents' farm very near the property line and a flooding problem in the south-east corner of their property. They allege that the construction of the barns has altered drainage and as a result, there is standing water on their property most of the year.

24. Ray Geertsma, a local realtor, met his future wife in March of 2001, before the construction of the barns. They married in August 2004. Mr. Geertsma stated that the noise from the trucks during catching is so extreme that he has called the police two or three times. He talked to Albert Breukelman about planting the trees along the property line and subsequently eighteen 16 18' cedars were planted along the boundary. The Breukelmans did not maintain the trees and they have now either died or been moved to the rear of the Breukelman property.
25. Mr. Geertsma is concerned that the Breukelmans are now cleaning out their barns at the west end of the barn (closest to the Geertsma home) and not the centre as was done initially. Further, the Breukelmans no longer use the dust curtain. As for notice, the Breukelmans have only given notice of catching once or twice and there has never been notice of clean-out. Mr. Geertsma feels that their property has been greatly devalued because of the construction and location of the barns. In his opinion, the only remedy for the problems they are experiencing is to move the barns to the east on the other side of the Breukelman house.
26. The Complainants called evidence from friends and neighbours who have also experienced dust, noise and odour problems emanating from the Breukelman farm. Bill Summers, a friend of 13 years has visited Ms. Geertsma many times. He noted a big difference in the view as well as the dust and the odour at the Geertsma house after the construction of the barns. On one occasion when he had stayed overnight, he recalls he could see dust and feel it in his eyes and nose at certain times, depending on the direction of the wind. He stated that his wife could not live at the Geertsma house and he would rather not stay there.
27. His wife, Anne-Marie Summers, a long-time friend of Ms. Geertsma, also gave evidence. She stayed with Ms. Geertsma many times before the building of the barns. There was a beautiful field view then. Now, she and her husband often stay elsewhere because the smell is very strong at times and the dust has caused her eyes to swell. Ms. Summers was a broiler grower from 1979 until 1987, growing up to 22,000 birds a cycle. She stated that she has never seen anything like the problems experienced by the Geertsmas.
28. Henry Wiebe, a neighbour of the Geertsmas living at 33820 Vye Road, also reports a dust problem which he attributes to the Breukelman operation. He too has been wakened on occasion by catching trucks at the Breukelman farm and notes that odours are a problem during clean-out especially on hot days. Mr. Wiebe is concerned about the negative effect the Breukelman operation has had on his property values.
29. Warren Rempel has lived at 33833 Vye Road for eighteen years. The noise from the Breukelman operation after midnight has on occasion disturbed his sleep. He left a letter in the Breukelman's mailbox about a year and a half ago thanking them for a sleepless night but never received a reply. On one occasion, he heard people talking, trailers with wire cages, and forklifts all making noise; he got up to investigate the cause of the noise and saw it was the Breukelman's catching crew. Mr. Rempel has

also noted problems with dust and odour during clean-out. He does not receive notice of when catching or clean-out is going to occur.

30. Art Penner was called as a hostile witness and as such he was cross-examined by Complainants' counsel. Mr. Penner has been a chicken producer for 18 years growing both broilers and layers. He has visited over 50 chicken farms. Mr. Penner and Frank Flokstra as members of the BC Chicken Growers Association ("BCCGA") Dispute Resolution Committee visited the farm on February 14, 2003 in response to complaints of noise, excessive dust, lighting and manure storage and associated water retention and seepage.
31. In a report written on February 18, 2003, Mr. Flokstra and Mr. Penner made several recommendations including:
 - Shipping birds from the east end of the barn where there are large doors;
 - Removing manure from side of barn, a new system was being finalised and to be in operation at next clean-out;
 - Turning off lights during grow out;
 - Installing dust curtains between barns;
 - Planting more trees along fence line on west side.
32. On a follow-up visit to the Breukelman property on April 14, 2005, Mr. Penner revised some of his earlier recommendations and noted that some recommendations had been carried out. His observation was that shipping from the east end of the barns was only possible for the south barn as there was inadequate room for the trucks and fork lifts to manoeuvre by the north barn. He also disagreed with his earlier observation that the barns' configuration created a tunnel effect given that one end of the barns is blocked off. Mr. Penner noted that the driveway had been moved to the east side of the barn rather than going down the west side and that trees had been planted on the west side of the property. In addition, he observed that the lights at the west end of the barns were now being shut off during the cycle.

