

IN THE MATTER OF THE  
*FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT*, RSBC 1996, c. 131  
AND IN THE MATTER OF TWO COMPLAINTS OF ODOURS,  
BIRDS, RODENTS, FLIES, AND  
NOISE FROM PROPANE CANNONS AND OTHER NOISE DEVICES ON A MINK  
FUR FARM IN LANGLEY, BRITISH COLUMBIA

**BETWEEN:**

MARGARET ORMSTON  
ALLAN CROSS

**COMPLAINANTS**

**AND:**

DOGWOOD FUR FARMS LTD.

**RESPONDENT**

**AND:**

BC MINK PRODUCERS' ASSOCIATION

**INTERVENER**

**DECISION**

**APPEARANCES:**

For the British Columbia  
Farm Industry Review Board:

Suzanne K. Wiltshire, Presiding Member  
Andreas Dolberg, Member  
Carrie H. Manarin, Member

For the Complainants:

Margaret Ormston  
Allan Cross

For the Respondent:

Kurt Bernemann

For the Intervener:  
BC Mink Producers' Association:

Terry Engebretson

Date of Hearing:  
Place of Hearing:

February 26 and 27, and April 23, 2013  
Abbotsford, British Columbia

## **INTRODUCTION**

1. The respondent, Dogwood Fur Farms Ltd. (Dogwood), operates a mink farm in the Agricultural Land Reserve (“ALR”) in the Township of Langley, British Columbia.
2. The complainant, Allan Cross, resides immediately to the south of one of the farm’s sites and to the southeast and across the road from the main production site. Mr. Cross has resided on his property and has operated a large broiler hatching egg farm for 20 years. Mr. Cross built a new home on his property which he moved into approximately 3 years ago.
3. The complainant, Margaret Ormston, resides to the south of Mr. Cross (her property is separated from his by 5 other properties) and approximately one half of a mile from the farm’s two sites. She has lived on her property for approximately 24 years.
4. The Ormston complaint was received by the British Columbia Farm Industry Review Board (BCFIRB) on March 7, 2012 and alleges that she is disturbed by odours, nuisance birds (seagulls and crows), flies, and noise from propane cannons and screechers resulting from the respondent farm operations, including its manure management.
5. The Cross complaint was received by BCFIRB on March 29, 2012 and alleges that he is disturbed by odours, nuisance birds (seagulls and crows), rodents, flies, escaped mink, and noise from propane cannons resulting from the respondent farm operations, including its manure management and the siting of new mink barns on the farm’s east site.
6. The BC Mink Producers’ Association applied for and was granted limited intervener status to make oral and written submissions at the hearing.
7. The two complaints were heard together in Abbotsford, British Columbia on February 26 and 27, 2013 and on April 23, 2013.

## **ISSUES**

8.
  - (a) Is the complainant, Margaret Ormston, aggrieved by odours, an increased presence of flies and birds (crows and seagulls) and noise from propane cannons and screechers from the Dogwood farm operations?
  - (b) If so, do the odours, increase in flies and birds and noise result from normal farm practices?
9.
  - (a) Is the complainant, Allan Cross, aggrieved by odours, pests (flies, crows, seagulls, rodents and escaped mink) and noise from propane cannons from the Dogwood farm operations?
  - (b) If so, do the odours, identified pests and noise result from normal farm practices?

## KNOWLEDGEABLE PERSONS

10. BCFIRB retained the knowledgeable persons named below pursuant to section 4 of the *Farm Practices Protection (Right to Farm) Act*, RSBC 1996, c. 131 (*FPPA*). The knowledgeable persons conducted a site visit to each complainant's property as well as to the respondent farm on May 24, 2012. They then prepared a report respecting the farm's management practices. In accordance with the terms of engagement for knowledgeable persons, their report was provided to the complainants and respondent shortly after its completion on July 26, 2012. The report was entered as evidence at the hearing and the knowledgeable persons were called as witnesses at the hearing:
  - Mark Robbins P.Ag. is a Regional Agrologist with the B.C. Ministry of Agriculture (Ministry). He holds a B.Sc. in Agriculture (livestock production), an M.B.A. and an M.A. (economics). Before becoming a regional agrologist he acted as the Ministry's horse industry specialist for 8 years. He also operates a small specialty chicken and turkey farm. Mr. Robbins was qualified as an expert entitled to give opinion evidence in the areas of animal and livestock production.
  - Bert Van Daltsen is the manager of the Strengthening Farming Program with the Ministry. He holds a B. App. Sc. (Agricultural Engineering). He is currently responsible for the Ministry's farm practices concerns handling program and planning for agriculture program at the local government plans and bylaws level. He has also worked with the Ministry as a Regional Engineer and Mechanization Engineer on the design of farm structures for a wide range of agricultural commodities and farm mechanization issues. Mr. Van Daltsen was qualified as an expert entitled to give opinion evidence in the areas of animal and livestock housing and ventilation and the use of various bird scare devices and techniques.
  - Dr. Daniel Schwartz is a veterinarian with the Canadian Food Inspection Agency. He led the development of mink and beef national bio-security guides and has also worked with a number of bio-security initiatives in the poultry industry. He was qualified as an expert entitled to give opinion evidence in the area of mink production.
11. Mr. Robbins, Mr. Van Daltsen and Dr. Schwartz (the "expert panel") gave oral evidence at the hearing; Mr. Robbins and Mr. Van Daltsen attended in person while Dr. Schwartz participated via conference call.

### *Farm Operations*

12. In their report, the expert panel describes the respondent farm as being 100 acres in total, comprised of two parcels of land in Langley, B.C. One parcel is approximately 60 acres (the "west site") and the second parcel is located directly across the road and is approximately 40 acres in size (the "east site").

13. The farm is a family owned business operated by Kurt Bernemann who is the general manager. The farm operation was started by Mr. Bernemann's parents in 1958 (at another location) and moved in 1980 to the current west site.
14. The farm's main operations are conducted on the west site. Twenty breeder and grow-out sheds were built shortly after the farm moved to this new site and are 10 feet wide with cages on either side of a centre aisle. In the mid-nineties, two 40 foot wide barns were built and several new sheds have been constructed more recently. There is also a feed production facility, a composting and manure storage facility, a pelting facility, mechanical and supply storage sheds, an office and a number of other outbuildings. The farm purchased the east site in 2004 and began building 12 mink grow-out barns on it in 2011. These sheds are 20 feet wide with higher roofs, fewer posts and built in ridge ventilation. There are also fields on both sites for spreading manure and compost. The farm has a flock of sheep which graze the fields and utilize the forage production from the farm and also keep grass down between the mink barns.
15. Mink farming follows the annual mink reproductive cycle. The mink are bred in early March and the females bear on average 5 to 7 kits in late-April to early May. In July, the kits are weaned and moved into grow-out pens in pairs and breeders are moved into breeder pens. The mink pelts are harvested in late October and November. Following the pelting process, the mink sheds undergo a cleaning and disinfecting process and the cycle starts again. The objective of mink farming is to produce good pelts and this requires good animal health and welfare.
16. The expert panel indicated that there are 213 mink fur farms in Canada and that approximately 13 of them are in British Columbia. The respondent farm falls within the top 10% by size of producers in British Columbia. It keeps 14,500 breeder females which results in approximately 75,000 mink for grow out and pelting each year.

#### **Food Source and Preparation:**

17. The mink are fed a high protein diet comprised of waste fish and poultry products, cooked eggs, grains and minerals. Mr. Bernemann advised the expert panel that raw products are ground up the same day as they are delivered to the farm site, and are either fed immediately or frozen for later use. Feeding time occurs primarily once per day: late afternoon in the winter and early afternoon in the summer. The feed is a ground up paste that is put on top of the mink cages. The mink pull the feed through the wire mesh and any feed that they drop falls to the ground below.
18. The expert panel confirmed the type of feed used on the farm, and the method of its preparation and distribution to mink are typical of the mink industry as a whole. They noted however that on most mink farms animal products used for feed are usually delivered in an enclosed vessel or tote but that in the case of this farm, fish waste was primarily delivered in a dump truck that was not fully covered or enclosed when waiting for grinding. Consequently, the expert panel recommended that the farm consider having

the feed material delivered in closed vessels to limit the potential access of birds to the raw feed products prior to grinding.

