



September 11, 2003

File: 00-03

DELIVERED BY FAX

Mr. & Mrs. Stuart Mitchell
[address]

Mr. & Mrs. A.J. Van Maren
[address]

Dear Sirs/Mesdames:

**THE OPERATION OF A DUCK FARM LOCATED ON BANFORD ROAD,
CHILLIWACK, BC**

As Vice Chair of the Farm Practices Board (the "FPB"), I have had the opportunity to review the package of material relating to the operation of a duck farm at 9231 Banford Road, Chilliwack, BC, forwarded by Jim Collins, Manager, Dispute Resolution Services of the FPB, in his letter dated August 27, 2003.

A few observations can be made. There was a prior FPB complaint involving the former owner of the duck farm.¹ This complaint did not proceed to hearing as the parties (the Mitchells and Allan Huttema, the prior owner of the duck farm) entered into a settlement agreement whereby Mr. Huttema agreed to modify certain farm practices to lessen the impact of odours from the duck farm on the surrounding areas. These modifications included switching from a liquid manure management system to a dry litter system and improving the handling of mortalities and manure. Despite a period of time where odour concerns were lessened and the modifications appeared to be successful, it has been suggested that Mr. Huttema appears to have relaxed his management practices and odour problems resumed. Mr. Huttema sold the farm to Mr. and Mrs. A.J. Van Maren, the present owners, on January 31, 2003.

According to Mr. and Mrs. Mitchell odour problems persist. They allege that throughout 2003, they have continued to be bothered by odours. They, who are dairy farmers, describe the odour when present as a "stench" and a "not normal farm smell". It can last anywhere from a few minutes to twelve hours. Mrs. Mitchell kept a "smell diary" from June 1, 2003 to August 19, 2003. The diary records significant odours (greater than 6 on a smell scale of 10) at varying

¹ There is correspondence relating to complaints about the Chilliwack duck farm going back to 2000.

times throughout the day for approximately 18 times in June, 10 times in July and 10 times up to August 19. Other neighbours also report odour problems. Numerous visitors, including trades people, employees, relatives and friends, have written letters on the Mitchells' behalf confirming that they too have experienced significant duck odours while at the Mitchell home.

Mr. Van Maren and his father Bernie Van Maren challenge the *bona fides* of the Mitchells' ongoing complaints. They allege that after purchasing the farm, the Van Marens made a number of improvements to the barns, including a new roof, improved ventilation, shifting the one remaining wet barn (used for breeders) to a dry system, adding a misting system to reduce temperature and in turn reduce odour, and reducing the breeder flock size per barn from 2900 to 1900. Mr. Van Maren denies that his farm produces strong odours and believes that the Mitchells are coercing and manipulating other neighbours into expressing concerns. Nearby neighbours, Ken Huttema and Laverne Grigg have stated that they have no concerns with the duck operation. It is stated that MLA John Les frequently walks by the duck farm and has advised Bernie Van Maren that any odour he has smelled has been barely discernible.

Based on my review of the submissions of both parties, I direct as follows:

- a) If Mr. and Mrs. Mitchell wish to pursue this matter, they must initiate a new complaint under the *Farm Practices Protection (Right to Farm) Act* (the "*Act*"). The Legislature, not the Board, has determined that every complaint requires a filing fee: s. 3(2)(c) of the *Act*. The settlement agreement specifically states that: "[t]he Complainants agree that the signing of this Memorandum of Settlement constitutes a withdrawal of their Complaint". The settlement agreement thus terminated the previous complaint. Furthermore, there is a new farm owner, who was not a signatory to that agreement. Clearly, any additional complaint is a "new" complaint requiring a new filing fee.
- b) Any complaint will proceed on the basis of whether the disturbance complained of, namely odour and mortality management, results from normal farm practice.
- c) Given the lengthy history involving this farm operation and the FPB, the FPB will not provide any further facilitation or mediation services to resolve the complaint, should it be filed. The complaint will proceed directly to hearing.
- d) The FPB reserves the right to obtain the advice of persons who are knowledgeable about normal farm practices to assist in resolving this complaint.
- e) Subject to the submissions of the parties, the issues in this dispute are well known. As such the matter could be scheduled for hearing in the near future; a maximum of two days should be sufficient to hear the arguments of both parties.
- f) The FPB will conduct a pre-hearing conference to ensure that the issues, grounds for complaint and any potential witnesses are identified.

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Any questions regarding the foregoing may be addressed to Mr. Collins. Given the FPB's very busy fall schedule, the Complainants are encouraged to finalise their complaint by sending in the requisite fee expeditiously so that a hearing can be scheduled as soon as possible.

FARM PRACTICES BOARD
Per

(Original signed by)

Christine J. Elsaesser
Vice Chair