

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 DAIRY FARM
IN COLDSTREAM, BRITISH COLUMBIA

BETWEEN:

MYRTLE MILLER

COMPLAINANT

AND:

PAN-O-RAMIC FARMS LTD.

RESPONDENT

AND:

KAMLOOPS OKANAGAN DAIRYMEN'S ASSOCIATION

INTERVENER

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board

Suzanne K. Wiltshire, Presiding Member
Garth Green, Member
Dave Merz, Member

For the Complainant

Myrtle Miller

For the Respondent

David Schaefer, Counsel
Rod Palfrey

For the Intervener
Kamloops Okanagan Dairymen's
Association

Henry Bremer, President

Date of Hearing

February 10-11, 2009

Place of Hearing

Vernon, British Columbia

Introduction

1. The respondent, Pan-O-Ramic Farms Ltd., operates a dairy farm (the home farm) in the District of Coldstream in the Okanagan area of British Columbia. Pan-O-Ramic is owned by Rod Palfrey, the fourth generation of his family to have farmed on this property. The home farm is situated on a hillside which slopes down to Kalamalka Lake and is comprised of approximately 50 acres (40 owned and 10 leased). The home farm is located in the Agricultural Land Reserve and zoned agricultural.
2. The complainant, Myrtle Miller, is a down-slope neighbour who lives on Kidstone Road approximately 300 feet from the lower boundary of the home farm. Her residence is separated from the farm by a paved district walkway, a narrow strip of land and Kidstone Road. She complains that odour resulting from the manure management practices of the farm, particularly in the summer months, has created an untenable situation for her and her neighbours.
3. The complaint is dated July 29, 2008 and was received by the British Columbia Farm Industry Review Board (BCFIRB) on August 5, 2008. The complaint alleges frequent spreading of thick deposits of farm waste over fields during the summer months, as well as repeated watering which delayed the waste from drying out. The complaint states odours were conveyed by downdrafts as the air cooled in the late afternoon and evening which precluded the opening of windows or doors to enjoy evening breezes as relief from the heat of the day and the enjoyment of meals outdoors. The complainant attached to her complaint a supporting statement signed by a number of property owners in the immediate area.
4. The respondent's position is that its manure management practices are in keeping with normal farm practice and in compliance with the *Farm Practices Protection (Right to Farm) Act* RSBC 1996 c. 131 (the *Act*).
5. BCFIRB retained Orlando Schmidt, PAg, Environmental Soil Specialist, Ministry of Agriculture, Sustainable Agriculture Management Branch, as a knowledgeable person pursuant to section 4 of the *Act*. Mr. Schmidt and BCFIRB staff conducted a site visit on September 25, 2008. Mr. Schmidt prepared a report (KP report) assessing the manure management practices of the respondent. This report was issued to the parties on October 23, 2008.
6. The Kamloops Okanagan Dairymen's Association was granted intervener status. The Association was concerned that any limitations to the respondent's right to farm might create a precedent in future complaints. It took the position that any limitations to the respondent's ability to operate the farm must be clearly due to its unique situation so as to not cause repercussions on other farmers' use of common farm practices.
7. At the outset of the hearing, the complainant requested that the panel include in the issues to be considered on this complaint her concerns with respect to pollution of Kalamalka Lake from run-off from the home farm into a culvert and air quality because of chemicals in the air from the manure. While these concerns were raised by the complainant during

the settlement phase of this complaint as part of her grounds, the panel notes that the complaint itself is restricted to odours arising from the spreading and manure management practices of the respondent. Given that issues of air quality and pollution are outside our jurisdiction and the subject of separate legislation under the jurisdiction of other agencies, the panel's ruling was that this complaint would be restricted to the farm practices issue set out under the heading issue below.

8. This ruling accords with previous decisions of this board. In *Eason v Outlander Farms* (December 3, 1999), a panel of the then Farm Practices Board stated:

Finally, there were times during our hearing when it appeared as if the Panel was being asked to exercise jurisdiction over what might generally be called "pollution". The *Waste Management Act*, administered in this area by the GVRD, is the statute that governs the discharge of "waste" in this Province. Issues of compliance with that *Act* are for other agencies to determine. Neither Complainants, farmers nor *Waste Management Act* decision makers themselves should assume that our decisions are in any way based on the *Waste Management Act* or that the nature or timing of decisions under that statute should depend on the outcome of our decisions.