### **Manure/Waste Handling:**

19. When kits are born, false bottoms and extra bedding are added to the pens so that no manure or feed falls to the ground. As the mink do not react well to stress during this whelping phase (6 – 8 weeks), they cannot be disturbed by manure removal. Consequently, manure is not removed from under the cages until after weaning in mid-July when the false bottoms are removed and breeder mink are returned to the standard cages. Mr. Bernemann reported that after that, during the production or ‘grow out’ phase, manure is removed every 10 days.
20. The floors of the respondent farm’s sheds are hard packed ground with gravel and the sheds have overhangs to protect the manure from rain which the expert panel indicated is typical of other mink farms. Because driving rain can be a challenge, the newer sheds have been designed with larger roof overhangs to help keep the manure under the pens drier.
21. With the increased number of animals, there is a steady increase from April to November in the volume of food being fed as well as the volume of manure and urine (or biomass) produced, with the heaviest amount produced prior to pelting in late October to early November. This in turn increases the potential for odour and flies. At the time of their site visit, the expert panel noted little odour but observed that their visit occurred at a time when the kits were still with their mothers and therefore the quantity of biomass was at much lower levels than it would be at other times of the year.
22. Manure removed from under the cages is spread on the fields after forage has been cut or the fields have been grazed by the flock of sheep kept on the farm. Mr. Bernemann advised the expert panel that seagulls were attracted to the raw manure spread on the fields. He also reported that when there is too much manure to spread, the manure is stored in a covered composting shed with a cement pad. The expert panel noted that there is a release of odours when the piles are turned and that the farm covers the piles with a layer of shavings to reduce odours. As well, the farm is investigating other land for spreading excess manure and opportunities to move excess manure off the farm site.
23. According to Mr. Bernemann prior to 2005, the farm shipped carcasses off site to a processor. However, after that local processors would no longer take carcasses and the cost of sending them to a processor in Alberta went up sharply so many mink farms began composting carcasses. At harvest, the extra mink manure and some shavings (to reduce odours) were mixed with the carcasses. This practice continued up to and including 2011. In 2012, all carcasses were removed off site.
24. The expert panel concluded that the manure management practices on the farm are similar to those used on other mink farms. The industry standard and recommended practice is to allow manure accumulation in the whelping box during the whelping phase

and then to remove the manure every 14 days during the grow-out phase. The expert panel also noted that the majority of mink producers spread raw or partially composted manure on crops, with any excess stored for later application or trucked off site. They observed the farm's practice of storing excess manure under cover and on a cement pad was better practice than that on other mink farms. The expert panel confirmed that given the difficulties with other disposal methods over the past seven to ten years, composting mink carcasses on-site became more common. While not as common anymore, the expert panel's view was that the composting of carcasses on mink farms is a normal farm practice nationally.

25. The expert panel concluded that the farm's manure management practices are typical and some aspects exceed those used generally throughout the mink industry. The expert panel recommended that to enhance its practices, the farm could compost the manure for a few weeks before spreading on the fields, noting that high enough temperatures would kill any fly larvae and compost any feed material which in part is attracting the seagulls as well as reduce odours when spread.
26. The expert panel also noted that the farm is in the process of preparing a nutrient management plan to determine if the amount of manure being produced matches the nutrient requirements of the crops it is spread on, so that any excess manure can be spread elsewhere. The expert panel indicated that this would exceed any current standards as a nutrient management plan is not required, few farms in the Fraser Valley utilize them and they were unaware of any other mink farm that had one.

**Fly Control:**

27. During their site visit the expert panel observed a normal number of flies around the mink pens and few flies on the residence on the farm property. During their site visit to the Cross property the expert panel noted that there was an excessive number of flies on that residence and more than were seen on the farm. The expert panel could not account for the lower density of flies on the residence on the east site of the mink farm and the mink barns themselves compared to the high concentration of flies on the Cross residence. Mr. Cross indicated to the expert panel that the fly problem persisted even in the cooler winter months. The expert panel noted that flies do not travel extensively in temperatures below 17 degrees Celsius and therefore in their opinion it was unlikely that flies would have travelled from the mink farm to the Cross property during the cooler months of the year.
28. The expert panel observed that there were many potential sources of flies in the area surrounding the complainants' properties including two poultry operations and several horse farms. The expert panel stated, for example, that blowflies can exist on poultry operations depending on their waste management practices. Consequently, the expert panel stated that it could not conclude that the respondent mink farm was the sole source of flies on the Cross property and recommended that Mr. Cross hire an entomologist with expertise in fly control, to investigate and identify potential sources so that appropriate control measures can be undertaken.

29. The expert panel noted Mrs. Ormston reported a lot of stable flies over the last two to three years which she believed bred in the wet feed on the farm. The expert panel did not observe any flies on the Ormston property during their site visit.
30. Mr. Bernemann advised the expert panel that the mink shed floors are kept as dry as possible to reduce fly breeding areas and that the farm has a regular program of spraying to reduce flies in the summer months. The expert panel confirmed that the fly control program used on the respondent farm is similar to that used on other mink farms.

### **Bird Control:**

31. During their site visit to the farm, the expert panel observed only a few crows on the west site and no seagulls or starlings. Mr. Cross advised them that the crows arrive from the southeast at dusk and land on the mink barns and reverse their direction in the morning. Mr. Cross told the expert panel that he believed the crows' arrival and departure coincided with feeding times on the farm. In relation to the few crows seen during the site visit, Mr. Cross told them he had recently observed a dramatic reduction in the number of crows.
32. The expert panel observed that there is a well-established crow roost (or rookery) less than two kilometres north of the respondent farm where hundreds of crows congregate in the winter and spring months in the evenings. The expert panel testified that while en-route to a rookery crows will take advantage of a food source, however they will remain in the area despite the feeding opportunities due to the existence of the rookery. The expert panel also testified that prior to roosting, crows will congregate at a staging area an hour or two before darkness. The expert panel also testified that it is almost impossible to get crows to change their rookeries and that it must be considered a part of the make-up of the neighbourhood.
33. The expert panel noted that the crows' flight pattern as described by Mr. Cross corresponded with a migratory pattern to the rookery and did not correspond with the feeding times reported by the respondent. Consequently, the expert panel said it could not draw an association between the presence of crows and feeding times on the farm. The expert panel also stated that it was unclear if the respondent's farm management practices have encouraged the crows to use the farm as a staging area or if their presence is a natural phenomenon.
34. The expert panel observed that the mink barns on the farm are open sided structures with roofs. Mr. Bernemann advised the expert panel that the farm has experimented with screens on the sides and gates at the doorways to prevent birds from accessing the mink sheds. In order to exclude the larger birds such as crows and seagulls, a small gauge netting is necessary, however it is problematic in that the screens get covered with fur which restricts the natural air flow through the sheds. As a result, Mr. Bernemann reported that the screens have not been used on all sheds throughout the operation. Mr. Bernemann advised the expert panel that the farm has also tried using mesh covers

on top of some of the pens at the end of the sheds to prevent the birds from accessing mink feed.

35. The expert panel concluded that the design of the mink sheds on the farm was common to mink farms in British Columbia and across Canada. In particular, the expert panel testified that the open-sided design of the mink sheds was commonly used in the industry at this time with closed sided sheds being rare. The expert panel recommended that the farm continue to explore methods to limit bird access to the sheds.
36. The expert panel noted that there are no specific guidelines or Ministry standards for the use of noise bird scare devices on livestock farms but that the respondent farm's use of propane cannons is consistent with the standards developed for berry and grape crops. They observed that in the farm's case the cannons are manually controlled and the farm takes an integrated approach to controlling birds using cannons only when there are large bird populations present on the farm. The expert panel indicated that the farm's use of propane cannons could be a mutual benefit to the farm and neighbours given the high bird pressure from the nearby crow rookery.

**Siting:**

37. The expert panel noted that during their site visit to the Cross property, Mr. Cross stated that he believed the mink sheds on the east site were too close to his residence and that they could have been located further to the back of that property or on the respondent farm's west site. The expert panel had no recommendations regarding siting of the mink barns on the east site but encouraged the farm to continue construction of a berm between the farm property and the Cross residence.

**COMPLAINANTS' EVIDENCE AND SUBMISSIONS**

**A. Margaret Ormston**

**Odours:**

38. Mrs. Ormston stated that for some time she has been subject to strong odours on warm summer evenings that are so intolerable that she cannot be outside. Mrs. Ormston said the odours are not noticeable in the winter time or during the day in the summer months. She believes that the surrounding geography resembles a horseshoe shape (i.e. with a rise in elevation to the east and west and higher elevations to the north of the area where the respondent farm is located). She also testified that the prevailing winds during the day are from the southeast to the northwest and during the evening they are from the north. As a result of these conditions, Mrs. Ormston submits that the cool summer evening air moves down the higher elevations to the north of the farm and is directed southward toward her property.
39. Mrs. Ormston submits that the odours are the result of inadequate manure management practices on the respondent farm. In particular, she submits that the current frequency of



manure removal on the farm is inadequate given that a 1994 Surrey Fur Farm By-Law required weekly removal of manure under pens (except during whelping). She also states that manure is not collected between mid-October and the following spring during which time manure and food waste are allowed to collect under short roof overhangs in the wettest times of the year.

