

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF A COMPLAINT ABOUT DUST
AND ODOUR ON A TURKEY OPERATION

BETWEEN:

SHERRY GILBERT
BERND HUBER

COMPLAINANTS

AND:

ROCKY RIDGE TURKEY FARM LTD.

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board

Corey Van't Haaff, Presiding Member
John Les, Chair
Diane Fillmore, Member

For the Complainants

Sherry Gilbert
Bernd Huber

For the Respondent

Steve Heppell

Date of Hearing
Place of Hearing

June 17 and 18, 2014
Langley, British Columbia

INTRODUCTION

1. The British Columbia Farm Industry Review Board (BCFIRB) hears complaints about farm practices under the *Farm Practices Protection (Right to Farm) Act* RSBC 1996, c. 131 (the *Act*).
2. Under section 3 of 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 BCFIRB for a determination as to whether the disturbance results from a normal farm practice. Section 6 of the *Act* provides that, following a hearing, a panel of BCFIRB is of the opinion that the odour, noise, dust, or other disturbance results from a normal farm practice, the panel must dismiss the complaint. If the panel determines that the practice is not a normal farm practice, the panel must order the farmer to cease or modify the practice causing the disturbance.
3. The respondent, Rocky Ridge Turkey Farm Ltd., is owned and operated by Steve Heppell and is located at 19885 12th Avenue in Langley, in the Agricultural Land Reserve. There has been a turkey farm at this location since the 1960s and Mr. Heppell has owned it since 1994.
4. The complainants, Sherry Gilbert and Bernd Huber, reside at 1289 200th Street which is to the east of the respondent. Their property is not contiguous with the respondent, separated from the farm by a right-of-way and another property. They have lived at this address for 33 years.
5. In September 2004, Mr. Huber filed a complaint with respect to odour and dust from the respondent farm. This complaint was resolved through a settlement agreement dated March 17, 2005 (2005 Agreement). By letter dated January 21, 2014 (received January 28, 2014) Sherry Gilbert and Bernd Huber wrote to BCFIRB alleging that the 2005 Agreement had been breached by the respondent and seeking to “reopen” the complaint.
6. BCFIRB accepted the complainants January 2014 letter as a new complaint which, given the history of the unsuccessful mediation, proceeded direct to hearing in Langley, B.C. on June 17 and 18, 2014.
7. The following materials were entered into the record as Exhibits:

Gilbert/Huber Book of Documents	Exhibit 1
KP Report (May 23, 2014)	Exhibit 2
Follow up Zabek KP Report (June 3, 2014)	Exhibit 3
Gilbert Additional Documents	Exhibit 4
Gilbert Video Clip	Exhibit 5
Heppell Book of Documents	Exhibit 6
Zbeetnoff Report	Exhibit 7
Cone Picture	Exhibit 8
Heppell Video Clip	Exhibit 9

ISSUE

8. Is the dust and odour complained about generated by Rocky Ridge Turkey Farm Ltd. and if so, does that dust and odour result from normal farm practices?

BACKGROUND

9. In 2002, there was a fire at the respondent farm and one of three barns burned down. In rebuilding, Mr. Heppell connected brooder, mid-stage and finishing facilities into one structure, incorporating fan ventilation in the brooder and mid-stage section and natural ventilation in the finisher section. In total, there are 13 fans blowing from the east side of the barn in the direction of the complainants' property.
10. In order to build the single structure, Mr. Heppell required and was granted a variance by the Township of Langley allowing him to have a setback from the east property line of only 25 feet, rather than the usual 50-foot setback. With the right of way and the intervening property, the respondent's barn is approximately 197 feet from the complainants' property and 377 feet from their home.
11. In the 2004 complaint, Mr. Huber alleged that since the new barn was built with fans blowing out to the east in the direction of their property, dust and odour have been a problem, affecting the enjoyment of their home. In the 2005 Agreement, the respondent agreed to place screens in front of the exhaust fans which did not have hoods and which faced the Huber property; place hoods on two additional 36" fans; construct the screens as prescribed; install a cedar species tree "shelterbelt" as prescribed along the eastern boundary of the turkey farm.
12. At the time of the 2005 Agreement, there were tall deciduous trees on the Township of Langley right of way adjacent to the turkey barn. Mr. Heppell feared they might blow over so he asked the Township to remove the vegetation from the right of way between the properties. This vegetation was removed in the fall of 2013.