ARGUMENTS OF THE RESPONDENTS

33. The Respondents argue that this complaint results from the inevitable interface of two uses of agricultural land. They note that this is not residential land, but land within the ALR and that the core values and guiding principles of the *Act* are at stake.
34. The Respondents argue that contrary to what was alleged by the Complainants, there has been no malice on their part towards the neighbours. In fact, they have repeatedly shown and continue to show a willingness to mitigate any deleterious effects of this "class act" broiler operation. This operation has been recognised in the industry as a leader in compliance with standards even before compliance was mandatory. No witness has alleged that any farm practice on the Breukelman operation is below the standard of "normal farm practice" in any way.

35. The Respondents also argue that as the issues raised by the Complainants have been varying and changeable, it has been difficult to address all the concerns with any finality. They have never given the Respondents a list of what they want by way of mitigating steps. It is only at this hearing that Ms. Geertsma has come forward with such a list. The Panel must recognise that the Breukelmans have consistently tried to mitigate problems, but the attempts to do so have never been good enough. The Respondents' believe that the only thing that will be acceptable to the Complainants is for the Breukelmans to stop farming and move their barns to another location on the property.
36. The Respondents argue that considerable thought was given to the barns' location. They could not have been sited on the south half of the property because of flooding concerns. The east corner of the property is also not satisfactory as Albert Breukelman dedicated 2.82 acres of that land to his church.¹ The feasibility of this area was questionable in any case, because it is not clear that the barns could have been sited in this location given the required municipal setbacks from roadways.
37. The Respondents argue that prevailing winds are not towards the Geertsma's property, so most of the dust and odour should blow in the opposite direction (i.e. towards the Breukelman home). The buildings are sited legally and appropriately and in any event, they argue that siting is not within the jurisdiction of the Provincial board but rather is a municipal matter.
38. The Respondents argue that they used a unique barn design (the "U" shape) to avoid a wind tunnel effect on their neighbours. Further, their fans discharge into the centre of the barns where dust can be controlled. The Respondents maintain that they are intent on replacing the dust curtain which had been installed at the end of the "U" to further reduce dust but such a dust curtain is not a "normal farm practice". It can be considered a better farm practice and shows their willingness to mitigate the impact of their operation on others.
39. The Respondents also argue that they have continued to modify their clean-out process to minimise the impact of dust and odour on the Complainants' property. Initially, Albert Breukelman installed a conveyor belt system to clean-out the barns from the centre but this system took too long and eventually broke down. The Respondents are now doing the clean-out from the west end of the barn in much less time than under the old system.
40. The Respondents acknowledge that the loading of chickens does create noise. However, this noise is consistent with normal farm practice for broiler operations and takes approximately 6 hours, 6-7 times a year. The Breukelman's have offered to pay for the costs of a hotel for Ms. Geertsma on the nights when catching will occur. They have also relocated the driveway at Mr. Van Kleeck's suggestion and offered to

¹ It appears that the land could not be removed from the ALR and as such this property is still part of the Breukelman farm.

load chickens in the north barn from the west and the chickens in the south barn from the east in an attempt to reduce the amount of noise.

41. With respect to the flooding and garbage complaints, the Respondents argue that these complaints are questionable at best, not serious and can be easily remedied.
42. The Respondents argue that their efforts to mitigate the problems should be contrasted to the actions of the Complainants who:
 - lit fires and created smoke increasing mortalities;
 - persisted with fires even after a letter was sent requesting the burning stop;
 - threatened workers from the farm's processor, Lilydale Co-operative Ltd. ("Lilydale"), and Albert Breukelman;
 - shone floodlights into the barns during shipment;
 - initiated media attention and contacted numerous local organisations to pressure the farm;
 - failed to respond to the farm's recent settlement proposal.
43. The Respondents concede that they have had little communication with the Complainants but likewise the Complainants have made no effort to communicate with them. The Respondents maintain that they have taken numerous steps to mitigate the Complainants' concerns, none of which have been sufficient. These include:
 - offering to pay for a hotel on the catching nights;
 - reducing the number of nights over which birds are caught;
 - turning out yard lights at night;
 - offering to install a new dust curtain;
 - planting trees along the property line;
 - building a berm along the property line - which was subsequently removed at the Complainants' request;
 - moving the driveway further from the property line;
 - changing manure clean-out to reduce the time it takes;
 - offering to remove the leaves and other refuse from the Complainants' property so they do not have to burn.
44. The Respondents argue that their farm is a clean, well-run operation. The issue is not whether the farm could do a better job, but rather how much a farm is reasonably expected to do and at what expense. The Panel should not be concerned with the "best farming practices" but rather "normal farming practices". The Respondents question the motivation of the Complainants as nothing offered to date has been adequate.
45. John Molnar, an immediate neighbour of the farm who has lived on his property for 45 years, testified that since the new barns were built there are a few flies and some dust as well as a little odour every eight weeks at clean-out. He is not bothered by

these things. He notes that there have been run-off problems on the Breukelman property along the property line from west to east for 45 years. Filling in the pond, which was previously there, has helped but flooding still occurs at times. Mr. Molnar also testified although the Breukelman property was a llama farm prior to their purchase, the property was a chicken farm prior that.