40. Mrs. Ormston also notes that a total of 15,000 to 16,500 mink are housed on seven acres of the farm's property year round and that this grows to 85,000 when the young are born in the spring. She submits that this "density of operation" contributes to the intensity of the odours coming from the farm and is unreasonable given the proximity of the farm to residences. Mrs. Ormston speculates that the farm's employees probably suffer from "olfactory fatigue" (or loss of sense of smell) from constant exposure to the odours and therefore they are unlikely to detect it.
41. Mrs. Ormston testified that there are three large poultry operations to the north, northwest and southwest of her property, a cow-calf operation to the south and large horse farms to the north and east. She claimed, however, that she detects no odour from them and that the odour from the mink farm "is distinctive." She admitted that she has never been on the respondent mink farm.
42. A witness, David Vybiral, testified that his property is located to the north of the farm's east site, abutting the east site on the south. He stated that he detects odours from time to time in the summer months and believes it is from manure spread on the farm's fields. He said he has observed farm employees spreading manure on the fields after the grass has been cut down and believes spreading occurs about once per year.

**Flies:**

43. Mrs. Ormston also claimed that over the past few years she has been bothered by biting flies in her fields and a large number of flies on her house. Mrs. Ormston said she believes the flies are coming from the respondent farm because she has observed full ditches and standing water on the farm after heavy rainfall.
44. Mr. Vybiral testified that he gets flies on his property but that he could not determine their origin. While he has always noticed flies on his property, in the past year there has been a noticeable increase in numbers and the flies also persist in the winter months, which is unusual.

**Birds:**

45. Mrs. Ormston testified that she often sees scavenger birds in the sky throughout the day. Mrs. Ormston said she is aware of a rookery in the area as hundreds of crows fly over her property every day but do not land on her property.
46. Mr. Vybiral testified that he has always had crows and seagulls on his property and has observed that they also stick around for a day or two when manure is spread on the

farm's fields. He stated however, that he is unaware of the origin of the birds as they appear to come from all over. He acknowledged that there was a crow rookery in the area but was unaware of its location.

47. Ms. Ormston submits that due to the mink food dropping to the ground and mixing with manure, it attracts flies and fly larvae which she submits is the reason for the number of scavenger birds and in particular crows on the respondent farm.

**Noise:**

48. Mrs. Ormston testified that during 2011 and much of 2012, she was disturbed by propane cannon noise on a daily basis, throughout the year. She claimed that the noise was so loud at times that she could hear it inside her house; however, the intensity of the noise varied. Mrs. Ormston submits that the geographical nature of the property surrounding the neighbourhood (referred to above) not only amplifies the sound of the propane cannon noise but directs it toward her property.
49. Mrs. Ormston said she believes that in 2011 the cannons were set to fire automatically instead of in response to bird pressure due to the frequency at which they were fired. Ms. Ormston stated that the cannons now only fire on rare occasions and in a single shot.
50. Ms. Ormston also claimed that on one occasion when she was riding a bicycle near the farm, a screecher went off without warning and startled her. She also stated that she has not heard screechers for many months.
51. Mr. Vybiral testified that he has heard the farm's propane cannons for the past 2 to 3 years. Another witness, Allan Robinson, resides on a farm to the south of the farm's west site but separated from it by one other property. Mr. Robinson gave evidence that the volume level of the cannons varies at times and that he only noticed them when they were very loud. He also admitted that he was unable to distinguish between the sound of a propane cannon and a gun being discharged.
52. Mrs. Ormston asks that the respondent farm be ordered to: cease use of cannons or screechers and use only quiet methods of bird control; and manage its waste and manure so as to significantly reduce odour and not attract nuisance birds.

**B. Allan Cross**

**Odours:**

53. Mr. Cross testified that he has smelled strong odours typically in the summer and fall months in the evenings for many years. He said from July to October, he often cannot open his windows at night due to the smell. Mr. Cross said he believes the odours come from manure spread on the fields as well as from the mink themselves because the odour is similar to that of skunk.

54. Mr. Cross further submits that the farm spread manure in a field in the late fall (when no crop is in place to use the nutrients) and that this over-application of manure attracted birds. Mr. Cross referred the panel to 2 photographs that he alleged showed these things. Mr. Cross also referenced the January 12, 2013 report prepared by Dave Melnychuk, P.Ag., (Agrologist report) and entered into evidence by the respondent farm. Mr. Melnychuk is the agrologist assisting the farm with its participation in the Environmental Farm Plan program. Mr. Cross submits that the Agrologist report concludes that due to poor soil, the east site is unsuitable for growing crops and therefore the manure spreading activities of the farm are not a normal farm practice.
55. Mr. Cross submits that the farm's former practice of composting in excess of 80,000 carcasses per year is not manageable or acceptable. The panel notes that in his written submissions, Mr. Cross referred to an uncovered pile of compost on the east site but he did not refer to this in his testimony.

**Flies:**

56. Mr. Cross submits that as early as mid-November of 2011 (prior to the new mink sheds on the east site being occupied) he reported to the farm's representative that there was an increased presence of flies and fly manure on his new residence. Mr. Cross stated that he battles flies year round especially on his residence and especially when it is sunny. He said the flies leave an excessive amount of waste on the residence and that when it is exposed to moisture, it creates mold. Mr. Cross testified that as a result of the excessive fly population on his property, he and his family rarely eat outside.
57. Mr. Cross also testified that while he has not spoken to an entomologist to find out the source of the flies, he believes some of them are blue bottle flies whose primary food source is dead animals and therefore he submits that they are probably attracted to the high protein mink food on the respondent farm.
58. Mr. Cross referred the panel to an undated internet article entitled, "Integrated Fly Control on Mink Ranches" as authority for the proposition that in order to minimize fly populations and increase bio-security, mink farms should consider long-term changes that include enclosing the mink barns.

**Birds:**

59. Mr. Cross submits that a large number of birds are attracted to the respondent farm due to the open sided, unscreened style of the mink barns that give the birds (as well as rodents and flies) access to food and manure. He relies on the January 12, 2013 report prepared by Falcon Bird Control for the farm, which states that nuisance birds "have been visiting the site for many years and have become used to it being a feeding ground." He also relies on the report's statement that "operations of mink farming are such that there is waste food available to birds...[and] the best solution would be to remove the food source". Mr. Cross also relies on the respondent farm's Agrologist report which states that "nuisance birds are attracted to the farm primarily as a source of food".

60. Mr. Cross testified that he sees crows and seagulls in large numbers, throughout the day, every day of the year on his farm or on the respondent farm. He said he is awakened by hundreds of crows at sunrise that stop to roost and feed in trees and on the farm's mink sheds. He referred the panel to photographs he took in 2012 which show large flocks of birds in flight, some seagulls landing on his barn and perching on the unoccupied sheds on the east site, and a few crows pecking at small shrubs in his front yard.
61. Mr. Cross testified that he and his guests have been hit with bird droppings and that he, his family and staff have spent a lot of time cleaning it up. Mr. Cross also claims that birds flying overhead have dropped pieces of feed material onto his property and that crows have destroyed approximately \$6,000 worth of shrubs that he recently planted in his front yard.
62. Mr. Cross submits that the nuisance birds are a potential risk (or vector) to carry diseases to his chicken operation. In particular, he submits that rain washes bird droppings off of the roof of his barn and onto the ground creating a bio-security hazard. Stephanie Nelson, the Acting General Manager of the British Columbia Broiler Hatching Egg Commission testified that wild birds can transmit avian influenza, cholera and other diseases. She stated that all broiler hatching egg farms in the province are inspected annually by an auditor with two comprehensive check lists, one for the BC Poultry Biosecurity Program and one for the sector's on-farm food safety assurance program-Canadian Hatching Egg Quality (CHEQ). Ms. Nelson also testified that in her view a large number of birds or flies inside a broiler hatching egg operation's controlled access zone would not only be an indicator that an effective pest management control program is not in place but would also be a safety risk.
63. Ms. Nelson testified that based on prior inspections, she believes Mr. Cross has been successful in controlling potential nuisances. However, she agreed that photographs showing birds on Mr. Cross' poultry barn would warrant corrective action and that she was not aware of any bird deterrents used by Mr. Cross on his farm.