PRELIMINARY ISSUES

13. During the course of the hearing, the complainants raised the issue of the proliferation of flies around their residence which they attribute to the respondent farm. However, as the complainants did not raise flies as an issue in either the Notice of Complaint or the Case Management Conference, the panel has not considered any alleged fly disturbance as part of this complaint decision.
14. As set out earlier, this is not the first complaint filed by Mr. Huber and Ms. Gilbert. His earlier complaint did not proceed to a hearing and was instead resolved by the 2005 Agreement. At times during the hearing both Ms. Gilbert and Mr. Heppell sought to testify regarding the circumstances of how that Agreement

was reached. As settlement discussions are privileged, the panel has not taken into account that testimony. During this hearing, the complainants argued that Mr. Heppell was in breach of the 2005 Agreement. Whether or not Mr. Heppell was in breach of the 2005 Agreement is not the issue for this panel. We are instead concerned with whether the alleged disturbances that form the subject matter of this complaint are the result of normal farm practice. Given that settlement agreements are voluntarily entered into by the parties, the fact that a farm may agree to implement certain changes to its operation to avoid proceeding to a hearing is not determinative of “normal farm practice” for that farm.

KNOWLEDGEABLE PERSONS’ REPORT AND TESTIMONY

15. Ministry of Agriculture employees, John Luymes, P.Eng, Chris Zabek, P.Ag and Jacquay Foyle, EIT were engaged by the BCFIRB as knowledgeable persons (KPs) for this complaint pursuant to section 4(a) of the *Act*. Mr. Luymes, Mr. Zabek and Ms. Foyle were called by BCFIRB to give evidence at the hearing, and their report dated May 23, 2014 and Mr. Zabek’s June 3, 2014 follow-up report were entered into evidence as Exhibits 2 and 3 respectively. It is important to note that the evidence contained in the knowledgeable person’s report and presented at the hearing is not binding on the panel.
16. The KPs testified to their joint report as a panel, with Mr. Zabek testifying to his supplementary report. Each of the three KPs provided a summary of their qualifications, as detailed in their joint report. Mr. John Luymes was qualified as an expert in the field of agriculture, specifically farm structures and ventilation; Ms. Jacquay Foyle was qualified as an expert in the field of agriculture, specializing in air emissions and control for agriculture operations; and Mr. Chris Zabek was qualified as an expert in the field of agriculture generally.
17. Mr. Zabek testified that when they visited the respondent farm on April 25, 2014 he observed that the farm was clean and well-managed. Dust and odor levels were low at the time. He mentioned that there was significant water flow coming from other properties and that there was a row of cedar trees in poor condition on the northern end of the property. He said that the farm was similar to other turkey farms in the area except the barn was closer to the property line. He also testified that on his June 2, 2014 visit, the dust and odour levels were low, similar to what he found on the April 25, 2014 visit. No flies were noticed in the barn.
18. Mr. Zabek further testified that he observed a light film of dust on the barbecue and patio table at the respondent’s residence which is directly south of the barn. He said he found a heavier dust level on the complainants’ furniture.
19. The issue of the colour of the dust was raised by the complainant, Ms. Gilbert, during the hearing and the KP panel was recalled to testify on the issue. Mr. Zabek stated that he remembered yellow dust at the complainants’ property but he did not

discern a colour of the dust at the Heppell property. He had observed yellow dust at other poultry barns but said pollen could also be a source of yellow dust.