9. The complaint was heard in Vernon on February 10 and 11, 2009. The panel viewed the home farm property and surrounding area on the first morning of the hearing. Mr. Schmidt was qualified as an expert witness in the area of agricultural waste management and testified with respect to his report. Ms. Miller and four of her neighbours appeared as witnesses for the complainant. Mr. Palfrey and Mr. Bifano, an Okanagan dairy farmer, were witnesses for the respondent. Closing argument was made by written submission, the final submission being received on March 16, 2009.

Issue

10. Does the odour arising from the spreading and manure management practices of Pan-O-Ramic Farms Ltd. result from normal farm practice?

Remedy Sought

11. The complainant seeks an odour free environment during the summer months and requests there "be no spreading or dumping of manure annually from June 15 to September 15 inclusive" or "during any evenings, weekends or holidays throughout the year". The complainant also seeks an order for two months additional storage of manure on site to enable less frequent spreading, that hauling offsite be regulated to set dates in covered and leak proof vehicles, and that the number of dairy cows on the home farm be restricted to a maximum of 25 and that no additional dry¹ cows be added to those presently on the home farm. The complainant also requests that development of a buffer zone be explored.

¹ Dry cows are milking cows that are not being milked. Generally, they have been removed from the active milking herd for veterinary treatment or in anticipation of the birth of a calf.

Farm Operations

12. The home farm has operated in its current location since 1913. This precedes the establishment of the residences of the complainant and the neighbours supporting the complaint.
13. The home farm operated as a mixed dairy farm and orchard until recently. Removal of the fruit trees started in fall 1999, with most of the trees being removed between 2000 and 2002 and the last trees being removed in 2004. The farm has continued to operate as a dairy farm and the former orchard area was converted to a grass forage field.
14. The number of milking cows on the home farm has expanded over the years, rising from approximately 50 milking animals in the mid-1980's to approximately 95 milking animals at the time of the complaint. In addition to the milking cows, the home farm also houses dry cows and bull calves. As noted in the KP report because the farm raises all its own bull calves, it has more animals than a comparable farm that sells its bull calves. Mr. Paltry confirmed that the respondent had approximately 250 animals in total, but added that not all would always be on the home farm and that 60 to 70 animals would be pastured on other property from April to September. He said it had been necessary to increase the herd size to stay profitable but the dairy operation would still be considered small.
15. In addition to the home farm which consists of approximately 50 acres of owned and leased property, the respondent also owns and leases a total of approximately 250 acres in Lavington, some 15 kilometres away, and a further 150 acres in the Coldstream/Vernon area within 8 kilometres of the home farm. These lands are used for grazing, crop growth and manure disposal.
16. The KP report provides the following description of the home farm.

Of the 50 acres on the home farm, up to 5 acres are occupied by buildings and roadways, 10 acres are in a grass forage field that is harvested for silage or hay, and the remainder is used for pasture. The pasture land is utilized primarily by bred heifers, dry cows and a few bulls.

As an older farm, it appears that different barns and buildings have been built at different stages in the history of the farm. Most if not all the buildings are heavily utilized for cattle housing, milking, feed storage and equipment storage.

The farm is isolated from other dairy farms and is isolated from other forage producing lands. It is bounded on the south and southeast by Kalamalka Lake Provincial Park, on the north by a productive apple orchard, and on the West and Northwest by residential properties that are mostly adjacent to Kalamalka Lake ... Most of the complainants in this case reside in the residential subdivision located to the Northwest of the farm.

In terms of geography, the farm is on a hill and most of the fields have a substantial slope downwards towards Kalamalka Lake. The geography is such that during periods of inversions or when the air is quite still, any odour that emanates from the farm tends to migrate downslope towards the neighbouring residential area. The effect is increased in hot weather.

