

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

BETWEEN:

PAUL HARRISON

COMPLAINANT

AND:

MYKALB HOLDINGS LTD.

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board

Ron Bertrand, Presiding Member
Andy Dolberg, Member
Diane Fillmore, Member

For the Complainant

Paul Harrison

For the Respondent

Arne Mykle

Date of Hearing

December 10-11, 2012

Place of Hearing

Abbotsford, 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. If, after 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 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.
3. The respondent, Mykalb Holdings Ltd. (Mykalb), operates a poultry farm in Langley, British Columbia. The principals of Mykalb are Arne Mykle and Brian Mykle. The farm raises chickens from the newly hatched chick stage to fully grown birds that are then marketed for meat. The farm is located in the Agricultural Land Reserve on land that is zoned agricultural and is approximately 8 hectares in size. Prior to farming at the subject location, Arne Mykle operated a poultry farm in Surrey and he has been in the poultry production business since 1959.
4. The complainant, Paul Harrison, lives on an approximately 4 hectare property that is located immediately to the north of the Mykalb property. In addition to the Harrison residence, the site is used as an equestrian facility for boarding and training horses.
5. Mr. Harrison and his wife, Janet Harrison, have lived at the subject location since 1987. They have conducted various horse related activities since moving to the site that have included raising and training race horses and boarding pleasure horses. Since May 2011 they assert that they have been aggrieved by odour from the Mykalb operation.
6. Mykalb purchased the property in question in December 2009 and, for the following 17 months, carried out the activities necessary to construct 2 barns, each 72 ft. wide by 480 ft. long oriented in a north-south direction, with a separation distance between the barns of 50 ft. The first birds were placed in the new barns in May 2011. The farm produces 84,000 birds per cycle.
7. Mr. Harrison submitted a complaint to BCFIRB which was received on January 31, 2012 alleging that the odour from the Mykalb operation was not as a result of normal farm practice.

8. BCFIRB engaged knowledgeable persons under s. 4 of the *Act* to provide advice on the issues in the complaint. The knowledgeable persons visited the site, prepared a report and testified at the hearing.
9. The parties with the assistance of BCFIRB, entered into a settlement process pursuant to s. 4 of the *Act*. After this process was unsuccessful the complaint was referred to this Panel for hearing.
10. The complaint was heard in Abbotsford on December 10 and 11, 2012. Prior to commencement of the hearing, on December 10, the panel viewed both the complainant's and respondent's properties in order to be able to visualize the two properties when hearing the complaint.

ISSUE

11. Does the odour from the respondent's poultry operation result from normal farm practice?

KNOWLEDGEABLE PERSONS

12. The knowledgeable persons, Mark Robbins, P.Ag., Bert van Daltsen, P.Eng. and Dr. Bill Cox, DVM were qualified by the panel as experts in various aspects of poultry production. They testified as a panel at the hearing.
13. Mr. Robbins is a Regional Agrologist (Abbotsford, Langley) with the B.C. Ministry of Agriculture. He is a registered agrologist, holds a B.Sc. Agriculture degree (livestock production) from the University of British Columbia (UBC), and a MBA from Simon Fraser University (SFU) and a MA (economics) from SFU. In his time with the Ministry of Agriculture, Mr. Robbins served for 8 years as the horse industry specialist before becoming a regional agrologist. He also operates a small specialty chicken and turkey farm in Abbotsford.
14. Mr. van Daltsen is the manager of the Strengthening Farming Program with the B.C. Ministry of Agriculture. He has a Bachelor of Applied Science (Agricultural Engineering) from UBC. He has worked for the Ministry of Agriculture as a Regional Engineer, Mechanization Engineer and Manager of the Strengthening Farming Program. During this time he worked on design of farm structures for a wide range of agricultural commodities, farm mechanization issues, farm practice complaints and land use planning. As Manager of the Strengthening Farming Program, he is responsible for the Ministry's farm practice complaint handling program and planning for agriculture program at the local government plans and bylaws level.
15. Dr. Cox is the poultry veterinarian with the Animal Health Branch of the B.C. Ministry of Agriculture. He has a DVM from the Western College of

Veterinary Medicine and a Post Graduate diploma in Pathology from the Ontario Veterinary College. Prior to joining the Ministry of Agriculture in 2007, he was in poultry practice for close to 15 years.