#### **Rodents and Escaped Mink:**

64. Mr. Cross testified that he has seen escaped mink over the years (i.e. a couple per year) on his farm both at his home and in his poultry barns where they have killed chickens.
65. Mr. Cross also testified the respondent farm allows vegetation to grow near the mink sheds creating a potential habitat for rodents. Mr. Cross submits that according to an internet article from the US Centres for Disease Control, rodents can spread a number of serious diseases including Salmonella to other farms.

**Noise:**

66. Mr. Cross testified that he heard propane cannon fire on a year round basis commencing in late 2010 up to November of 2012 and again in mid-February 2013. He claimed that as a trained and licensed firearm user, he can differentiate between the sound of a propane cannon and a gun. Mr. Cross argues that propane cannons are only supposed to be used to protect crops from bird predation and therefore it is not normal farm practice for the farm to be using them.

**Siting:**

67. Mr. Cross submits that the mink barns on the farm's east site are located too close to his residence. He alleges that the farm deliberately located them there "as retribution for speaking against Dogwood's application to the Langley Township Board of Variance" in connection with the recent siting of additional mink sheds on the west site.
68. Mr. Cross states that the Township of Langley's fur farm by-law requires mink farms to be located 300 feet from a road and that this requirement has been in place for 50 years. As a result, he submits that it is common sense, good farm practice and neighbourly to also locate mink sheds 300 feet away from his home. He testified that the distance between his fence line and the mink sheds on the east site is 150 feet.
69. Mr. Cross submits that the proximity of the mink sheds to his residence is not an issue of aesthetics but rather a factor that aggravates the nuisances from the farm. In particular, he submits that the open-sided sheds when occupied, provide flies, rodents and birds free access to feed and manure and that these pests then migrate to his property.
70. Mr. Cross also submits that the east site may be inappropriate for open sided mink sheds given that the farm's Agrologist report concludes that the east site has poor soil and is prone to flooding. To further support this contention, Mr. Cross relies on an undated internet article from the Fur Institute of Canada that states when siting a mink farm consideration should be given to slightly sloping land with good drainage. Mr. Cross referred the panel to some photographs in his book of documents that show pooling of water on the east site. In summary, he submits that given the style of the mink sheds and the high density of the farm's operation, the east site is an unsuitable location for the mink sheds.
71. Mr. Cross seeks the following remedies:
- That the nuisance control of gulls, crows, flies and rodents be dealt with by off- site professionals;
  - That raw mink food components be regulated for handling, storage and delivery and that off-site sales be prohibited;
  - That all compost, manure or waste be shipped off-site at least once per month and be contact covered inside the storage shed;

- That any off-site manure, compost, mortalities or pelts be prohibited from being handled or processed on the farm;
- That fully enclosed, impermeable floored sheds be required;
- That all new sheds on the east site be relocated and that any unpermitted sheds be removed entirely;
- That the farm pay compensation for past and future damage to the Cross home and farm<sup>1</sup>;
- That a full review of the fur farming industry be undertaken and that a system similar to what is in place for the broiler hatching egg industry with respect to auditing compliance with proper farm practices be implemented.

## RESPONDENT'S EVIDENCE AND SUBMISSIONS

72. In the spring of 2012 the farm enrolled in the Environmental Farm Plan program. As previously noted, the respondent farm entered as evidence the Agrologist report prepared in connection with the program. The report addresses agricultural and environmental issues on the farm. The report's author did not attend the hearing to give evidence as a witness.
73. According to that report, the west site is 56 acres in size of which 30 acres are used for pasture and 12 acres are used for buildings. The remaining 14 acres are natural areas unusable for agricultural purposes. The east site is 40 acres in size of which 4 acres are used for mink barns, 16 acres for pasture and the remaining 20 acres are unusable natural areas.

### Frank Candalerio:

74. Frank Candalerio is a senior grader and an employee of 33 years for a fur auction house in Seattle, Washington. He testified that he has visited approximately 200 mink farms located primarily in the United States and British Columbia over the years and is familiar with mink farming operations and in particular, conditions that produce the best pelts. He stated that the respondent farm is a client and that he has visited it approximately seven times per year for the past eight years.
75. Mr. Candalerio testified that compared to other mink farms he has visited, he found the farm's operations were "impressive" and he would rank it 10 on a scale of one to ten for cleanliness of the pens, sheds and grounds, for keeping manure piles and odours down and for organization. He testified that he has never seen rodents or dead, rotting carcasses lying around nor has he seen a "noticeable" amount of flies.
76. Mr. Candalerio stated that in his experience "birds come with the territory" and that what other mink farmers do is to keep areas clean and (depending on local laws) use propane cannons to deter the birds. He believes it is impractical to completely net off sheds due to

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<sup>1</sup> The panel's authority to make orders is limited under section 6(1) of the *FPPA* to ordering a farmer to cease or modify a farm practice. There is no authority under the *FPPA* to award compensation.

the amount of care the mink require (ie. feeding and changing litter) and the resulting traffic this generates through the sheds.

77. Mr. Candalerio also testified that in his experience enclosed mink barns are detrimental to the health of the mink and the mink pelt; he has seen only two such enclosed operations and the mink raised in those conditions were small and unhealthy and their pelts were not of good quality. He testified that mink need access to natural light and gradually changing day length because this is what triggers the breeding instinct and fur growth. He also testified that air flow at the cage level is critical to animal health. Mr. Candalerio claimed that it is as a result of these factors that mink farms use open sided sheds.
78. Mr. Candalerio said it is good farming practice to reduce the number of mink per pen as it reduces stress in the mink which results in more kits per litter, larger mink and fewer fur defects (such as bite marks). He testified that the farm's pelts have received "top lot" awards on many occasions and command higher prices due to their color and quality. He attributed this to the farm's attention to maintaining a healthy environment for the mink.
79. Mr. Candalerio testified that mink have some odour but said he could not smell the mink farm as he approached it from the south on his travels up from Washington State. He explained that his visits would occur at different times of the day. He testified that the only farm odour he noticed on his trips to the respondent farm was from a cattle operation when driving through Lynden, Washington (near the Canada and U.S.A. border).

**Gary Worley:**

80. Gary Worley has been a falconer for the past 40 years and is an expert in the field of bird control. He gave evidence that he was hired by the respondent farm in October 2012 to look into the bird problem on the farm. During his first visit, Mr. Worley testified that he observed 300 – 400 seagulls and in excess of 300 crows.
81. Mr. Worley said he attended the farm from dawn to dusk with his falcon for a continuous period of 20 days to instill in the birds that there was a predator there and that it was not safe. Mr. Worley stated that by the end of the first 20 days, the number of birds had been reduced to approximately 20 – 50 gulls and very few crows each day. He testified that he then attended the farm every other day with a falcon to "keep the birds nervous" and later attended only occasionally. Mr. Worley stated that the farm employees now practice bird control by wearing an orange jacket to simulate the falconer. He advised that the falcons do not fly on wet days and therefore other deterrents such as propane cannons or orchard pistols must also be used as required.
82. Mr. Worley said he believes birds are attracted to the farm because of the mink food and therefore it is important to minimize feeding opportunities. However, he said he does not believe that the farm is the reason the birds are in the area. He testified that there are approximately 20,000 crows that roost in the rookery in the community and most of them fly off to places other than the respondent farm. He has also followed seagulls flying overhead to the Chilliwack landfill site. He estimated between 5,000 and 10,000 seagulls

travel from the Whiterock area to the landfill site every day in the winter months and stop at many places on the way. Mr. Worley also testified that he has observed other potential feeding opportunities for birds near the respondent farm such as a small free-run chicken operation, two other mink farms and large fields across the border in Washington State.