20. The KPs' first report sets out that light winds in the area are primarily from west to east with approximately 18% of the predominant winds from south to north. Wind would affect the design of mitigation options. The complainants advised the KPs that most odours came in light or no wind conditions.
21. The KP report sets out that during the site visit there were little to no winds and fans were running minimally. They detected two whiffs of odour, one when at the west end of the complainant's property line a short time after a fan stopped running, which they concluded was likely carried by overland flow of air, and one whiff close to the complainants' home, carried by a light wind or overland flow of air.
22. The KPs noted that there were no snow-fencing screens in place. Mr. Heppell acknowledged to the KPs that he was not presently compliant with the terms of the 2005 Agreement. He explained that he had installed snow fencing screens but, due to the wet soil conditions, the posts rotted off and the screens fell over. He had also installed hoods as per the agreement but they had been removed to undertake maintenance and to build a lock-block style wall along part of the property line. The KPs' view was that the farm was operating according to industry practices, similar to those commonly observed on other poultry farms in the lower mainland.
23. The KPs explained that although a local government variance situated the barn closer to the Heppell property line than in most similar farms, the large separation between the barn and the complainants' house (due to the right-of-way and the intervening property) made it unlikely that the variance had a significant impact on the severity of dust and odour experienced by the complainants.
24. The KPs first report included a series of recommendations for the panel to consider should the panel find that the farm was operating outside of normal farm practices.
25. Mr. Zabek testified his second visit to the barn showed no additional levels of dust or odour than the first visit. The birds were older and he expected the dust and odour in the barn to have increased but they had not. No ammonia smell was present and visibility while inside the barn, from the front to back of the barn, was good. No flies were seen in the barn.
26. Ms. Foyle testified that there is normally a certain amount of dust in the air, which is carried by the wind.
27. Ms. Foyle further testified that walls were normally not used to deflect dust from exhaust fans, and fan hoods would reduce air speed and deflect exhausted air to the ground, essentially stopping it. She said that not all poultry barns have hooded fans, and the hoods on larger fans may require custom manufacturing, as mentioned in the first report when she said Mr. Heppell was investigating having such hoods

custom-built. She observed that the odour on the respondent farm was low. She stated that the odour was not pungent and there was no ammonia smell as the litter was dry. She noted that there was a low level of dust compared to similar farms.

28. The KPs concluded that this was a well-run poultry farm. No flies were observed on the turkey farm. The KPs have seen farms with many neighbours like this large lot agriculture/residential area, and some with few neighbours.

COMPLAINANTS' EVIDENCE AND SUBMISSIONS

Vince Johnson

29. The complainants relied on the evidence of Mr. Johnson, a realtor who currently acts for the complainants' neighbour. He has 25 years of experience and is a licensed associate broker working primarily in the Fraser Valley, Delta, Abbotsford, Chilliwack areas with rural and agriculture properties accounting for 15-20 per cent of his business. He testified that odour can affect a transaction either by taking longer to sell a property or reducing the price obtained for a property.
30. Mr. Johnson attended the KP visit on April 25, 2014 and detected odour from the Heppell farm. He testified that there was no odour when the fans were running but about ten seconds after the fans shut off, he noticed the odour and it was not pleasant. He stated that he smelled the same smell later-near the complainants' sundeck. He also said that he saw yellow dust in a lot of places on the complainants' property but he stated that in April, the yellow dust could have been pollen. He said he did not notice other sources of dust or odour or flies on the complainants' property or neighbouring properties. He did mention that he noticed a horse on the neighbour's property.

Shirley Gilbert

31. The complainant, Ms. Gilbert, testified that the dust and odour became a problem for her after the new Heppell barn was built in 2002. She stated that the negotiated resolution of the complaint (2005 Agreement) was never satisfactory. She would now like to have a permanent solution and seeks to have the fans moved to the west side of the barn, to have hoods placed on all fans, to have closure of all east side openings, and to have a cedar hedge planted.
32. Ms. Gilbert expressed her view that although she was not happy with the agreed mitigation factors in 2005, she felt she and Mr. Huber (as well as Mr. Heppell) were honour-bound to the terms of the 2005 Agreement and she assumed that Mr. Heppell was living up to his obligations. She said that it was when the vegetation was removed in 2013 from the right-of-way between the farm and the adjacent property that she realized that many of those agreed-upon mitigation measures were not in place, and she became upset and initiated this complaint.