17. The KP report records that the home farm manure is managed either as a solid or as a semi-liquid as described below.
18. Manure from the cow housing area is cleaned out twice daily and scraped into a rectangular concrete manure storage pit. Wash water from the milking parlour also drains or is pumped into this pit. (Wash water from the milk tank and pipelines is discharged into a septic field.)
19. The KP report notes that on the September 2008 site visit the manure pit was about half full and the manure had the appearance of thick slurry. The manure was deeper at the loading end and thick enough to partially stack but not liquid enough to flow easily. Mr. Schmidt estimated a moisture content of 80-85%. Depending on precipitation and wash water usage, he estimated storage capacity of 3 to 4 months.
20. Milking cattle also have access to a paved outside yard area and an adjacent covered area. The manure from this area is scraped into a smaller outdoor storage bay. The manure is semi-solid and is removed for field application on a weekly basis.
21. Young stock is raised in individual or group pens on a bedding pack, with sawdust or straw used for bedding. The pens are cleaned out intermittently as necessary and the manure is handled as a solid and applied directly to the land at the time of cleanout.
22. Because of the limited land base of the home farm, about 30% of all manure is applied on the home farm and the balance is trucked out and applied to the respondent's other owned and leased lands in the area or to lands where farmers have requested manure as a fertilizer. The manure is applied on the home farm using a rear discharge spreader or a V-bottomed spreader with side discharge. Both are top-loaded with a front-end loader.
23. Manure is applied on the 10 acre forage field once or twice in early spring (March, April), then once after the first crop is harvested (June), and again after the second crop is harvested (July). Manure is spread at a rate of about 4 to 5 loads per acre with the rear discharge spreader.
24. Mr. Palfrey noted that before hauling manure through Coldstream he would call the district clerk to advise that hauling was about to take place. He indicated it would take about a day and a half to empty the manure storage pit.

The Complaint

25. The complainant and her neighbours testified that the manure odour from the farm had worsened over the past 3 to 5 years and was particularly bad in the evenings in summer when cooler air descended downhill. The complainant described the odour as having become intolerable in summer 2008. The complainant and the neighbours said that because of the odour they were unable to open their windows and doors in the evening to cool down their homes, unable to use their patios and outdoor areas when the odour was

strong, and hesitant to invite guests over. They described the odour as lingering in their homes and vehicles and recessed areas outside and taking several days to clear.

26. The complainant and her neighbours primarily associated the odour problem with the spreading of manure in the 10 acre field used for forage.
27. The complainant and one of the neighbours observed that there had been no problem with odour until after the orchard in the 10 acre field was removed and the field began to be used for forage. The neighbour said that about a year after this, odour became a problem 3 to 4 times per year when manure was spread in this field and lasted for about a week after each spreading. The neighbour said there was no smell from the farm yard.
28. This neighbour identified several photographs he had taken of the 10 acre field. He referred to a photograph taken in mid July 2005 when he had complained to Coldstream. The photograph shows a “burnt-out” strip of pasture which the neighbour identified as running along the lower part of the 10 acre field bordering what is now the paved walkway. The neighbour attributed the burnt-out area to heavy manure spreading. This neighbour also referred to photographs he had taken on August 4 and 6, 2008 of the 10 acre forage field from the paved walkway, when he investigated because there had been a terrible smell. He described the darker patches shown in these photographs as being manure about 1.5 to 2 inches thick located in the lower part of the 10 acre field adjacent to the paved walkway. He observed that it appeared the manure had just been dumped rather than being spread and that he had not seen it like that before.
29. Another neighbour described the odour as not being too bad in the spring but a problem because of the heat in summer when manure was spread on the 10 acre field following the first cut. This neighbour also indicated that they had smelled manure on two other occasions, December 26, 2007, when they observed it spread on the snow along the west end of the 10 acre field, and once between October 2008 and January 2009 while walking on the paved walkway. They identified the crop as a mix of alfalfa and grass, asserting that manure was not necessary for alfalfa.
30. A third neighbour also described the odour problem as occurring after manure was spread in the 10 acre forage field, observing that the neighbours never knew when this would occur.
31. A fourth neighbour stated that they had twice noted manure splashing out on the road from vehicles used to transport manure from the home farm. The neighbour confirmed that the first instance was some 10 years previously and that the second recent incident had involved only a small amount of spillage and so they had not reported it.
32. The complainant described the odour as occurring more frequently and as being more persistent than her neighbours did. Like her neighbours she said she noted the odour whenever manure was spread on the 10 acre field, However, she said she also noticed it at other times but did not know where it was coming from and on one occasion had driven up

to the 10 acre field but could see no manure on it. She indicated she has an acute sense of smell.