83. Mr. Worley stated that he observed his falcon chase birds from the west site onto Mr. Cross' and neighbouring properties and that this was problematic because he could not gain access to those properties. He also testified that on occasion, he observed a large number of crows on Mr. Cross' barn roof pecking at brown matter coming out of the air vents. He considered it likely that the crows on Mr. Cross' property were pulling out newly planted shrubs to get at insects and worms or were attracted by fertilizer in the disturbed earth. Mr. Worley stated that while he heard shotgun blasts from the Cross property on occasion, he was not aware of any other bird control measures used by Mr. Cross. Mr. Worley said he had not observed much bird activity on Mrs. Ormston's property.
84. Mr. Worley stated that while working on the farm, he had an opportunity to view the entire property, including inside the sheds, and said he never saw any rodents, dead rotting carcasses or flies and did not notice any offensive odours. He also stated that he never saw birds eating from the mink cages.
85. Mr. Worley testified that the farm had incurred expenses of approximately \$20,000 to \$25,000 to date for his falconry services and that falconry services could cost up to \$100,000 for an entire year. He said he was not aware of any other mink farm using falconry for bird control.
86. Mr. Worley said it will not be possible for the respondent farm to get rid of the birds but rather it must control them through a bird control program that includes removing access to food through screening, using propane cannons and orchard pistols, having employees wear an orange jacket to simulate the falconer and using falconry from time to time to keep the birds on edge.
87. Mr. Worley testified that given other potential food sources and perching sites in the area, it would be more effective to move birds out of the area rather than just off of one farm site onto another. He stated that a bird management plan that included a number of area property owners and the municipality would be more effective and cost efficient.

**Jonathan Bernemann:**

88. Jonathan Bernemann, the nephew of Kurt Bernemann, is the farm manager responsible for the day to day operation of the respondent farm. He testified that he has worked on the farm for the past five years and currently resides on the west site with his family. During this time, he received only one complaint from Mr. Cross about an escaped mink. He set a trap and dealt with the matter promptly.



89. Mr. Bernemann stated that the farm's manure management program includes a thorough "clean out program" commencing in mid-July of each year after the mink are moved to grow out cages. He testified that every 10 to 14 days, manure is removed from under the cages and the area is sprayed for fly and maggot control. Also, if time and manpower permit, a "clean out" is also done in late March or early April, after breeding and before the whelping boxes are put in place. He said this system has been in place for a number of years.
90. Mr. Bernemann testified that in the summer months wood shavings are constantly put on the cages and fall to the floor to keep the manure dry and reduce odours. After mid-October, however, when pelting season occurs, he said there is little available manpower to devote to manure removal and the manure piles may accumulate; however, the piles are monitored and if they get too high, are shoved further under the shed so they do not get wet.
91. Mr. Bernemann testified that the manure is spread on the fields after a crop is taken off or the farm's sheep have grazed an area. Manure spreading on a field is done no more than twice in any given season and never in the evening and only rarely on weekends. He acknowledged there was one occasion when a new farm hand accidentally overspread manure but said that this was an isolated incident and staff were instructed so as to prevent a recurrence. Mr. Bernemann said that any excess manure is stored in a manure barn and the farm is working on a manure composting system. Mr. Bernemann confirmed that the farm stopped composting carcasses and resumed shipping them off site in 2012.
92. Mr. Bernemann stated that in response to neighbour complaints about birds, the farm has been experimenting with netting all new mink sheds and some of the older ones. However, the netting cannot be left on all year because fur accumulates in the mesh and restricts air flow which is hazardous to the mink especially in the hot, summer months. Since the mesh is cleaned by burning it with a torch, this cannot be done safely in the summer months when the mink are in their pens and the sheds are surrounded by dry grass.
93. He testified that the netting was effective at keeping out larger birds such as crows and seagulls but not starlings. Consequently, he said the farm continues to experiment with such things as mesh size, netting below the pens and removable screens that would be easier to clean. He said the farm has also experimented with placing mesh covers or lids on the end mink pens and placing food further back on the cages to deter birds from eating the mink food.
94. Mr. Bernemann said the farm has a rodent control program which includes placing rat poison in the sheep barn and the feed prep house. The bait stations are monitored for activity and replaced as necessary. He had not seen any rodents on the farm except in the sheep barn.

95. While he acknowledged that there are flies on the farm, he said neither he nor his family have been bitten by flies. He also explained that dead mink would not be left to rot on the farm as the pelts have value and as a result, any mortalities are frozen until harvest.
96. Mr. Bernemann said that based on his conversations with other mink farmers at mink seminars in Seattle, Washington, he is aware of other farm's practices and believes that the respondent farm's pest control and manure management practices exceed the industry norm.
97. Mr. Bernemann testified that propane cannons were first used on the farm in 2010 and have been used only on the west site. The farm has two propane cannons that are manually controlled by himself, his father or the senior manager of the farm. The cannons are set to fire single shots and are operated on an "as needed basis", normally around mink feeding times, and only if birds are present. The cannons are also moved frequently to avoid having birds become accustomed to them. He stated that neither of the complainants approached him about any concerns they had with the propane cannons. Mr. Bernemann did not believe the cannons had been used since October of 2012, except perhaps for testing purposes. He testified that for bird control, the farm currently employs someone to walk around the farm with an orange vest and a shotgun from 1:00 to 6:00 pm each day and that this is working very well.

**Joseph Williams:**

98. Joseph Williams is employed as a manager on one of his family's mink farms. He is also related to Kurt Bernemann and has a business relationship with the respondent farm. Mr. Williams stated that he is aware of three mink farms in the same area as the respondent farm that have between 85,000 and 90,000 mink but believes that the respondent farm is probably the second largest locally.
99. Mr. Williams recalled that in September 2012, he received a request from a Dutch businessman who wanted to tour a mink farm because he was interested in setting up a mink operation. Williams testified that the respondent farm agreed to allow a tour of the farm on only a few hours notice and he accompanied the man around the whole of the property. On that day, he did not notice any odours and saw only a few flies. He said he also observed two or three crews removing manure and that the site was very clean and the "mink looked really nice."
100. Mr. Williams said he has visited mink farms throughout Canada and the United States and has worked on mink farms in Holland and China. Compared to other mink farms, he would rank the respondent farm an eight or nine out of ten on its overall operations.
101. Mr. Williams stated that on one of his family's farms, netting was installed on the outside of the sheds and the eaves troughs at a great expense to deter birds. He said the farm found the netting to be ineffective because while it kept the larger birds out, starlings could still get inside where they remained in large numbers seeking food, water, shelter and protection from predators. Consequently, he said the nets were cut down and are no

longer used. He also stated that he is unaware of any other mink farm that has bird proofed its entire farm and that while some may have a bird control program, many just use a shotgun.

102. Mr. Williams also testified that he is not aware of any mink farm other than the respondent farm that removes manure every 10 days in the summer months, that has the capacity to store more than a year's accumulation of manure or that has a nutrient management plan.
103. He testified that in order to comply with the new revised Code of Practice for the care and handling of mink<sup>2</sup>, expected to be published in 2013 but still in draft form at the time of the hearing (the "revised Mink Code"), and maintain production levels, most mink farms (including his own) will have to expand by putting in more sheds to make more room for more or larger cages.

**Dan Evans:**

104. Dan Evans is an employee of the respondent farm and has resided on the farm's east site for the past three years with his family. Mr. Evans said he has lived in other farming areas and found that in comparison to the respondent farm there was more of an odour around dairy farms although the number of flies was about the same. He denied that there were odours that smelled like a skunk on the farm. He testified that the prevailing winds (85 – 90% of the time) are from the south to the north and on occasion from the north to the south. He claimed that when the wind blew from the east, he could smell the Cross poultry operation.
105. Mr. Evans said he uses a hot tub outdoors and also entertains guests outdoors on the farm. He denied that he or any of his family members or any other employees had been bitten by flies. He observed that Mr. Cross has had a couple of large social functions outside on his property in the past year.
106. Mr. Evans testified that he is responsible for maintaining and repairing the farm's propane cannons. He said the cannons are operated by management and only fired when a large number of birds are around. He said that the cannons are rarely used anymore given that there is a person who now attends the farm daily with a shotgun for bird control.
107. Mr. Evans said that on February 27, 2013, he tested the loudness of the propane cannons with a decimeter. The loudest reading, taken from 15 feet away, was 90 decibels and was the same reading he got for a diesel pick-up truck driving by. From other locations the sound level was less than that made by a car.

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<sup>2</sup> The revised Mink Code was subsequently finalized and published by Canada Mink Breeders Association and the National Farm Animal Care Council in 2013 as the Code of Practice for the Care and Handling of Farmed Mink.