16. The knowledgeable persons visited the site on April 24 and June 1, 2012 and Mr. Robbins also conducted random drive by “sniff” tests. Their findings and observations were summarized in their report that was presented as evidence at the hearing. The following paragraphs contain some of the key points in the report.
17. A new batch of chicks was placed 2 days after the initial visit which provided an opportunity to analyze a full production cycle in an effort to identify factors that may correlate to the odour incidents at the Harrison home. The analysis involved: the Harrisons recording the date, time and intensity of odours, the Mykles recording the date, time and intensity of odours, an installation of a weather station that provided continual information on wind speed, wind direction, wind gusts and temperature.
18. The knowledgeable persons attempted to determine the source of any odour and then to develop recommendations to ameliorate that odour. On the June 1 visit (day 37 of the production cycle when birds are near maturity and the potential for odour emanating from the barn fans is at its highest), they stood 150 ft. east of barn #2 (the eastern most barn) and could detect little or no odour. They concluded that the exhaust from the cross ventilation fans is unlikely to be the source of complaints at the Harrison residence. They based their conclusion on the following:
 - The Harrison home is farther from the broiler barn than recommended in all guidelines reviewed by the knowledgeable persons;
 - The barn exhaust from the cross ventilation fans must travel uphill to reach the Harrison residence;
 - Under wind conditions strong enough to carry the barn exhaust to the Harrison home, the exhaust will be dispersed quicker (likely before it reaches the Harrison home);
 - Under low wind conditions, the odour will follow topography and flow south away from the Harrison property; and
 - The wind seldom blew from the WSW, SW or SSW; about 5% of the time during the observation period.
19. The knowledgeable persons then turned their attention to the 52 in. tunnel fans located at the north end of the barns and which exhaust high volumes of air onto the north part of the Mykalb property and which then, depending on the circumstances, could move onto the Harrison property. These fans, which are a relatively new technology, are used as part of a temperature control system to prevent in-barn temperatures from rising too high during warm days. The report states that data collected during the study period

suggest that the noticeable odour that reaches the Harrison residence is coming from the tunnel fans. Exhaust from these fans is pushed onto the back portion of the Harrison property and, when climatic conditions are favourable, the odour drifts to the Harrison residence. In their opinion, this happens at a relatively low frequency.

20. The knowledgeable persons recommended that the Mykalb farm install a solid buffer (dense row of 5 ft. spaced cedar hedging) at the top of the bank from the west side 50 ft. south of the northwest end of barn #1 around the north end and down the east side of Barn #2 until the bank meets the level grade. This is to create a chimney effect in an effort to direct exhaust from the tunnel fans upwards and create more turbulence and as a result more dilution and dispersion. They further recommended that the Harrisons plant vegetation in a way to intercept air flowing from the west and northwest portion of their property. Finally, they recommended that, to ensure the Harrisons are aware of the days there may be an odour event and to reduce the potential impact of those odour events, Mykalb provide the Harrisons with their production schedule for the full year so the Harrisons will know well in advance of when the potential for odour events are highest.
21. Their report notes that the Ministry of Agriculture is currently studying the effectiveness of different types of buffers to reduce the impacts of fan exhaust from broiler operations.
22. Under cross examination from Mr. Harrison, Mr. van Dalfsen stated that the volume of air from fans larger than 36 in. is too great to allow hoods to be installed. Therefore, the recommendation was made to install a cedar hedge to increase dilution and dispersion. They expect that any odour would be greatest at the north end of the barns on the Mykalb property, followed by the Harrisons' horse track and then to a lesser degree at the Harrison residence.
23. With respect to the sniff tests, Mr. Harrison questioned why they were not conducted on his property and during the morning and evening when there was more of an odour problem instead of during the day. Mr. Robbins indicated that the tests were conducted to get a very coarse sense of how far the odour was travelling.
24. In response to questions from Mr. Mykle, Dr. Cox testified that dust buildup at the base of fan hoods could result in accumulation of viruses and/or bacteria resulting in biosecurity concerns.
25. Mr. Mykle asked Mr. van Dalfsen about the efficacy of a proposed misting system that he plans to install over the exhaust from the tunnel fans. Mr. van Dalfsen responded that the knowledgeable persons did not notice dust as an