46. Klaas Korthius, procurement manager for Lilydale since 1981 also testified. He sees 75 chicken operations regularly and in his opinion, the Respondents' farm is carrying out normal farming practices and is a "class act" farm. He stated that it is normal to load birds at night when they are more docile and that it is common to use the setback from the property line for roadways and driveways. Mr. Korthius maintained that it would be "virtually impossible" to load the birds from the west end of the north barn because of the limited space. He feels that Mr. Breukelman has done everything possible to please the neighbours, conversely these efforts have made the situation more difficult for Lilydale to load birds.
47. Stan Friesen also gave evidence. He removes the poultry manure from the Breukelman farm. The new clean-out system (loading out from the west end of the barn) will cut down on the clean out time from 6 hours to approximately 2 1/2 hours which reduces noise and odour. He noted that the Breukelman operation is as "clean and as good as everyone else".
48. Brian Hoven, an inspector with the British Columbia Chicken Marketing Board since 2001 testified that he visits approximately 175 broiler farms/year and in his view the Breukelman farm is in the top 10% of farms in regard to farming practices. The Breukelman farm was the second to be audited for the On Farm Food Safety Program and the first to request re-certification out of the 350 chicken farms eligible. In his view, the Breukelmans have done everything possible to limit the dust created by the farm and have turned off the lights at night as requested. He too noted the difficulty of loading the north barn from the east end and stated that it occurs only six times a year.

ARGUMENT OF THE INTERVENOR

49. The BCPA intervened in this complaint in support of the farm to ensure that the principles of normal farm practices in the broiler chicken industry are upheld and clearly defined. It maintains that the Respondents are following normal farm practices similar to those found in similar situations within the industry. In the BCPA's view, it is normal within the industry to have the following:
 - double decker barns built side by side with the services and front rooms at one end together with the main residence
 - growing of broiler chickens which are placed and shipped approximately every eight weeks
 - placement of the chicks facilitated by end doors so to have multiple drop points for ease and care of the baby chicks

- shipping of the birds after dark to minimise stress on birds and facilitate the processing plant
 - clean-out by pushing manure to the lower floor where it is pushed out the doors and loaded onto a truck
 - sawdust delivery blown into the barns with a high pressure vacuum system through side doors
 - driveway access which allows full movement around the barn
 - utilisation of setback areas.
50. The Intervenor notes that siting the barns at another location on the property could have transferred the complaints to another neighbour. The Intervenor recognises that this hearing affirms the necessity for the agricultural industry to be cognisant of their operations and attempt to mitigate the effects on their neighbours. However, the Intervenor maintains that there is responsibility on the neighbours to help mitigate the effects as well.
51. The BCPA points out the ongoing mitigation initiatives undertaken by Mr. Breukelman in response to a number of proposals made by outside facilitators and caution that these mitigation initiatives do not mean that the current farm practices are wrong and cannot be followed. Rather these initiatives suggest that it is prudent for all parties who live on ALR lands to engage in mature communication and planning.
52. The Intervenor maintains that it is imperative that intensive food production involving good husbandry practices and producing safe and nutritious food be allowed to continue. The public needs to be aware that common farm practices are often accompanied by dust, odours and noise; however, it is incumbent on the poultry industry to manage their operations in a consistent manner using current technology and implementing new initiatives.

DECISION

53. 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.
54. 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).