**Kurt Bernemann:**

108. Kurt Bernemann, the general manager, testified that in 2010 the farm was granted a permit to build sheds on the west site but once building started, the Township of Langley claimed it had made an error. A variance was obtained for two of the four sheds. The issue related to the municipal bylaw requiring fur farms to have a setback from the highway of 300 feet (or approximately 90 metres). Mr. Bernemann said he obtained legal advice which led him to conclude that the Township did not have jurisdiction to enact by-laws in the ALR and he subsequently obtained a determination by the Ministry of Agriculture that the Township's zoning by-law setbacks were too restrictive given that the Ministry set back standard is a maximum of 30 metres for confined livestock areas. He agreed that two of the mink sheds were built without a building permit but submitted that they are not illegally sited given that the farm has made every attempt to stay within regulated setbacks. Mr. Bernemann said the Township denied the farm any further permits for the west site and as a result, he built 12 barns on the east site. As noted in the expert panel's report, in doing so he chose the area of poorest forage production for the location of the barns and with residences on both the north and south sides of the east site and prevailing winds from the south west, it was considered that this more southerly location would result in the least impact on neighbours.
109. Mr. Bernemann submitted that the separation distance between the farm's barns on the east site and the Cross property is reasonable. He stated that in consideration for its neighbours, the farm decided to site the new mink barns on the east site back a further 225 feet from the road for a total of 550 feet (or 168 metres) and 150 feet from Mr. Cross' property line. He stated that although the east site is 2600 feet deep, the new barns were set back as far as they could go given that they need to be elevated for drainage and that there is a drop in elevation at the back of the property.
110. Mr. Bernemann described the location of the mink barns on the east site as ideal for raising mink because it is in a breezy location which provides good air flow. He said that the best mink he has produced have come from this site. The increased air flow also results in drier conditions which would reduce odours and flies.
111. Mr. Bernemann testified that the farm proposed to build a treed berm on the property line of the east site in an attempt to mitigate any odours and asked Mr. Cross for his input but received no response. He noted that there is a berm on the Cross property between the new residence and the poultry barns but was unsure if it was intended to mitigate odours from Mr. Cross' poultry operation.
112. Mr. Bernemann testified that the farm follows recommended fly control measures for mink farms and has the "most aggressive manure removal program in BC." He stated that the vegetation between the sheds (and the pastures) is kept down by the farm's flock of 60 sheep. He also said that the farm takes measures to ensure proper sanitation by keeping feed kitchens, sheds and grounds clean and by immediately removing any mink

mortalities. As well, fly control mechanisms (such as fly traps, sticky tape, etc.) are set up in the feed kitchen and sheds.

113. Mr. Bernemann testified that the farm is also making long term management changes by building sheds on raised ground so that water drains away between the sheds and into a trough channelled away from the property. He said the new sheds were built to accommodate automatic manure removal machinery and the farm now has two of these machines which keep things cleaner. He also stated that the roof overhangs were extended on some sheds in an attempt to keep rain off manure piles. Mr. Bernemann said that as a result of these measures and putting wood shavings on the cages, the droppings under the mink cages are very dry and not a desirable area for flies to reproduce. He further testified that manure piles under the pens are monitored regularly for fly and maggot populations and when found, spot control measures are applied.
114. Mr. Bernemann submitted that storing waste under the pens of fur bearing animals is an accepted method of storage and is permitted under section 10 of the Code of Agricultural Practice for Waste Management (Code) for up to nine months. He also submitted that section 23 of the Code which provides for the disposal of mortalities (or carcasses) by burial or incineration represents accepted practice on mink farms and that the respondent farm has complied with that up to 2011, after which it resumed shipping carcasses off site.
115. Mr. Bernemann stated that although he has been neighbours with Mr. Cross for approximately 20 years, it was not until early 2010 that he became aware that Mr. Cross was disturbed by nuisance birds. Mr. Bernemann argues that Mr. Cross' issue with the birds only arose when he moved into his new residence which has a high roofline on which birds like to roost.
116. Mr. Bernemann disputed Mr. Cross' allegation that birds roosted on the Cross barns waiting for an opportunity to feed. He noted that the barns on the Cross property sit in a low spot which does not give a good view of the fur farm. He also argued that birds do not land on the Cross barns, pointing out that the only photograph provided by Mr. Cross of birds landing on his barns was taken when the falconer chased the birds off of the respondent farm.
117. Mr. Bernemann also submitted that if the scavenger birds on his barns were a bio-security risk to Mr. Cross' poultry operation, it would have been reasonable for Mr. Cross to take measures to deter the birds from roosting on his barns but he has not done so. Mr. Bernemann suggested that the reason Mr. Cross has taken no measures to deter birds and the reason he received no complaints from Mr. Cross about birds in the 18 years prior to 2010 was because the birds do not land in the Cross secure zone.
118. Mr. Bernemann submitted that the farm has no control of birds flying overhead and referred the panel to a number of photographs that he said showed that there were other farms (including another mink farm) within a mile of the respondent farm that attracted large numbers of crows and seagulls.

119. Mr. Bernemann testified that the farm has tried various methods to deter birds including noise devices such as propane cannons, Bird Gards, screechers and guns as well as silent methods such as lasers and falconry. He said the farm is also experimenting with exclusion netting on the entrances into its new sheds and on some of its older sheds in order to keep birds from entering the barns. He said the farm has also experimented with covering the mink food with wire lids and putting food further back on the cages at the end of the sheds to prevent access and to deter birds from attempting to eat it. He testified that the farm has installed custom made doors on the sheds on the east site at a cost of \$7,000 and hired a falconer which while successful, was very expensive.
120. Mr. Bernemann testified that the farm has tried to minimize the impact of noise on its neighbours by operating the cannons manually and only when birds are present. Mr. Bernemann submitted that it was unlikely that Mrs. Ormston was disturbed by odours or noises from the farm given that her property is located approximately one-half of a mile away from the respondent farm and that there are other large farming operations that surround her property that are in closer proximity than the respondent farm.
121. Mr. Bernemann referred to the testimony of Ms. Nelson indicating that commercial poultry barns provide an environment that allows insect and rodent populations to thrive because they have summer like conditions year round and plentiful food sources and hiding spots. He submitted that there are no rodent or fly issues on the respondent farm but rather these are issues that are endemic to poultry operations.
122. Mr. Bernemann testified that the farm has received three complaints from its neighbours about escaped mink in the past five years; while some of the mink were determined to be from the respondent farm, others were not based on their colour.
123. Mr. Bernemann submitted that to be successful, mink cannot be raised in enclosed barns like a chicken operation. Mr. Bernemann referred to clause 1.2 of the Recommended Code of Practice for the Care and Handling of Mink published by Agriculture Canada in 1988 (1988 Mink Code) and in effect at the time of the hearing which states that mink sheds should be designed to provide “clean, airy and sanitary conditions”. He also referred to clause 1.2.3 of the 1988 Mink Code where it states that “mink sheds are normally open sided” and that “mink should be kept in enclosed buildings only if environmental conditions interfere with the natural needs of the mink”. He further referred to a British Columbia Ministry of Agriculture factsheet from October 2004 entitled “Fur Farms” for the proposition that mink farmers require open sided barns and exposure to natural light both for the furring process and for reproduction. Mr. Bernemann submitted that the farm has incorporated these practices since 1957 and “has it down pat as to what works”.
124. Mr. Bernemann submitted that once it is finalized the revised Mink Code will require that pens meet certain minimum size specifications, which will mean that the size of existing pens used to house multiple mink will have to be increased or else the population in the pens will have to decrease. Mr. Bernemann stated that the respondent farm is working to

comply with the anticipated revised Mink Code minimum size specifications by depopulating existing barns, and building new barns to spread the mink over a larger area. He said he believes the farm is a frontrunner in coming into compliance with the revised Mink Code regarding pen size. He acknowledged that for the past three years the farm has also increased the number of breeding females it keeps year round by roughly 1,500 to 2,000 with the intention of producing an additional 4,000 to 5,000 mink per year in response to market demand.

125. Mr. Bernemann testified that the farm processes approximately 30,000 pelts from other mink farms each year in addition to its own 75,000 to 80,000 pelts. He noted however that the carcasses are not shipped to the farm with the pelts.
126. Mr. Bernemann noted that the respondent farm is located in RU2 zoning which permits intensive agriculture and submitted that Mr. Cross should have taken this into consideration when he established his chicken operation. He also submitted that it is irrelevant that the farm expanded its operations onto the east site given that another mink farmer could also have purchased that property for use as a mink farm.

## **SUBMISSIONS OF BC MINK PRODUCERS' ASSOCIATION**

127. Mr. Engebretson, the BC Mink Producers' Association representative, submitted that most mink are raised in a similar manner to that of the respondent farm and noted that the housing of mink has evolved over the past 100 years as a result of trial and error. He also submitted that it is unreasonable to suggest that mink should be raised like other animals.
128. Mr. Engebretson commented that the respondent farm is more proactive than most other mink farms and therefore cautioned that when making changes to farming practices, the panel must be mindful of the consequences that could have to other mink farmers.