issue but indicated that misters could reduce any dust and it was worth the effort to experiment with such a system.

26. In response to a question regarding barn orientation from Mr. Harrison, Mr. Robbins explained that a North/South orientation provides for better temperature control inside the barn than an East/West orientation would. With respect to the tunnel fans exhausting to the north, it was noted this was the logical approach because the land topography had a bank north of the barns to provide a chimney effect for the exhaust air. Dr. Cox testified that switching the tunnel fan system so the exhaust is directed south would not be feasible as the barns have been constructed with the service area on the south side and a complete change in barn configuration would be required.
27. The knowledgeable persons also testified that, in their opinions, the Mykalb farm was being operated in accordance with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances.
28. At the request of the panel, Mr. van Daltsen returned to the hearing to respond to questions from the panel. He testified that fan hoods are used to shield fans from outside wind pressure and to deflect dust particles 50 microns or larger to the ground. Mr. van Daltsen would not expect the 50 micron or larger particles to travel to the Harrison property so hoods would not serve any purpose. Hoods do not cause smaller particles to settle out and, therefore, the odour carried by these particles is not reduced by hoods.

COMPLAINANT'S CASE

29. Mr. Harrison submits that the odour became an invasive issue on their property in May 2011 and has continued to be an unacceptable nuisance to the present. The odour is overwhelming and has caused them to cease much of their horse operation and curtail many other outside activities.
30. Mr. Harrison expressed the view that the Mykalb farm is not operating in accordance with normal farm practice because there are no hoods on the cross ventilation fans, there is inadequate vegetative buffering adjacent to the fans and the large tunnel fans discharge exhaust air onto their property.
31. Mr. Harrison submitted as evidence a number of fact sheets and information bulletins from the Ministry of Agriculture that recommended the use of hoods on all ventilation fans to ensure that dust and feathers leaving with the exhausted air are directed towards the ground. In addition, the Ministry documents recommend establishing and maintaining vegetative hedges to intercept dust.

32. Mr. Harrison called a number of witnesses. Rita Ferrero testified that she keeps horses adjacent to a poultry operation that has hoods on exhaust fans. She has only detected odour from that operation when the barns are being cleaned out. She visits the Harrison farm less often than in previous years because the Harrisons are holding fewer outdoor events due to the odour from the Mykalb operation.
33. Gary Jacques, who lives immediately to the north of the Harrison property, testified that during 75% of the year the winds come from a south westerly direction that bring odours from the Mykalb farm to the residences north and east of the barns; namely the Harrison residence and the Jacques residence. He stated that the other chicken farm in the area has hoods on fans and directs the exhaust to the area between the barns, not away from the barns as is the case with the Mykalb farm. He stated that he can detect odour from the Mykalb farm about half of the days of the year.
34. Joyce Grognet has lived on the Harrison property for 14 years. She testified that there were no odour issues in the neighbourhood prior to the Mykalb farm commencing operation. Since then there has been quite a lot of odour. On many occasions, she must go indoors to escape the odour. The odour is worse in the summer months. The last odour event for her was in October of 2012. Ms. Grognet testified that the odour is not a problem for a few days after birds are shipped, then it starts up again.
35. Jeannie Jacques has lived on the property to the north of the Harrison property for 9 years. She testified that the only odour detected by her prior to the Mykalb farm coming into operation was once a year when manure was spread on a nearby field by another farm. Now there is odour 4 to 5 days per week. The odour is of sufficient strength to cause her to do less outside. There is often odour inside the house and she routinely lights scented candles to mask the odour before going to bed in the evening.
36. Shannon Jacques, who lives on the property north of the Harrisons, testified that there are poultry farms near the horse barn where she works. She has never smelled odour from these barns. Odour from the Mykalb barns, although sporadic, can be detected 12 months of the year.
37. Janet Harrison testified that she has lived on the property for 25 years and has had a horse business there for 21 of those years. She stated that they began downsizing their horse operation, starting more than 4 years ago (before the Mykalb farm came into operation). Due to the odour from the Mykalb farm, they are continuing to downsize their horse operation because of the limited amount of time that they can spend outdoors. They now do very little outdoor entertaining and must regularly go indoors to escape the odour. The odour has ruined a lot of their lifestyle. She is of the view that the period of time used by the knowledgeable persons for their study was