33. Ms. Gilbert understood that, while she provided materials from her 2005 complaint for background information, this was new complaint to be decided on its own merits. Ms. Gilbert stated that she has not been happy with the dust and odour since 2005 even though some of the measures recommended in the KP report prepared by Mr. Chipperfield and which formed part of the 2005 Agreement were implemented.
34. Included in Ms. Gilbert's documents was a copy of her June 5, 2008 letter to BCFIRB in response to its survey of satisfaction where she stated that the 2005 recommendations when implemented did little to decrease the problem. Two of the three recommendations were no longer in practice. She said that the screens in front of the 48-inch fans were removed or on the ground and the cedar hedge that had been planted on the neighbour's property had since died. She thought BCFIRB should do follow-up site visits after a signed agreement to ensure compliance as well as sending twice-yearly questionnaires for two years to monitor compliance and measure results. She said this was necessary as some areas were not visible to the complainants. Enforcement is needed after the agreement. She felt the entire process was a waste of time and money.
35. The complainants' January 21, 2014 Notice of Complaint outlined the elements of the 2005 Agreement which were not presently in place, namely, no screens in front of two exhaust fans, no 36" fan hoods and no shelterbelt planted.
36. The complainants' documents also included many photographs of fans and dirt on the barn. Extensive historic temperature and environmental charts were also included in the documents.
37. Ms. Gilbert testified about the fans and reported that two fans had hoods at one time but those hoods were gone by January 2014. The last known time that those hoods were in place was February 2005.
38. She testified the colour of staining around certain fans and the volume of staining around certain fans was significant as degree and colour of staining was, in her opinion, indicative of fan use with or without a hood.
39. Ms. Gilbert testified that the volume of yellow dust on her vehicle was apparent even after a hard rain, and that yellow dust could be seen in a photograph of the turkey barn's roof taken in 2005. She did not explain the significance of the yellow dust.
40. Ms. Gilbert testified that the smell was bad enough that they cannot open their doors or windows nor use their back patio. She said that she and her husband see dust in the air and a fine yellow dust clings to their home's windows and siding. She commented that she once detected the odour from the farm in Campbell Valley Park 0.7 km away down a hillside and through thick underbrush. She stated that she can often smell the respondent farm 10 properties away from her home.

41. Ms. Gilbert spent considerable time describing the cycles each fan was on and the length of each cycle, as well as the wind conditions and the outside temperatures. She had kept detailed records. She provided proof of outside temperatures. She confirmed her understanding that the outside temperatures were the controlling factor in the operation of the fans.
42. Ms. Gilbert testified that the dust particles and the odour she complained of could not be explained through any other means than the turkey farm.
43. Ms. Gilbert explained that because the complainants are not an adjacent neighbour, they were not notified of the Heppell application for a variance in 2002 and she was not otherwise aware of it at the time.
44. Ms. Gilbert acknowledged that right now, all but two fans on the east side are hooded and that they have noticed an improvement in dust and odour but that the odour depends on the weather and is hard to quantify.
45. Ms. Gilbert maintains that the dust and odour is from the farm and has impacted her enjoyment of her property and dust and odour hang over her property. She confirmed the triggering event for this complaint was that on a dry day in January 2014, her husband saw dust in the air and, the brush having been removed from the adjacent property, she was able to see that the hoods had been removed. This was “the straw that broke the camel’s back.”

RESPONDENT’S EVIDENCE AND SUBMISSIONS

Darryl Zbeetnoff

46. The respondent relied on the evidence of Mr. Zbeetnoff, who has provided consultant services to the BC agricultural sector since 1988. He is a Planning Advisor, assisting farmers to complete Environmental Farm Plans (EFPs). His credentials include Master of Agricultural Economics and Farm Management (MSc); Professional Agrologist (P.Ag), and Certified Agricultural Consultant (CAC) of the Canadian Consulting Agrologists Association (CAC).
47. Mr. Zbeetnoff said that when he prepared an environmental farm plan workbook on the Heppell farm, he concluded that the farm operated “within the law”. The only thing that could not be given a complete positive mark on his report was on the issue of unacceptable odours solely because this current complaint is outstanding.
48. Mr. Zbeetnoff said that he did not notice any dust at the Heppell farm when he visited the property in May 2014 and only a slight poultry smell. He said that odours cannot be eliminated completely from livestock barns and that well-run barns smell less than ones not as well run.