33. The complainant referred the panel to two photographs she had taken. One, undated, shows cows grazing in the upper pasture above the barns. The complainant drew attention to the numerous seagulls shown on the green field, saying they were feeding on manure. The other photograph taken on August 4 or 5, 2008, is of the 10 acre field and shows the rear discharge manure spreader in operation coming up from the lower part of the field.
34. The complainant also referred the panel to a number of documents she had obtained from various sources. These include several documents relating to the environmental farm plan program and the respondent's participation in the program; pages copied from the internet described by the complainant as being from an environmental farm course; and various documents and lot sketches with respect to the respondent's owned and leased lands.

Manure Management Practices

Mr. Palfrey's Evidence

35. Mr. Palfrey stated that the 10 acre forage field was a mix of 90% grass and 10% alfalfa. He said it was common practice to use manure as a nutrient source for forage production because it eliminated the need to apply chemical fertilizer and to subsequently put organic matter back into the soil, thereby reducing costs.
36. Mr. Palfrey confirmed his practice was to spread manure in the spring and after each crop cut, spreading as soon as possible after the cut. In the spring he would utilize manure from the manure pit for this application. After spreading, he would harrow and then irrigate twice between each crop to get the best nutrient value. He said that even if manure is thickly spread, crop growth remains good after harrowing and watering. He did note that because of the paved walkway it was more difficult to water the lower part of the 10 acre field and portions could be missed because of the need to stagger the watering across that portion of the field. He considered his manure management practices to be normal and necessary and said it was not feasible to prohibit manure spreading during the growing season from June to September as requested by the complainant. Such a restriction would both increase the quantity of manure to be hauled away and reduce the productivity of the home farm.
37. Mr. Palfrey admitted that in 2008 a couple of "rookie" operators had been hired to spread manure and had opened the gate of the spreader and let the manure run out rather than spreading it properly. He stated that these individuals were no longer employed by the respondent.
38. As to the timing of manure application, Mr. Palfrey noted that ideally one would harvest every 22 to 26 days in the growing season, but that often this was not possible because of weather conditions. Mr. Palfrey said that manure might be spread anytime from Monday

through Saturday, but was never spread on Sunday and that manure was not spread in winter when the land was snow covered and had never been spread on Boxing Day.

39. As for 2008, Mr. Palfrey said there had been no change in his farm management practices but noted as it had been consistently drier and hotter that year he had been able to take 4 crops off the 10 acre field.
40. Mr. Palfrey stated that the increase in the dairy herd size had been necessary to stay profitable, but even with the increase the herd would still be considered small in comparison to herd size in the area. He anticipated a decrease to 50 milking cows on the home farm with the imminent completion of his new milking facility in Lavington.

Mr. Bifano's Evidence

41. Mr. Bifano, a dairy farmer from Armstrong, testified that he was familiar with the respondent's dairy farm and other dairy farms in the North Okanagan and with common farm practices in the area.
42. Mr. Bifano carries out his dairy operations on a 130 acre home farm and he leases additional lands for a total of 1400 acres. Mr. Bifano has 780 milking cows plus heifers, dry cows and calves for a total of 1100 animals. He said it was common to see increases in herd size because of lower margins and that he believed the respondent's herd of 95 milking animals was below average size for the area.
43. Mr. Bifano spreads manure on his home farm and on some of the leased lands and transports manure off the home farm. He described this as a common manure management practice in the area. He also said it was common to use manure rather than chemical fertilizer because it was better and less costly.
44. Mr. Bifano's manure storage is a mix of liquid, solid and semi-solid, with 4 months liquid storage capacity and 4 days solid storage capacity. Solid waste is disposed of year round on the fields. Liquid waste is emptied from storage as late as possible into the fall and then spread again as early as possible in spring before planting and after first cut, with applications varying depending on weather. He said most farms in the area use a liquid waste system because of ease and speed of spreading, but that this depends on the configuration of the farm. Because of the need to stir the pit, he thought liquid waste might produce a stronger odour but said there was not much difference in odour between liquid and semi-solid storage. He noted solid waste was not common practice.
45. Mr. Bifano said because harvesting and spreading are both weather related and there is a short window to do both, he does not give notice to his neighbours before spreading manure on his fields. He does however try to avoid issues with his neighbours. He said a restriction on spreading from June to September was not feasible because that is the growing season and the time when manure is needed.