not a good measure of the prevailing wind directions. It is her view that the wind is from the southwest 70% of the time.

38. Mr. Harrison insists that the air on his property stinks due to the proximity of the Mykalb farm. This contention is supported by his witnesses. In previous BCFIRB decisions, farmers have been required to meet a threshold of care with respect to the impact of their farm operations on their neighbours before they can be found in compliance with normal farm practice. It is the position of Mr. Harrison that this threshold of care has not been met by the Mykalb farm.
39. Mr. Harrison is of the view that BCFIRB should find that the Mykalb farm does not operate in accordance with normal farm practice and that the farm should be ordered to: relocate the large tunnel fans so that they discharge air away from the Harrison property, install hoods on all fans and establish vegetative buffers close to all fans.

RESPONDENT'S CASE

40. Arne Mykle presented the respondent's case. He testified that the Mykalb property is within the Agricultural Land Reserve and has been zoned RU3 by the Township of Langley which permits poultry farming as a land use. The barns have been located as far south as possible and well to the west side of the property. The barns are approximately 762 ft. away from the Harrison residence.
41. Mr. Mykle entered as evidence copies of various documents indicating that the farm had been audited and certified under the BC Poultry Biosecurity Program, the Safe, Safer, Safest food safety program conducted by the Chicken Farmers of Canada, the Animal Care Program also conducted by the Chicken Farmers of Canada and the Environmental Farm Plan Program. He pointed to written statements on the certification documents such as "farm and paperwork are immaculate! Totally compliant and up to date!" and "Farm and paperwork in great order – fully compliant, up to date and complete. A pleasure to audit!" According to Mr. Mykle, these documents and statements indicate that the Mykalb farm is being operated at the highest standard.
42. Mr. Mykle drew the attention of the panel to a copy of a notice provided to neighbours indicating when birds would be placed in the barns and when birds would be shipped. This was one of the recommendations in the knowledgeable persons' report and was intended to allow neighbours to know when the potential for odour would be low and when the potential would be higher.