49. Although the 2005 and 2014 KP reports both recommended buffers – either vegetative or solid fencing – to control odour and dust, Mr. Zbeetnoff testified that while he has seen buffers used for privacy or trespass prevention, it is uncommon to see them used for other reasons. The buffers were a negotiated remedy agreed to by Heppell and Huber/Gilbert in 2005. In his view, solid barriers could block airflow and inhibit drying inside the barn. A berm or buffer could be effective on the complainant's property as it is not practical to place a berm and hedge on the Heppell property because of the short setback from the property line and poor drainage in that area which would likely cause any trees planted to die.
50. Mr. Zbeetnoff said that he witnessed two fans running on his visit (both without hoods) coming on and off for 30 seconds to 3 minutes and found no dust and low odour.
51. Mr. Zbeetnoff said when fans are hooded, they are less efficient and may run harder. Although it is common to see all fans hooded, he has also seen similar farms with no hoods. He said the fans are properly located and although they could equally be on the other side of the barn, they are on the east side and his Environmental Farm Plan deals with the existing structure and he feels the location of fans is manageable. The fans are directing discharge between the Heppell farm and the setback, the same type of space he has seen in other poultry barns. He said the complainants' property is a significant distance away, with 122 metres between the residence and the barn.
52. Mr. Zbeetnoff described the 2005 Agreement was one of appeasement, not one done as part of a farm plan. He also noted that the 2005 Agreement did not contain a finding that the Heppell farm operation was not being conducted in accordance with normal farm practices.

Frank Curtis

53. The respondent relied on the evidence of Mr. Curtis, a farmer and employee of feed company Richie Smith Inc. As a feed representative, Mr. Curtis said he has been on numerous poultry operations in BC.
54. Mr. Curtis testified he went to the Heppell farm on June 2, 2014 and went into the stage 2 barn and observed a very clean barn with virtually no dust in the air or on equipment. He took a video which was entered as Exhibit 9. He stated that he has been in other barns with flies but he saw no flies at the Heppell farm and smelled no ammonia. Of all turkey barns and all poultry barns he has been in, he said that this barn is in the top 10 per cent in managing bird space, cleanliness, air quality, equipment, and litter management. He testified that a huge part of fly and odour control is litter management and this litter was dry, which is optimal.

Steve Heppell

55. Mr. Heppell testified that he purchased the respondent farm in 1994 but had been farming since 1988. He said he has always raised flocks of 9500 birds every sixteen weeks. His production has not changed but his barn now has all three stages of bird growth under one roof. He explained that when his original barn burned down in 2002, he built one larger barn able to accommodate all stages of his turkey operation. He said that, given the topography of the property, it was advantageous to build as far to the north as possible. This resulted in the southerly extent of the barn being 200 feet further north than previously, which, in the view of Mr. Heppell, reduced the exposure of the Huber/Gilbert property to odours and emissions.
56. Mr. Heppell testified that his parcel of land is long and narrow so he applied for a variance for a set-back of 25 feet from the east property line to build the new barn. There is a road allowance adjacent to-part of his property along its east side. That allowance is landlocked, which he said was a consideration in the granting of the variance. He said the setback requirement was originally 50 feet and he was allowed a variance for 25 feet from the east property line which, in addition to the 33 foot road allowance, meant there is a 58 foot setback to the nearest neighbour's property boundary at that point. He said his new barn is 80 feet wide and 800 feet long. Mr. Heppell stated that the new barn has better air and manure handling abilities, minimizing exposure to the elements and the resulting impact on neighbors.
57. Mr. Heppell testified that he was not happy with the 2005 Agreement and felt pressured to sign it. He denies operating his farm outside of normal farm practices or that there was any issue with dust and odour from the barn.
58. With respect to the complaints about dust, Mr. Heppell said that he gets substantial dust and pollen at his own house as they live in a heavily treed area. He said it is unlikely the dust at his residence comes from the barn or from trucks coming into his property. He argues that the complainants have not proven that the dust disturbance they allege comes from his farm.
59. Mr. Heppell acknowledged that he has many neighbours and said that he has invested extra time and money to minimize his farm's impact on them.
60. Mr. Heppell testified that the dust and odour are worse when the barn is at capacity, as it was during the second KP visit. He pointed out that the KP's report indicates that conditions in the barn were excellent, with minimal dust and odour, at the time of the second visit. Mr. Heppell explained that dust is at its worst in stage 2, odour at its worst in stage 3.