46. Mr. Bifano has seen the fertilizing of the respondent's 10 acre field on numerous occasions and stated that it was done in a manner generally in accordance with common farm practices in the area.
47. Mr. Bifano said that an increase in the respondent's storage capacity would have no impact on odour since the odour was a result of the dispersal of the waste on the fields. If storage were increased it would only mean there would be more manure to disperse in the summer.
48. Mr. Bifano commented on the photographs put in evidence by the complainant. He described the photograph of a rear discharge manure spreader in operation on the 10 acre forage field as showing the type of spreading normal for that type of spreader. The manure left behind after spreading shown in the other photographs, he considered consistent with that type of spreading prior to harrowing and irrigation to settle the manure down. He considered the area of burnt dead grass shown in the July 2005 photograph to be consistent with what would normally be seen in mid July.
49. When questioned as to the ratio of cows to land acreage, Mr. Bifano indicated this was not a useful ratio with respect to odour because odour depends on how much manure is put on per acre.

The Association's Submissions

50. The Association submits that it is common farm practice to use manure as fertilizer and to apply it throughout the growing season. After harvesting a grass crop as hay or silage, it is common practice to apply fertilizer to provide nutrients for the next cutting. Dairy farmers have a good supply of manure and apply it after cutting, ideally just before a rain but this is weather dependent. The next best option is to irrigate the field to move nutrients from the surface to the root zone in the soil, ensuring adequate nutrients for the next harvest. Because the harvest and fertilizing schedule is highly dependent on the weather, it is impossible to consistently schedule when these jobs can be accomplished. When weather interrupts harvest, manure fertilization can spread out over the entire season.
51. The Association also submits that it has become common for dairy farms to become larger and that many dairy farmers rent or acquire land away from the home farm and then transport their manure to that land, which prevents a build-up of nutrients at the home farm and a shortage in the more distant fields.

Knowledgeable Person - Evidence and Report

52. Mr. Schmidt states the following in the KP report with respect to the method of manure application:

The *Code of Agricultural Practice for Waste Management* requires that manure be applied as fertilizer or as a soil conditioner and in a manner that does not cause pollution. There are no restrictions on method of application.

For the type of manure on the farm (semi-liquid) and the cropping system in place (perennial forage), the types of spreaders used on the farm are not uncommon. Limitations with spreaders being used are that they are not very precise in the placement of the manure, and there is a risk of manure not being applied very uniformly. The result can be a streaking effect where some land receives manure at an excessively high rate while adjacent strips receive less than desired. The effect of excessive application on the crop can be temporary smothering, resulting in delay of crop growth and increased odour potential.

My analysis of the manure application methods used on Panoramic Farms is that the methodology being used is consistent with practices common to the livestock industry. Extra care is recommended in the management of the equipment being used to maximize the uniformity of application and regulate the rate of application to match crop requirements.