## **ANALYSIS**

### **A. *The Law***

129. The complaints were filed pursuant to section 3(1) of the FPPA which provides as follows:

3(1) If a person is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, the person may apply in writing to the board for a determination as to whether the odour, noise, dust or other disturbance results from a normal farm practice.

**B. Matters included in Complaints that are not Disturbances**

**Earth Berm:**

130. During a pre-hearing conference, the construction of a new earth berm on the respondent farm was raised by Mrs. Ormston. This is neither an issue nor a disturbance that was raised by this complainant in her filed notice of complaint and it was not addressed during the hearing of this matter. Consequently, the panel concludes that the earth berm is not an issue for determination.

**Siting:**

131. In his filed complaint Mr. Cross identified the farm's siting of new mink barns on its east site as a disturbance. Mr. Cross clarified at the hearing that he was not alleging that he was disturbed by the aesthetics of the barns but rather that their proximity to his residence contributed to the impact of the odours and bird disturbances on his property and was not in accordance with normal farm practice.
132. In [\*Hill v Gauthier\*](#), BCFIRB March 4, 2013, the BCFIRB Chair noted as follows:

In farm practice complaints, issues of proximity are often central to the consideration of whether a farmer, in his site specific circumstances, is following normal farm practices. Siting of operations may also be an issue as decisions to site operations close to a neighbour may increase the potential impact of those operations on the neighbour.

Consequently, the panel finds that the siting of the mink barns is properly dealt with not as a disturbance per se but rather as a factor to consider when determining normal farm practice.

**Pollution:**

133. During the hearing, the complainants made submissions that the farm's manure management practices had the potential for exposed manure stored under cages to contaminate nearby watercourses. The parties were cautioned prior to and at the hearing and the panel observes again here that BCFIRB does not have jurisdiction under the *FPPA* to deal with pollution complaints. The panel notes that neither of the complainants alleged in their complaints that they were disturbed by drainage or flooding from the respondent farm. Consequently, the panel finds that any evidence and arguments that relate to potential pollution of nearby watercourses are not relevant to the determination of the disturbances as they are framed in the respective notices of complaint.
134. Having clarified those matters that are not disturbances, we now turn to consider the balance of the disturbances set out in the two complaints that are in issue.



**C. Step one: Standing**

135. A complaint under the *FPPA* involves a two step analysis. The first step deals with a party's standing to make a complaint; i.e. a complainant must establish that he or she is aggrieved by odour, noise or other disturbance that results from the farm's operation(s). The complainant Mrs. Ormston alleged that she was aggrieved by odours, flies, birds, and noise from propane cannons and screechers. The complainant Mr. Cross alleged that he was aggrieved by odours, flies, rodents and escaped mink, birds and noise from propane cannons.

**Odour:**

136. Mrs. Ormston testified that on hot summer evenings in 2011 and 2012 she could smell a strong, unpleasant odour the source of which she believed was from manure spread on the respondent's fields and also from inadequate waste management practices on the farm generally. Mr. Cross testified that for many years, he has smelled strong, unpleasant, odours typically from July to October, in the evenings and submitted that the odours were from manure spread on the respondent farm's fields as well as from the mink themselves. The respondent farm disputed that Mrs. Ormston was disturbed by odours given that her property was too far away from the farm and surrounded by other farms that had the potential to create odours. The evidence establishes that the respondent farm spread manure on its fields. The panel accepts that manure spreading will create some odours. The evidence of the expert panel was that it was the farm's practice at the time the complaints were made to spread raw manure on the fields and that this would create a stronger odour than if the manure had been composted.
137. Given Mr. Cross' proximity to the farm and the fields in which the manure was spread, the panel finds that Mr. Cross has established that he was aggrieved by odours from manure spreading.
138. The panel had some reservations about whether Mrs. Ormston could reasonably be affected by odours from manure spreading activities given the distance between her property and the respondent farm as well as the existence of many other large livestock operations in close proximity to her property. However, given that Mrs. Ormston's complaint is generally consistent with Mr. Cross' regarding when the disturbance occurs, the panel finds that the farm's manure spreading activities likely *contributed* to the odours experienced by Mrs. Ormston. Therefore the panel finds that she was to a lesser degree aggrieved by odours from the farm's manure spreading.
139. The panel finds that there is insufficient evidence to conclude that other areas on the farm or other farm operations emitted odours that were aggravating as alleged by the complainants. Based on the testimony of Mrs. Ormstrom, Mr. Vybiral and witnesses for the respondent farm such as Mr. Evans, the panel finds that for the majority of the time the prevailing winds blow from the south to the north. This is significant in that the Cross and Ormston properties lie to the south of the farm and would therefore be "upwind" of or unaffected by odours produced on the respondent farm most of the time. Mrs. Ormston

testified that the prevailing winds in the evening were from the north and that given the geographic nature of the surrounding topography, cool evening air moved “downslope” from the farm in a southerly direction however she provided no corroborating evidence of those assertions. The panel also considers it significant that there are other farming operations that are located to the north, south and east of the complainants’ properties that could also be sources of unpleasant odours.

140. The panel further finds it significant that neither of the complainants claimed in their testimony to be disturbed by odours from the respondent farm during the late-Fall and Winter months when the manure was allowed to accumulate under mink pens for extended periods of time and was potentially subject to the wettest weather conditions. The panel also notes that Mr. Vybiral, a neighbour who lives a short distance north of the farm (and therefore subject to the prevailing winds) testified that he was disturbed only by odours resulting from seasonal manure spreading. The panel further finds it significant that neither of the complainants has ever been on the respondent farm and had no direct opportunity to determine what the source of the alleged odour was, whereas many witnesses who had been on the farm testified that manure underneath the pens did not emit a strong odour and that they noticed little if any odour from the mink.
141. Mrs. Ormston submitted that the farm’s employees could suffer from “olfactory fatigue” (or loss of sense of smell) if they were constantly exposed to odours. However the panel notes that Mr. Worley and the expert panel who did not have constant exposure to the respondent farm also testified that they detected no offensive odours while on site.
142. As a result, the panel finds that the complainants have established that they are aggrieved by odours from the farm’s manure spreading activities, but not otherwise.

***Flies:***

143. Mrs. Ormston testified that over the past few years she has been bothered by biting (or stable) flies in her fields as well as by a large number of flies on her house in warm weather. Mr. Cross testified that since approximately mid-November 2011 he has been bothered by an increased and excessive population of flies year round that leave manure on his new residence, prevent him from entertaining outdoors and pose a potential bio-security risk to his farming operation. Both of the complainants submit that the flies are attracted by mink food on the respondent farm. The respondent farm denies that the farm is the source of the complainants’ fly problems and submits that it does not have the same problems, has a fly control program in place and that there are other sources for flies such as large horse farms and poultry operations in close proximity to (and in the case of Mr. Cross on) the complainants’ properties.
144. The panel finds that there is insufficient evidence that Mrs. Ormston is aggrieved by flies as a result of the respondent farm’s operations. Although Ms. Ormston testified that she is disturbed by flies, she has failed to establish that the flies on her property are a result of the respondent farm’s operations. In coming to this conclusion, we note the following:  
(a) the Ormston property is located approximately ½ a mile away from the farm and is

surrounded by several other farming operations that could be a source of flies; (b) during their site visit on May 24, 2012, the expert panel observed no flies on the Ormston property; and (c) the respondent farm maintains a fly control program.

145. While the panel accepts that Mr. Cross is disturbed by the presence of flies on his home, we cannot conclude that the respondent farm or its operations are the source of the flies. In coming to this conclusion, the panel finds it significant that there was no evidence of a high concentration of flies on the respondent farm's buildings such as there was on Mr. Cross' residence. The panel also finds significant the expert panel's observation that there are many other potential sources of flies in close proximity to the complainants' respective properties including two poultry operations (on which blow flies can exist) and several horse farms and that it was unlikely flies would travel in temperatures cooler than 17 degrees Celsius. The panel also finds it significant that the farm has a fly control program.
146. Consequently, the panel finds that neither of the complainants has established that they are aggrieved by flies originating from the respondent farm and as a result their respective complaints regarding that issue are therefore dismissed.