61. Mr. Heppell stressed that his underlying concern in every decision he made about placement and size and operation of fans was the welfare of the birds and to give them the best environment possible without dust, odour and ammonia. He said that a healthy environment gives healthy birds.
62. Mr. Heppell explained that he has timers on fans and humidity sensors to influence the venting requirements and that he monitors CO₂ to maintain an optimum environment for the birds. He said that outside temperature influences the inside temperature but that the computers monitor inside temperature and adjust the vents and fan operation accordingly. He believes the best environment for the turkeys equates to the best environment for his neighbours as both require the least amount of dust and odour. He stated that the vents manage heat but also CO₂ and humidity, as 80 per cent of what the birds drink is eliminated by them and the fans help to remove the moisture and keep the litter dry. He said that drier barns equate with less odour. He also said that turkeys do not scratch like chickens so turkey barns have less dust.
63. Mr. Heppell does not dispute the complainants' photos of missing hoods and screens. In 2013, he had removed some hood covers so they would not get damaged while he was building his retaining wall. He said the area was then too wet in the fall to replace those hoods and he intended to replace them this spring, which he did. He testified that he was going to test a snow-deflection device before he installs hoods on the 48 inch fans. He indicated that a big issue for him is that the snow is very wet and heavy. It is necessary to protect his investment as falling snow would damage the large hoods which protrude from the side of the building.
64. He explained that the poles supporting the screens rotted due to wet ground and that some hoods on the smaller fans were removed for building the retaining wall. He says the dust observed on the outside of the barn is 12 years old as it has never been washed. He also stated that he was willing to put hoods on the remaining fans once his snow deflection system is tested. He advised that the 36 inch fans are hooded. He disputes the complainants' claim that they can feel the air movement from his fans at their west property line because of the distance between the Gilbert/Huber property and his barn.
65. Mr. Heppell explained that his new venting system runs the two largest fans on timed intervals for air circulation, and all other fans as needed for temperature regulation. He acknowledged making an error in his documents when he provided information relating to the operation of the fans and air movement for June to September 2013. He inadvertently stated that he was using the new fan system (described above) at a time when he was still using the old system where smaller fans did most of the work, with sequential fans operating as needed and emergency fans available for temperature control. He testified that there is a combination of factors that determine which fans get turned on when, and how often. Regardless, the inside temperature and air quality govern the use of the fans for the birds' welfare.

66. Mr. Heppell said that he positioned the fans on the east side of the barn due to biosecurity considerations. The west side is where the barn is accessed so deposited material from the fans would be tracked back into the barn.