53. Mr. Schmidt states that he also considers the semi-liquid manure handling system utilized to be within the range of commonly used practices in the industry.
54. With respect to timing and rate of manure application Mr. Schmidt states that it is normal to apply manure as a fertilizer source prior to initiation of spring growth and following subsequent cuts, but the value of mid-summer application can be limited. Irrigation as soon as possible after manure has been applied can minimize odour.
55. Mr. Schmidt notes in his report that expansion of the herd at Pan-O-Ramic Farms is consistent with industry practices but can result in increased odour. He also notes that the 10 acre forage field was previously an orchard and no liquid manure would have been applied. With the removal of the fruit trees and the conversion of this field to forage he considered it quite possible that detectable odours have increased.
56. Mr. Schmidt suggested a number of mitigation strategies, emphasizing that these were not “recommendations” but were “provided with the intent of having both parties engage in discussions that could lead to mutually beneficial conclusions.” These include following up summertime spreading with irrigation, avoiding manure application in very hot weather and at sensitive times and advising neighbours when spreading, reducing animal numbers, possible consideration of an automated barn cleaning system, reverting to a solid manure handling system and establishment of a vegetated buffer along the property line.
57. Mr. Schmidt noted that Mr. Palfrey had voluntarily completed the BC Environmental Farm Plan (“EFP”) certification in 2008. He felt this was a “great program” and that completing it was “a good thing”. He stated that the EFP allowed farmers “to do due diligence around manure management, water management, pesticide management and air quality management”. Mr. Schmidt commented that the process undertaken to acquire certification under this program requires the development of an action plan to address environmental issues identified on the farm. Mr. Palfrey’s certification means that he has voluntarily taken additional steps identified during his farm assessment to ameliorate environmental impacts associated with his farming practices.

58. Mr. Schmidt’s overall assessment was: “In comparing manure management practices at Panoramic Farms with other farms, my assessment is that the farm is lagging behind most farms but still marginally within the range of commonly accepted practices.”

Analysis and Discussion

59. A complaint under the *Act* involves a two-step analysis.
60. The panel accepts that the complainant has satisfied the first step of establishing that she is aggrieved by odour emanating from the home farm operation. Indeed the respondent does not dispute that odour emanates from its spreading and manure management practices and the evidence of the complainant and her neighbours is that they are aggrieved by the odour.
61. Once the initial step has been satisfied, the panel must go on to make a determination as to whether the grievance results from a normal farm practice.
62. Section 1 of the *Act* defines normal farm practice:

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

(a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and

(b) any standards prescribed by the Lieutenant Governor in Council,

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

63. BCFIRB has previously considered the meaning of “normal farm practice” and “proper and accepted customs and standards as established by similar farm businesses under similar circumstances”. 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. In making this decision, we necessarily take into account the particular circumstances of the site both on its own and in relation to those around it.
64. Applying that test to the facts before us, we conclude the spreading and manure management practices of the respondent fall within the definition of normal farm practices. Dairy farmers have spread manure after cropping since the beginning. We do not find that the respondent’s particular exercise of that practice is outside the scope of normal farm practice.
65. Our conclusion is based on the expert evidence of Mr. Schmidt, as well as the testimony of Mr. Palfrey and Mr. Bifano which we have summarised above and will not repeat. We rely in part on Mr. Schmidt’s conclusion that the respondent’s spreading and manure

management are within the range of commonly accepted practices albeit, in his view, marginally. We accept Mr. Schmidt's use of the term "commonly accepted practices" in this instance as being synonymous with "normal farm practices".

66. Since Mr. Schmidt has greater familiarity with the larger "state of the art" Lower Mainland dairy operations, we found Mr. Bifano's evidence as to spreading and manure management practices in the North Okanagan, including his first hand observations with respect to the respondent's spreading and manure management practices, most helpful. His evidence and the submissions of the Association, whose membership draws from this region, support the conclusion that the respondent's spreading and manure management practices are consistent with accepted manure management and spreading practices followed by similar dairy operations in the North Okanagan. We therefore find that the respondent's spreading and manure management practices do fall within the definition of normal farm practice.
67. The complainant has submitted that the changes in use represented by the removal of the orchard and expansion in the livestock numbers should be "given more priority" because the farm is surrounded by residential development. While the panel observes that these changes may have resulted in increased odour, the home farm is in the Agricultural Land Reserve, is zoned agricultural and these types of changes are permitted. We have already determined that any resulting odour increase emanates from normal farm practices. The panel observes that the increase in herd size and the management of manure offsite reflect the increasing density of cows on dairy farms generally. The respondent's dairy operations do not differ materially from other dairy operations in the area, in fact the operations are somewhat smaller than average.
68. The complainant both in the hearing and in her submissions expressed the view that the home farm was not large enough to support the number of animals on it, referring to a rule of thumb that there should be no more than 1 animal per acre of land to allow for sufficient forage and waste dispersal. She also disputed the respondent's claim to have a total of 450 acres of owned and leased land in the area, which would give it a more than adequate ratio. The panel notes that with increasing cattle stocking densities and the removal of waste for dispersal elsewhere this rule of thumb is outdated and no longer useful. The panel accepts the evidence of Mr. Palfrey that the respondent has a total of approximately 450 acres of owned and leased land in the area and finds no basis to conclude that the respondent has insufficient lands to appropriately manage manure from the home farm by removing it and spreading it elsewhere.
69. The complainant submits that the photographic evidence shows frequent overloading of manure in the lower part of the 10 acre field and argues that this is not normal farm practice. The panel notes that the photographs represent single points in time and do not in our view demonstrate a departure from normal farm practice. While the manure appears to be fairly heavily spread in some of the photographs taken in early August 2008, these photographs represents a single event and we find are not determinative of usual practice. The evidence also supports that with harrowing and "watering in" the manure would integrate with the soil and therefore we find that this heavy spreading would still be within normal farm practice. As for the mid July 2005 photograph of a burnt-out area, we accept