43. Also based on recommendations contained in the knowledgeable persons' report, Mr. Mykle indicated that an additional row of cedar trees has recently been planted on the berm, closer to the tunnel ventilation exhaust, to further intercept and filter exhaust from the tunnel fans. This is expected to enhance the chimney effect noted in the knowledgeable persons' report. The berm on which the new cedars were planted was also raised an additional five feet, which is expected to further add to this effect.
44. Mr. Mykle, in response to a question from the panel, indicated that there will be odour from a poultry operation. He testified that odour events have been experienced by Brian Mykle, his son, who has a house on the property. However, Brian and his wife continue to entertain outdoors. He indicated that, during a 56 day production cycle, there are approximately 37 days when there will be little or no odour because there are either no birds in the barns or the birds are small and produce a low level of odour in a well-managed barn.
45. Brian Mykle was called as a witness. He testified that, although no landscape buffer was required by the Township of Langley at the time they issued the building permit to construct the Mykalb barns, a cedar hedge buffer was established in 2011 north of the barns. The spacing at time of planting was 5 ft. from stem to stem and approximately 2 ft. from the tips of the branches. Since that time, the trees have grown to a point where the branches touch. Trees were not planted along the entire east or west sides of the barns because the ventilation fans on the sides of the barns are not close to neighbouring properties.
46. Brian Mykle testified that there is another poultry farm across 248th street to the east of the Mykalb and Harrison properties. He has smelled odour from that farm from time to time. Regardless of odour issues from either poultry farm, Mr. Mykle has held 2 outdoor functions in the past year; one with 60 to 70 people in attendance. He received no complaints from any of the guests about odour.
47. Mr. Mykle disputed testimony from one of the Harrison witnesses that an odour event, attributed to the Mykalb farm, had occurred about two weeks ago. At that time, there were no birds in the barns and no fans in operation. He estimated that two and a half months have passed since the last odour event could have occurred. This is because during a portion of that time, there were no birds in the barns, and for the remainder of the time, the birds were too young to create significant odour and there was low or no use of tunnel fans.
48. Gary Lepp was called as a witness by Mr. Mykle. He testified that he has over 30 years of experience in the poultry industry, including 24 years as a producer and the past 10 years working for Lilydale (a poultry processing

firm). Sixty poultry producers ship their product to Lilydale and he has visited all of the farms on a number of occasions and has entered all of the barns on these farms. In his opinion, the Mykalb farm is operated in accordance with industry standards. Between April 26 and June 5, 2012, Mr. Lepp visited the Mykalb property every Friday to work on lighting issues in the barns. He found the Mykalb operation was run with good husbandry skills. He stated that there is a close relationship between chicken quality and barn conditions. The product from Mykalb has been consistently good over many years.

49. Under cross examination from Mr. Harrison, Gary Lepp estimated that 50% of the farms shipping birds to Lilydale have hoods on ventilation fans. He further estimated that 5 recently constructed facilities in addition to the Mykalb farm use tunnel ventilation. He indicated that tunnel fans lead to improved bird health because of the ability to regulate temperature on warm days. Approximately 25% of the barns that he visits have been renovated to install some form of tunnel ventilation. On narrow barns he has seen that tunnel fans exhaust out the side of barns but has only seen end installation on wide barns such as those on the Mykalb farm.
50. Dr. Ralph Hopkins testified at the request of Mr. Mykle. He has been a poultry veterinarian since 1983 and visits poultry farms on a regular basis. Between April and June of 2012, he visited the Mykalb farm to make observations throughout the growing period. Observations included: listening to the noises coming from the birds, smelling the air in the barn, checking the ventilation, determining the adequacy of space in the barn to ensure the birds had ready access to feed and water, and evaluating bird health in general. His conclusion was that the Mykalb farm was operating within industry standards. He also evaluated the odour intensity within the barns. He found that the ventilation of the barn was excellent. He indicated that he is particularly sensitive to ammonia. In his view, the ammonia levels were not a problem and he did not detect any amounts that made him uncomfortable. The moisture content of litter is a key indicator of ammonia. He found the level to be between 10 and 15% throughout the time that birds were in the barns. This is within the range that is desirable for keeping ammonia at low levels. He estimated that there are 240 days during the year when there should be no or a low level of odour emanating from the barns due to birds being either absent from the barns or at a young age.
51. Under cross examination, Dr. Hopkins indicated that one of the main purposes of ventilation is to remove moisture from barns so that the litter stays dry. He did acknowledge that there would be some odour in this ventilated air.
52. Annetta Breure lives on the east side of 248th Street directly to the east of the Mykalb property. She is the mother-in-law of Brian Mykle. She testified

that she was contacted by Janet Harrison prior to the subject property being purchased by Mykalb. She was queried about the use that was intended for the property should it be purchased. According to Annetta Breure, Janet Harrison stated that she would fight until the bitter end to prevent chicken barns from being built on the property.