55. 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.
56. On the threshold question, the Respondents urged the Panel to consider carefully whether Mr. Geertsma was indeed aggrieved or whether he in fact had some ulterior motive or purpose behind the complaint. The Panel had the opportunity to visit the site and accepts that the very close proximity of the Complainants’ home to the Respondents’ barns and the ongoing and intrusive nature of the practices complained of establish sufficient personal interest on the part of both Complainants in this complaint.
57. Having found the threshold question met, the Panel must determine whether the odour, dust, noise and other disturbances including flooding and aesthetic issues of the farm are conducted in accordance with “normal farm practice”.
58. The Complainants’ evidence with respect to normal farm practice involved a comparison of their present circumstances to what it was like before the Breukelman barns were built and the chicken operation commenced. There was little evidence with respect to normal farm practice of similar farms in similar circumstances from the Complainants. Little evidence was tendered to demonstrate where this farm was falling down in terms of its on farm practices. However, the Complainants did have the report from Mr. Penner and Mr. Flokstra of the BCCGA Dispute Resolution Committee prepared in 2003 which noted some deficiencies and possible areas where farm practices could be improved. At the hearing however, Mr. Penner evidence appeared to have changed and he did not feel that any further changes were required.
59. The Panel had the benefit of hearing from Mr. Van Kleeck, a person knowledgeable about the operation of poultry farms. Mr. Van Kleeck found evidence of dust, odour and noise in the second half of the growing cycle and made several recommendations to mitigate these problems. It should be noted that many of his recommendations are not standard in the industry and could be viewed as experimental or cost prohibitive. Interestingly, Mr. Van Kleeck predicted that there would be problems with the neighbours when he saw these barns being built in this location due to their close

proximity to the property line and the neighbouring house. For him, this was a matter of common sense.

60. A normal farm practice means a practice conducted in accordance with “proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances”. Applying that test to these facts requires the Panel to look at amongst other things, the location and design of the barns, the local geography and the proximity of neighbouring homes.

61. In *Eason v. Outlander Poultry Farms Ltd.* (March 10, 2000), the Provincial board qualified this test as follows:

...implicit in the test, as in all good chicken farming, is the existence of practices showing some threshold of consideration for one’s neighbours.

62. What we take from this, is that circumstances vary. What is a normal farm practice in some circumstances may not be necessarily be “proper and accepted” when conducted in some other circumstance. Qualitative differences – such as we see in this case in the scale and siting of an operation and the use of lands – must be taken into account when determining whether the farm practices complained of are “proper and accepted”.

Odour, Dust and Noise

63. The Panel appreciates that there are always odours, dust and noise associated with intensive chicken production. Such factors alone are not sufficient to support a complaint under this *Act*. For example, the complaints of Mr. Rempel, Mr. Wiebe and Mr. Molnar (to the extent his comments can be viewed as a complaint) would appear to fall within the range of what a person could expect when one resides within the ALR and in an area with poultry operations. Periodic dust, noise and odour can be expected. However, where circumstances cause those problems to exceed the tolerance limits of a reasonable neighbour, proper and accepted customs and standards require, in our opinion, reasonable steps taken by the farmer aimed at mitigating those effects.

64. In this particular case, the circumstances for the Complainants are much different. The proximity of the Breukelman barns to the property line, combined with the level of activity and the location of the bulk of that activity (at the west end of the barns) creates a situation which exceeds the tolerance limits of what can be understood as normal farm practice. Therefore, there is an obligation on the Respondents to take steps to mitigate the dust, noise and odours caused or exacerbated by their site selection and the configuration (including where catching and clean out occurs) of their barns.

65. For example, if clean out and shipping were occurring from the east end of the barns, we would consider that to be normal farm practice. The distance of the activities from the Complainants’ home would be greater and the barn structure would act as a buffer

for dust, noise and odour. Had this been the situation at the time of the complaint, the Panel would likely have dismissed the complaints relating to dust, odour and noise. However, that is not the current circumstance. The barns are located at the minimum set back and the Respondents are using the set back for trucks and machinery to carry out clean-out and shipment. The Panel therefore finds that certain mitigating steps, which may not be required in a different situation, are, in this situation, normal farming practice.