Mr. Bifano's evidence that it would not be unusual to see such a burnt-out area in mid July and we therefore do not consider the photograph to necessarily be evidence of a departure from normal farm practice.

70. The complainant also points to Mr. Palfrey's admission that two inexperienced operators made a mistake and dumped manure from the rear discharge spreader at the bottom of the 10 acre field. She argues that this is not normal farm practice. We agree this is not normal and indeed represents a mistake, but one mistake is not a practice and the respondent has already acted to ensure it will not recur by ceasing to employ the individuals involved.
71. The panel well appreciates that there are always odours, even very significant ones, associated with dairy operations; odour from manure management and spreading is inescapable. However, odours alone are not sufficient to support a valid complaint under this *Act*. The complainant's desire for an odour free environment cannot be satisfied given the proximity of her residence to the home farm and the site-specific factors cited in the evidence. Nor would it be reasonable to prohibit the spreading of manure in the growing season.
72. The *Act* requires that farm businesses follow proper and accepted customs for similar businesses under similar circumstances. We do not find any significant qualitative differences between this farm and other similar farm businesses which would require the panel to impose a higher standard of practice on this farm in order to be "proper and accepted". We do not accept that the odour produced by this farm and the periodic spreading of manure exceeds the limits of normal farm practice so as to require us to order the farm to take steps to mitigate the effects of odours.
73. Likewise, to grant the remedies requested by the complainant would impose a higher standard of farm practice on the respondent than is required based on the intent and purpose of the *Act*.
74. Having found the odour arising from the spreading and manure management practices of the respondent result from normal farm practices, we must, in accordance with section 6(1) of the *Act*, dismiss the complaint.
75. In so doing, we note that this situation is not analogous to a farmer choosing to site a chicken barn within 60 feet of the property line of a residential neighbour as seen in *Ollenberger v. Breukelman*, British Columbia Farm Practices Board, November 18, 2005. The respondent here has carried on his dairy operation on this farm in the same manner for years. The respondent has shown some threshold of consideration for his neighbours; he does not spread excessive amounts of manure, he does not spread manure on Sundays and he hauls much of the manure away. He has completed the Environmental Farm Plan. There may be more that the respondent could do to improve his relationship with his neighbours. To this end, we urge the respondent to take care to maximize the uniformity and regulate the rate of application of manure to match crop requirements, followed by harrowing and irrigation, in the interests of both better crop production and reduction of odour.

76. More importantly we wish to stress the need for all parties to be good neighbours. To the extent possible we urge the respondent to inform neighbours when spreading will occur. However, we recognize that this may not always be feasible because of the need to take the weather into account when scheduling the work to be done and because of the short window between harvest and spreading. Good communication is two-way communication and so we encourage the neighbours to communicate timing of special events and to bring problems to the attention of the respondent with a view to an early resolution consistent with normal farm practices.

ORDER

77. The complaint is dismissed.

78. There will be no order as to costs.

Dated at Victoria, British Columbia this 6th day of July 2009.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Suzanne K. Wiltshire, Presiding Member



Garth Green, Member



Dave Merz, Member