



August 19, 2009

File: 08-02, 08-04

DELIVERED BY E-MAIL and FAX

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Citizens for Legitimate Composting (CFLC)
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FOX AND CFLC VS. TRUONG, FILE #08-02 and #08-04, FARM PRACTICES COMPLAINTS, LANGLEY MUSHROOM COMPOSTING OPERATION

I write in response to the submission process initiated by my letter of July 17, 2009. I have reviewed the correspondence received from counsel for the Farm, Mr. Hobbs, dated July 20, 2009, an email dated July 24, 2009 from Charlie and Diane Fox, and an email dated July 30, 2009 from Maureen and David Adamson on behalf of the Citizens for Legitimate Composting (CFLC).

Background

In my correspondence of July 17, 2009, I summarized the status of this complaint. It is not my intention to reiterate that history here. Briefly, the circumstances that lead to these complaints being filed by Mr. and Mrs. Fox and Mr. and Mrs. Adamson on behalf of the CFLC have changed considerably since they were filed in 2008. As a result of violations of local and provincial environmental regulations and an unfortunate workplace accident which resulted in the death of farm workers, the composting operations which were the subject of this complaint have ceased.

It also appears that if and when the Farm resumes operation, it can only do so under very different circumstances than existed at the time these complaints were filed. The effect of the orders issued by WorkSafeBC, the Ministry of Environment and the British Columbia Supreme Court in response to a Petition filed by the Township of Langley is to require the composting facility to be redesigned and engineered to bring it into compliance with local and provincial regulations.

As a result of the foregoing, I asked the parties to address whether it would be proper to keep open a complaint about former practices that have now ceased, where there is no certainty if or when those practices will resume, and where if they do resume, the farm practices in question will be significantly revised in comparison with those in the original complaint.

Counsel for the Farm submits that it is uncertain if or when the composting operation will resume as the operating entity of the composting business has made an assignment into bankruptcy. If and when composting operations resume, the entity resuming those operations must address the injunction held by the Township of Langley and obtain the other necessary permits and approvals. As such, Counsel for the Farm submits there is no purpose to be served holding this matter in abeyance or referring the matter to a panel for hearing.

Mr. and Mrs. Fox advise that they cannot agree to formally closing this file and instead seek to hold the file in abeyance until such time as the farm formally applies to re-open as they do not want to give up any right to make new operators aware of the past issues. Further, they seek an assurance that should issues arise with the operation that they not be required to pay the \$100 fee to file a new complaint. Although the Foxes appreciate that the farmer has many regulatory “hoops” to clear, they argue that the neighbourhood has no desire, after recapturing their former life-style and standard of living, to revisit the suffering of the past. They seek assurance that they will be given their “day in court” prior to the farm resuming operations and confirmation of who will be monitoring the operation.

The Adamsons agree that given the current state of affairs, the complaint file should be closed on the understanding that the complaint remain on record. Should a future complaint need to be filed, they are prepared to do so.

DECISION

As I indicated in my earlier correspondence, there is no question that, as originally framed, this was a serious and legitimate complaint made in good faith. However, the ongoing involvement of various local and provincial agencies has resulted in the substance of this complaint being addressed. The only remedy the *Farm Practices Protection (Right to Farm) Act (FPPA)* available to the Provincial board, upon a finding that farm practices do not conform to “normal farm practice”, is to order the farmer to “cease or modify” *the offending practices: FPPA, s. 6(1)(b)*. In this case, that remedy has in effect already been granted as a result of the orders issued by WorkSafeBC, the Ministry of Environment and an injunction issued by the British Columbia Supreme Court.

There is no dispute that if the composting operation is to resume it will do so under very different conditions and likely with a different operating entity. As the substance of the complaint has been addressed, the only appropriate course of action is to dismiss this complaint without costs to either party; it is now academic and fails to disclose a sufficient ongoing personal interest on the part of the complainants in accordance with s. 6(2)(c) of the *FPPA*.

The Foxes have asked that *this* complaint be held in abeyance. That is not practical as any future complaint arising as a result of composting operations on this property will be different in substance from this complaint. There will be a new facility, new operations and possibly a new operator. If the Foxes are again aggrieved by the practices of a new composting operation on this site, the only

recourse under the *FPPA* will be to bring a new complaint grounded in the realities and actual practices of the operation at that time.

The Foxes also ask that they be given an opportunity to be heard before any new operation starts up to express their past concerns and obtain assurances of who will be monitoring the operation. Unfortunately, the *FPPA* does not give the Provincial board a prospective mandate. Our jurisdiction is triggered by a complaint relating to an actual operation. As noted above, there are several local and provincial government agencies involved in this matter, each with their own mandate. The Foxes are encouraged to work with those agencies to ensure their concerns are heard and that channels of communication between neighbours, the Farm and the involved agencies remain open. The Provincial board has no role in these communications.

Finally, the Foxes seek an assurance that should issues arise with a new operation that they be entitled to file a new complaint without having to pay the \$100 fee. The *FPPA* does not give the Provincial board the jurisdiction to waive the filing fee for a new complaint.

In their response, the Adamsons agree that the complaint file be closed but ask that the complaint “remain on record”. I am uncertain exactly what they mean by this. The fact that a farm practices complaint was made with respect to the Farm will be a matter of public record. The Notices of Complaint filed would form part of that record, as would any decisions and supporting correspondence. The extent that any of the issues raised in this complaint or documents contained in this complaint file would be relevant to a future complaint would need to be determined by the Chair or the panel presiding over the hearing of that complaint at that time.

Should any of the parties have any questions regarding the foregoing decision, please do not hesitate to contact Case Manager, Gloria Chojnacki at 250-356-1817.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Richard Bullock', written over a light grey rectangular background.

Richard Bullock
Chair