53. In response to a question from the panel, Ms. Breure stated that, from time to time, she does smell odour from the Mykalb farm and the other poultry operation in the area. However, it is not at a level that bothers her. She went on to state that this is farming country.

ANALYSIS AND DECISION

54. A complaint under the *Act* involves a two-step analysis. The first step involves standing; a complainant must establish that they are aggrieved by the odour, noise, dust or other disturbance that is the subject of the complaint.
55. The complaint from Mr. Harrison is that the odour is of such intensity that it limits the use and enjoyment of their property.
56. The testimony before the panel with respect to odour duration and intensity is not consistent. There is testimony that there are odour events 4 to 5 days every week and that the odour events occur every month of the year. There is other testimony that there can be no odour of any significance for over 240 days of the year because during those days there are no birds in the barns, the birds are of a young age or the tunnel fans are not in operation. Clearly, statements that odour events occur every week and statements that for over 240 days of the year there can be no significant odour cannot both be correct.
57. The panel also heard inconsistent evidence on the prevailing direction of the wind. The knowledgeable persons found in their study that the winds blew from the WSW, SW or SSW about 5% of the time. Mr. Jacques and Mrs. Harrison testified that during 70% to 75% of the year the winds come from a south westerly direction. Although this is a significant difference, the question before the panel is whether or not the Harrisons are aggrieved by odour from the Mykalb operation. Regardless of this inconsistent testimony, the panel does accept that, from time to time, odour from the Mykalb farm travels onto the Harrison property and that the Harrisons are aggrieved by the odour. The complainant has satisfied the first step of establishing that he is aggrieved.
58. 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.

59. 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).

60. 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. The analysis involves an examination of industry practices but also includes an evaluation of the context out of which the complaint arises. This evaluation may include factors such as the proximity of neighbours, the 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.

61. Testimony and evidence from the knowledgeable persons, Gary Lepp and Dr. Hopkins is that the Mykalb farm is designed, located and operated in a manner consistent with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances. Further, the Mykalb farm has been audited under biosecurity, food safety, animal welfare and environmental farm plan programs and has been certified by all of these programs.

62. Mr. Harrison has asked the panel to find that the Mykalb farm is not being operated in accordance with normal farm practices and has asked that the panel order the farm to install hoods on all fans, establish vegetative buffers adjacent to all fans and relocate the tunnel fans to exhaust away from the Harrison property.

63. It is clear from evidence before the panel that it is common and accepted practice for fan hoods to be installed and for fan hoods not to be installed on poultry barns in the province. One of the reasons for installing hoods, according to Mr. van Daltsen, is to deflect particles of 50 microns or larger to the ground. Since, in his view, such particles would not travel from the Mykalb farm to the Harrison property for the reasons outlined at para 18, installation of hoods would not be expected to reduce odour from the Mykalb barns even if they were installed. Accordingly, the panel finds that this farm not installing hoods on the cross ventilation fans complies with normal farm practices.

64. Further, the knowledgeable persons report concludes that the side ventilation fans are likely not the source of the odour, and, if there is odour, under low wind conditions the odour would not flow to the north east due to topography and under higher wind conditions there would be significant dispersion of odour before the air reaches the Harrison residence.. There was no evidence placed before the panel to suggest that any additional vegetative buffering adjacent to the side ventilation fans would mitigate odours reaching the Harrison residence.
65. Testimony at the hearing was that use of tunnel fans is a relatively new practice employed by poultry operations in the province. Section 1 of the Act states that normal farm practice “includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices”. Use of the tunnel fan system to ameliorate temperature stress on the birds and improve productivity accords with advanced farm management practices. Therefore, the panel accepts that use of tunnel fans is in accordance with normal farm practices. That being said, Mr. Harrison has asked that the panel order Mykalb to install hoods on all fans. Testimony from Mr. van Dalfsen states that, because of the high volume of air exhausted by the tunnel fans, hoods cannot be installed on fans with a diameter greater than 36 in. The panel accepts this evidence and concludes that not installing hoods on these 52 in. tunnel fans accords with normal farm practice.
66. The panel notes a previous BCFIRB panel’s comments on the need for farmers to consider the impact of their farm operations on their neighbours. In the decision of [*Eason v. Outlander Poultry Farms Ltd., March 10, 2000*](#), the panel stated:
69. 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 has been difficult, in the sense that these circumstances are quite unique ... Nevertheless, implicit in the test ... is the existence of practices showing some threshold of consideration for one’s neighbours.
70. In our opinion, it is not proper and accepted practice for farmers ... to conduct farm operations in such a fashion so as to expose their neighbours to invasive and overwhelming odours, as arise in this case, without taking reasonable steps aimed at mitigating those effects.
67. Mr. Harrison asserts that this threshold of consideration has not been met by the Mykalb farm.
68. Consistent with the comments in the *Eason* decision, normal farm practice must include considering the impacts of one’s farm operations on neighbours and taking reasonable steps to mitigate disturbances resulting