ANALYSIS AND DECISION

67. The evidence from Ms. Gilbert was that she is not bothered by the sight of the Heppell barn but when the vegetation was in place, she could not monitor Mr. Heppell's compliance with the terms of the 2005 Agreement. In 2013, when the vegetation was removed, she was able to see that Mr. Heppell was not in compliance with various elements of the Agreement. Ms. Gilbert said that she was not satisfied that the previous BCFIRB process had given them the relief that she and her husband sought but they felt bound by the terms of the Agreement. She said she assumed Mr. Heppell felt the same. Once she realized he was no longer in compliance, she filed her complaint. She claims she has lost enjoyment and value in her property and that she has the right *not* to be negatively impacted by the farm. She felt betrayed by Mr. Heppell and pointed to the mistakes in his documents (on which she relied) as being deliberately misleading, and she said he got caught in a lie. She said his information is of no value due to errors and that she had relied on it to present her case. She provided ample evidence that outside temperatures did not reach the thresholds required to start the fans, yet the fans were seen running. She believed that Mr. Heppell minimized his fan operation during the KP visits so there would be lower emissions from the barn. She claimed he blatantly disregarded her complaints and BCFIRB. She now wants a permanent solution to her complaints.
68. Mr. Heppell said that the issue at this hearing is whether any dust and odour coming from his farm are a result of normal farm practice. He pointed out that the evidence from the KPs was that the odour was only a few whiffs and did not last long, and that the dust source was not readily apparent. Mr. Heppell relied on the evidence of the KP Mr. Zabek, who said the litter was dry, odour was low, the dust was low, and visibility was good when he looked 265 feet across the barn. As well, Mr. Curtis said the farm was in the top ten per cent of poultry farms and Mr. Johnson spent 45 minutes outside the complainants' residence and only noticed the odour twice. Accordingly, Mr. Heppell asked for the case to be dismissed based on the evidence.
69. It is unfortunate that the complainants believe that the fans are set to operate according to the outside temperature rather than, as is actually the case, the inside temperature. As a result, her observations that the fans come on prior to the outside temperature reaching a threshold number are not relevant as it is the inside temperature, which is monitored by sensors, that has reached the threshold number, Ms. Gilbert believes the respondent has lied to her and this panel. The panel does not agree with this conclusion which is based on her misunderstanding.

70. It is also unfortunate that the complainant believes it was only when the brush was cleared that she first became aware that the respondent had not complied with the terms of the written agreement. Her belief and testimony were not supported by her own evidence, namely her 2008 survey response when she stated that two of the three recommendations were no longer in practice. She wrote that the screens in front of the 48-inch fans were removed or on the ground and the cedar hedge had since died. She said that she thought BCFIRB should do follow-up site visits after a signed agreement to ensure compliance.
71. The complainants are also mistaken in their belief that they have a right not to be negatively impacted by odour or dust coming from the respondent's farm. The law offers no such protection. In fact, the law says that farmers have a right to farm in B.C. provided they use normal farm practices. The panel has no choice but to dismiss a complaint if it is found that the farmer is following normal farm practices, regardless of the disturbance experienced by the complainants.
72. Under section 3 of 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 BCFIRB for a determination as to whether the disturbance results from a normal farm practice. If a panel of BCFIRB is of the opinion that the odour, noise, dust, or other disturbance results from a normal farm practice, the complaint is dismissed. If the panel determines that the practice is not a normal farm practice, the panel must order the farmer to cease or modify the practice causing the disturbance.
73. A complaint under the *Act* involves a two-step analysis.
74. The first part of the test is whether the complainants have established that they are aggrieved by the odour and dust coming from a farm operation conducted as part of a farm business.
75. The complainants stated that they are aggrieved by the dust and odour from the turkey farm. Ms. Gilbert detailed the dust clinging to her home's siding, and settling on her patio furniture and on her vehicles, deep enough to permit her to write in the dust. She detailed the odour as being strong enough to prevent her from opening her doors or windows and not being able to use her patio.
76. The panel finds that the complainants are aggrieved by odour coming from the respondent farm.
77. With respect to dust, the panel does not accept the complainants' argument that in absence of another obvious source, the respondent's farm must be the source of the dust. Based on the evidence of the KPs, the panel finds that while the farm is not the main source of the dust in the neighbourhood, it does contribute some dust, and as such, the panel finds that the complainants have met the threshold of demonstrating that they are aggrieved by dust from the respondent farm.

78. Having concluded that the complainants are aggrieved by odour and, to some degree, dust, the panel must then determine if, at the time of this complaint, the complained of disturbances resulted from a farm operation being conducted in accordance with normal farm practice. It is important to note that the analysis involves not only an examination of industry practices followed by similar farms under similar circumstances but also includes an evaluation of the context out of which the complaint arises. This evaluation may include factors such as the farm's proximity to neighbours and the use of their lands, geographical or meteorological features (such as prevailing winds), other types of farming in the area, and the size and type of operation that is the subject of the complaint.