66. As an aside, the Respondents argued that there was little choice as to the siting of these barns on the approximately 10-acre property. The south end of the property is low lying and ground water is an issue. As the east corner of the property was dedicated by the Respondents for the construction of a church, the only available location for barns of this size was butted up to the property line adjacent to the neighbours' home. Given that this is ALR land, its primary use is for agricultural purposes. In the Panel's opinion, the fact that a person desires to remove a portion of their property from the ALR for a non-agricultural purpose does not justify the siting of agricultural buildings in a poor location. Nor is it an excuse after the fact, when a poor location has been chosen, for failing to take appropriate steps to mitigate negative impacts on one's neighbours.
67. In determining the appropriate remedy, we recognise that Mr. Breukelman has demonstrated a willingness to work with his neighbours to try and find a reasonable solution to the various problems. The Complainants, however, appear to be far less willing to come to a negotiated resolution. Mr. Geertsma stated that as far as he is concerned, the only acceptable remedy would be to move the barns to the east side of the Breukelman home. Ms. Geertsma thought there were possible solutions to the problems. She felt that both the dust and the noise problems would be lessened if the catching of birds and loading of manure were done from the east end of the barns. The alder trees that have been planted are not a solution and she feels that a professional should be consulted to find the best solution. Ms. Geertsma would also like notice in advance of shipping and clean-out.
68. The Panel finds that the placement and configuration of the barns in such close proximity to the Geertsma home has created a source of noise, dust and odour. Common sense, which is supported by the evidence of Mr. Van Kleeck, suggests that some form of screen or buffer would have a mitigating effect of the problems including the aesthetic ones. Both parties have recognised this as a potential solution at some time during discussions. Mr. Geertsma planted cedars and Mr. Breukelman has planted deciduous trees and also began constructing a berm. Unfortunately, neither individual consulted with a professional before undertaking these attempts at mitigation. In the Panel's view, the installation of a proper barrier or screen would demonstrate a modification of the farm's practices that reflects reasonable and proper concern for neighbours. However, any buffer needs to be constructed with the advice of an appropriate professional.

69. The Panel notes should a qualified professional determine that a berm is an appropriate solution here, placement is critical. In our view and given the Complainants' use of their property, a berm running along the property line may go a long way in dealing with aesthetic concerns. The Complainants could design the plantings on their side of the berm to reflect their current landscape design. The Respondents would be able to have a buffer and still have usable space for their farm operations.
70. Much of the evidence at the hearing concerned whether it was feasible for shipping and clean-out to be done at the east end of the barns. Messrs. Penner and Flokstra of the BCCGA Dispute Resolution Committee proposed this in their April 2003 Report. At the hearing, Mr. Penner resiled from his earlier opinion and testified that there was insufficient space to ship and clean-out the north barn from the east end due to the placement of utility lines and a shed. He offered no satisfactory explanation for why his opinion had changed. Mr. Korhuis felt there was insufficient space as did Mr. Friesen and Mr. Hoven. Mr. Breukelman testified that to reconfigure the east end of the north barn to allow for shipping and clean-out could cost in excess of \$100,000.
71. While the best solution would be for shipping and clean-out for both barns to occur at the east end of the barns, the Panel accepts the evidence that this presents difficulties for the north barn due to space constraints. If Mr. Breukelman moves his manure clean out operations to the east end but ships birds from the south barn from the east end and birds from the north barn at the west end, he will minimise the time spent at the west end of the barns. This will mitigate dust, odour and noise.
72. The Respondents are also willing to replace the dust screen between the barns. Given the proximity of the barns to the Geertsma home, the Panel is of the view that a dust screen, while innovative technology and not in use generally on poultry operations, is appropriate in these circumstances. As we have said earlier, farmers who choose to place their barns at the minimum set backs, with little or no off set from neighbouring homes and who use the set backs to operate heavy machinery may be required to take steps which might not otherwise be necessary. Accordingly, the Panel directs the Respondent to install a dust screen after consulting with the appropriate professionals.
73. Given the invasiveness of the dust, noise and odour, the Complainants have requested notice of shipment and clean out dates. The Panel believes this to be a reasonable request especially given that Ms. Geertsma uses her gardens for parties and photographs. The Respondents' hesitation in doing this previously was fear of the Complainants' retribution with fires and smoke that result in increased bird mortality. While no causal link was demonstrated at the hearing between the fires and mortalities, the Complainants have been put on notice to cease burning.

Aesthetic Concerns

74. The Panel heard a great deal about the aesthetics of the Breukelman farm and the fact that the barns are an "eyesore" obliterating the view of Mount Baker. The Panel

dismisses this aspect of the complaint. The Breukelman property is in the ALR where barns are a normal fact of life. There is nothing unusual about the appearance of these barns and in fact, both our observations and the evidence confirmed that, in terms of growing chickens, the Breukelman operation is indeed state of the art.

75. We have not been provided with any evidence or argument which persuades us that the loss of view resulting from the construction of the barn is, on the facts of this case, a disturbance that is not in accordance with normal farm practices.