from the farm operations. The panel views the following steps taken by the Mykalb farm as mitigative measures:

- siting the barns as far south as possible and on the western side of the property, away from the Harrison residence,
- installing a berm and planting a cedar hedge, in 2011, between the tunnel fans and the Harrison property,
- planting an additional cedar hedge closer to the tunnel ventilation exhaust to create a chimney effect, as recommended in the knowledgeable persons' report,
- advising the neighbours of the Mykalb production schedule so they know in advance when the potential for odour events is at its highest, and
- demonstrating a willingness to experiment with new abatement systems (e.g. Mykalb is planning to install an experimental misting system for the air being discharged from the tunnel fans).

69. The panel's decision is that the Mykalb farm has met the threshold of consideration specified in the *Eason* decision.
70. The panel also takes note of the recommendation in the knowledgeable persons' report that the Harrisons plant vegetative buffer strips to intercept air flowing from the west and northwest portion of their property so as to further mitigate the potential for odour to be an issue for them. Mr. Harrison testified that he should not have to incur costs to implement mitigative measures because their property is not the cause of the odour. The panel emphasizes that the Harrisons are living in a farming area and, therefore, will be affected from time to time by noise, dust, odour and other disturbances emanating from the farming practices of farms in their neighbourhood; even when those practices are normal and consistent with industry standards. Although farmers have a duty to farm according to normal farm practices, neighbours should consider implementing measures on their own properties to lessen the impacts of disturbances that are of concern to them.
71. The panel finds that the Mykalb farm is being operated in accordance with normal farm practices. Section 6 (1) of the *Act* states that the panel must "dismiss the complaint if the panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice". Accordingly the complaint is dismissed.

OTHER COMMENTS

- 72. Although the panel found that the Mykalb operation is being operated according to normal farm practices, it is still important to emphasize the need for the Mykalb operation and all farming operations to be sensitive to the impact of their practices on their neighbours. All farmers need to stay abreast of research and development work being done with the goal of finding better ways to farm. When new and better practices have been developed that reduce impacts on neighbours, it is important for farmers to consider the feasibility of adopting such practices on their farms. With respect to the issue in question, the panel has noted that further work is being undertaken by the Ministry of Agriculture to study different types of buffers to reduce the impact of exhaust from tunnel fan systems. The panel encourages Mykalb, and the poultry industry in general, to stay abreast of the work being done on this issue and to adopt any relevant recommendations flowing from this work.

- 73. It is also important to emphasize that everyone who chooses to live in a farming area should, from time to time, expect to encounter noise, dust, odour or other disturbances emanating from farming practices. Where a disturbance becomes an issue for someone living next to farming, it is important to take a cooperative and conciliatory approach to attempting to resolve the issue. Respectful communication and a willingness to share in the actions needed to resolve the issue will go a long way to finding a solution that both sides in a dispute can live with.

Dated at Victoria, British Columbia this 30th day of January, 2013.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Ron Bertrand, Presiding Member



Andy Dolberg, Member



Diane Fillmore, Member