79. Section 1 of the *Act* 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).

80. The KPs testified that there was little odour and dust coming from the turkey farm on either site visit. They described the farm as a tidy and well-kept; in-barn dust was low; flies were not observed. Feed company representative, Mr. Curtis, described the respondent farm as being in the top 10 per cent of farms he has visited in managing bird space, cleanliness, air quality, equipment, and litter management.

81. The respondent said he operates within normal farm practices and that there is no evidence his farm creates the dust complained of and that in every decision he made about placement, size and operation of fans his consideration was the welfare of the birds in order to give the best environment possible without dust and odour and ammonia. He said a healthy environment gives healthy birds.

82. The panel finds that the evidence is that the respondent farm followed normal farm practices with respect to its odour and dust management. The distance between the farm and the complainants' property was greater than is often the case with farms and adjoining properties. The farm's use of fans is consistent with normal farm practice and has the desired effect of creating a clean, relatively dry, low-odour barn with adequate ventilation and temperature for the health and welfare of the turkeys. The KPs had the opportunity to observe the dust levels in the barn at the time during the production cycle when dust levels are the highest and they found the dust levels in the barn were low. Further, they did not think dust from the barn was a major source of the dust (especially yellow dust) accumulating on the complainants' property.

83. The evidence given in the hearing was that some farms use fan hoods and some do not. Given this evidence, we conclude that it is an acceptable practice for a barn to be configured either with or without hoods. Contextual factors such as proximity of neighbours and prevailing winds or topography may influence the decision of whether hoods are necessary for a particular barn. In this case, there was no suggestion that contextual factors were such that fans were in fact required on this barn. The distance between the respondent farm and the complainants' property was greater than is often the case with farms and adjoining properties.
84. With respect to fans, the panel heard much from the complainant about her belief that fans are set to operate according to the outside temperature and her observations that the respondent's fans were coming on prior to the outside temperature reaching the threshold number and as such operating longer than they should. On this point, the panel accepts the evidence of Mr. Heppell that the fans are set to operate according to the inside temperature of the barns and that in this case, the fans are operating in a manner consistent with normal farm practice.
85. The complainant argued that the respondent farm needs to install a wall or vegetative hedge to be consistent with normal farm practice. The panel disagrees. The evidence from the KPs was that it was not a common practice to install a wall or a vegetative hedge between the barn fans and the property line. Further, given the magnitude of the disturbance complained of and the contextual factors (proximity of neighbours, prevailing winds), there is no basis upon which the panel could find it normal farm practice for Mr. Heppell to install a wall or a vegetative hedge on the east side of his barn.
86. The panel finds that the respondent farm operation was conducted in accordance with normal farm practice, based on the evidence presented. In fact, the evidence showed that the farm was conducted with high standards and in Mr. Curtis' words was in the top 10 per cent of farms that he has visited.
87. The complainants argued that they have a right not to be negatively impacted by odour or dust coming from the respondent's farm. They are mistaken. The conclusion that the respondent farm operates in a manner consistent with normal farm practice does not mean that the farm operates without odour or dust.
88. In this case, the panel is satisfied that the odour and dust arising in the course of the farm operations on the respondent farm result from normal farm practices. The panel finds that, in all respects, the farm was conducted in accordance with normal farm practices. The panel therefore cannot issue an order but does suggest, since the respondent expressed his willingness to install hoods on the two 48" fans once he tests a snow deflection device, that he do so to possibly further reduce dust and odour.

ORDER

89. The panel finds that the odour and dust arising in the course of the farm operations on the respondent farm to be a result of normal farm practices. Section 6 of the *Act* provides that a panel must dismiss a complaint if the panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice.

90. The complaint is dismissed.

Dated at Victoria, British Columbia this 15th day of August, 2014

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member



John Les, Chair



Diane Fillmore, Member