Flooding and Garbage

76. Finally, the Complainants submit that they are aggrieved by flooding and garbage. Ms. Geertsma believes that these problems are easy to resolve by simply removing the garbage and correcting the drainage problem. The Respondents do not dispute that some minor flooding has occurred. The construction of the barns did result in minor flooding to the Complainants' property by altering natural drainage. The Panel finds that the construction of barns is a farm practice. Where as here, that construction results in a change to drainage there is an obligation on the farmer to have due regard to neighbours. The Panel recognises that this is a minor concern and if the Complainants were not pursuing the larger odour, dust and noise complaints, it is doubtful that this issue would be before this Panel. However, minor or not, the Panel is satisfied that a small portion of the Complainants' property is now wetter than it was before construction and that this excess moisture does not result from a normal farm practice. Accordingly, the Respondents are directed to consult the appropriate professional and rectify the flooding.
77. The Panel does not find the small amount of construction associated garbage on the Respondents' property to be anything besides normal farming practice and therefore dismisses the garbage complaint. However, the Panel supports the Respondents' offer to remove the garbage as a gesture of good faith.

ORDER

78. Having found those portions of the Complaint relating to odour, dust and noise to be valid, we move to the question of remedy. Section 6 of the *Act* states:
- 6(1) The panel established to hear an application must hold a hearing and must
- (a) dismiss the complaint *if the panel is of the opinion* that the odour, noise, dust, or other disturbance results from a normal farm practice, or
 - (b) order the farmer to cease the practice that causes the odour, noise, dust, or other disturbance *if it is not a normal farm practice*, or to modify the practice in the manner set out in the order, to be consistent with normal farm practice.

[emphasis added]

79. Given that we have found a breach of the *Act* insofar as the practices complained of result in noise, dust, odour and flooding, 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. Accordingly, and pursuant to s. 6(1)(b) of the *Act*, the Panel orders the Respondents to modify their farm practices as follows:
- a) With the advice and assistance of an appropriately qualified professional(s), install a buffer or barrier along the property line. If the professional so determines, incorporating the existing trees as part of the new screen may be acceptable. This shall be installed within 6 months from the date of this Order and the report of the professional submitted to the Provincial board within 30 days of the date of this decision.
 - b) With the advice and assistance of an appropriately qualified professional, correct the flooding problem on the lower south-west corner of their property. This is to be done within 60 days from the issuing of this Order.
 - c) Create a yearly calendar marked with their home week (the week in which they are scheduled to ship bird to their processor) and supply it to the Complainants and give the Complainants one week's notice of the specific dates for shipping and clean-out operations.
 - d) Commencing immediately, clean out manure from the east end of both the south and north barns.
 - e) Commencing immediately, ship birds from the east end of the south barn.
80. The Complainants may or may not be satisfied with the impact of the Respondent farm even after it carries out the modifications in this Order. Be that as it may, we wish to make clear our view that normal farm practices in this case require nothing more or less than the farm taking reasonable steps aimed at ameliorating the problem. If it does that, our view is that the farm will be compliant with the *Act*.
81. We close this decision by making the following comments.
82. We note that the parties attempted to settle this dispute prior to the hearing.
83. On the evidence presented at this hearing, it appears that nothing short of ceasing operations or moving the barns would have satisfied the Complainants. At least Mr. Geertsma did not appear to be sincerely interested in modifications to the Respondents' farming practices. This is unfortunate and does not bode well for the development of a better neighbour to neighbour relationship in the future. There is still the opportunity for constructive communication and we appeal to both parties to take that path in the future. Intensive agri-business is the face of farming in British Columbia. The *Act* ensures that as long as farmers follow normal farm

practices, they will be protected. In our opinion the mitigation ordered above will ensure that the Breukelman operation meets that definition.

84. Second, some comments of a more general nature need to be made. Intensive agriculture brings with it a whole host of considerations beyond that of other types of development. All levels of government need to be sensitive to issues relating to the particular siting for a proposed agricultural operation. Building setbacks and orientation should take into account the impact of an intensive agriculture operation. Municipalities with a significant agricultural component, particularly those in the Lower Mainland of British Columbia, need to reconsider siting requirements in light of the increasing pressure associated with the growing urban-rural interface. We believe fractious, and ultimately divisive, complaints like this one will become more common if these issues are not addressed.
85. Further, commodity boards and producer associations also have a role to play in ensuring their members stay abreast of technology and continue to improve their farm practices encouraging common sense and good judgement.

Dated at Victoria, British Columbia, this 18th day of November, 2005.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per

(Original signed by):

Christine J. Elsaesser, Vice Chair
Garth Green, Member
Sandra Ulmi, Member