***Birds:***

147. Mrs. Ormston and Mr. Cross both alleged that they were disturbed by crows and seagulls that were attracted to food sources on the respondent farm. Mrs. Ormston testified that the birds in question fly over her property and occasionally drop food items. Mr. Cross testified that the birds dropped feces and food scraps on his property and residence, damaged ornamental plants and made a lot of noise. Mr. Cross also alleged that the birds were a potential risk for transmitting diseases to his broiler hatching egg operation. The respondent farm submitted that the presence of a large number of birds in the local area is not the result of their attraction to food sources on the respondent farm but rather due to other factors such as the birds' established flight paths to a crow rookery and to a landfill site as well as to feeding and roosting opportunities on other farms (including the Cross farm).
148. The panel finds that there is no evidence of birds engaging in behavior other than flying over Mrs. Ormston's property. Furthermore, the panel finds that given the distance of Mrs. Ormston's property from the respondent farm it is more likely that birds flying over her property do so because of their established flight paths as described both by the expert panel and Mr. Worley than because they are attracted to the respondent farm. Consequently, the panel finds that Mrs. Ormston has not established that she is aggrieved by nuisance birds as a result of the farm's operations.
149. The panel also finds that the crows and seagulls that fly over the Cross property do so as a result of their respective established flight paths. However, the panel concludes that some of these crows and seagulls stop to take advantage of food sources where available including on the respondent farm (both mink food and in spread manure). Given the proximity of Mr. Cross' property to the respondent farm, the panel finds that the

significant bird presence on the respondent farm described by Mr. Worley was a *contributing factor* to the bird presence on Mr. Cross' farm. The panel also finds that there are other factors that may have contributed to the presence of birds on the Cross property (in addition to the birds' flight path) such as opportunities to feed on newly planted shrubs and dust in the barn vents as well as birds seeking a safe haven from the bird control (ie. falconry) measures undertaken on the respondent farm. As a result, the panel finds that Mr. Cross is aggrieved by nuisance birds, the presence of which is contributed to by the respondent farm's operations.

***Rodents and Escaped Mink:***

150. Mr. Cross' complaint included a disturbance as a result of rodents that he believed were attracted to food sources on the respondent farm as well as some escaped mink from the respondent farm. The respondent denied that it had a rodent problem, gave evidence that it has a rodent control program in place and submitted instead that rodents are endemic to poultry operations such as Mr. Cross'. The respondent also gave evidence that there was only one occasion when Mr. Cross himself complained of an escaped mink and the farm took immediate steps to trap it.
151. The panel finds that the only evidence of rodents on Mr. Cross' property is a photograph of a dead one he said he found in his yard. In the circumstances, the panel finds that there is insufficient evidence to conclude that Mr. Cross is aggrieved by the presence of rodents on his property or that any rodent presence on his property is the result of the respondent farm's operations. The panel also finds that there is only reliable evidence of a mink escaping onto Mr. Cross' property on one occasion and that accordingly, the panel cannot conclude that he is aggrieved by escaped mink. Having failed to establish he is aggrieved by rodents and escaped mink, the portion of Mr. Cross' complaint dealing with these alleged disturbances is dismissed.

***Noise:***

152. Mrs. Ormston and Mr. Cross allege that they were disturbed by the sound of propane cannons being used on the respondent farm as a bird deterrent. Mrs. Ormston also stated that on one occasion she was startled by the sound of a screecher (or orchard pistol) as she rode her bicycle past the farm but testified that she has not heard it for many months. The respondent farm admits that it began using propane cannons in late 2010 in response to neighbours' complaints about birds but submits that it received no complaints other than those of the complainants in this matter and that it operated the cannons only on an "as needed basis." The farm stated that it discontinued its use of screechers after it received some complaints.
153. The panel finds that there is insufficient evidence to conclude that Mrs. Ormston is aggrieved by the noise of propane cannons or screechers used on the respondent farm. Given that Mrs. Ormston's property is approximately one half of a mile from the farm and separated from it by 5 lots and a treed area, the panel finds it unlikely that the volume of these noise devices would have been sufficiently loud on her property to constitute an

aggravating disturbance. The panel also finds that there is little evidence of geographic features in the area that could amplify the volume of those devices on Mrs. Ormston's property. The panel further finds that while Mrs. Ormston may have been disturbed by a screecher while riding her bicycle past the respondent farm property, it was an isolated incident and the use of screechers has since been discontinued. As a result, the portion of Mrs. Ormston's complaint dealing with noise disturbances is dismissed.

154. Given the proximity of Mr. Cross' property to the respondent farm, the panel finds that the noise generated by the propane cannons on the respondent farm would have been sufficiently loud to disturb him and accordingly the panel finds that he is aggrieved by the noise of propane cannons.

### ***Conclusion on standing***

155. In summary, the panel finds that Mrs. Ormston has established that she is aggrieved by odours from the respondent farm's manure spreading activities; however, she has failed to establish that she is aggrieved by flies, birds and noise from propane cannons and screechers. The panel finds that Mr. Cross has established that he is aggrieved by odours from the respondent farm's manure spreading activities, propane cannon noise and birds but has failed to establish that he is aggrieved by flies, rodents and escaped mink. As a result, the panel must now determine if the odours, birds and noise resulting from the respondent farm's operations are the result of normal farm practices or not.

### ***D. Step two: Normal Farm Practice***

156. Section 1 of the *FPPA* 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).

157. In determining whether a complained of practice falls within the definition of "normal farm practice," the panel therefore looks to whether it is consistent with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances. Consistent with the approach set out in [\*Pyke v Tri-Gro Enterprises Ltd.\*, 55 O.R. \(3d\) 257 \(C.A.\)](#) the panel also considers the site specific circumstances of the farm itself and in relation to properties around it to determine if there are any factors that are relevant to the determination of what is normal farm practice for the particular farm. 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.

158. Mr. Cross raised a number of factors which he argues are relevant and should be considered in the determination of normal farm practice for the respondent farm.
159. He submits that the respondent farm has increased its livestock over the past few years and is now “an intensive farming operation”, a factor that creates greater nuisances, and in order to mitigate those nuisances, the farm should be required to increase its separation distance from its neighbours beyond what is required by by-law. Mr. Cross relies on certain excerpts from [\*Eason v Outlander Poultry Farms\* \(BCFIRB, March 2000\)](#), [\*Ollenberger v Breukleman\* \(BCFIRB, November 2005\)](#), [\*Westcreek Citizens v Vane Investments\*, \(BCFIRB, August 2003\)](#) and [\*Evans et al v Dekleyne\* \(BCFIRB, January 2005\)](#).
160. The panel observes that the respondent farm and the complainants’ properties are located in an area zoned for agricultural use including fur farming and intensive farming operations. While the overall number of mink on the respondent farm is greater than on the average mink farm in the Lower Mainland, there is no evidence to conclude that the number of animals per acre at any given time of the production cycle is significantly greater than that of other mink farming operations. The panel also notes that one of the reasons the farm increased the number of barns and expanded its operations to the east site was to accommodate larger mink pens (thereby reducing density) as required by the revised Mink Code which was about to be finalized and published.
161. In his written submissions, Mr. Cross submits that when the panel considers proper and accepted customs of similar farm businesses under similar circumstances, it should not be limited to mink farms only but also to *any* similar farm business in a similar circumstance that shares the potential for similar nuisances. Mr. Cross argues that the mink sheds should be fully enclosed because the presence of crows and seagulls poses a bio-security risk to his poultry operation and since the poultry will be used for human consumption, it also poses a food safety risk. The panel notes that for these very reasons, Mr. Cross’ industry requires that he operate an enclosed facility and that he observe bio-security protocols within his operation. Normal farm practice does not require a farm carrying on one type of farming to change its practices to those used by farms carrying on other types of farming, especially when those industries have very different animal husbandry requirements.
162. The panel has concluded above that the large crow and seagull populations in the area surrounding the respondent farm and complainants’ properties, while contributed to by the respondent farm’s operations, are still primarily a result of natural phenomena (i.e. a nearby crow rookery and an established flight path to inland feeding grounds). The panel also observes that there are other farming operations in the area surrounding Mr. Cross’ farm that are potential sources of food. Consequently, the panel concludes that vectors for disease (birds, rodents and flies) could come from anywhere given the nature of the area in which Mr. Cross’ chicken operation is located.
163. Mr. Cross further submitted that the following excerpt from the respondent’s Agrologist report suggests that the east site is unsuitable for mink barns:

Both the home farm [the west site] and the new farm [the east site] have some drainage challenges because of the natural watercourses which cut through each of the properties. In the process of securing building permits for the new barns, the producer was required to obtain the services of an engineer to prepare a detailed drainage plan associated with barn construction.

The panel disagrees with Mr. Cross' assertion and finds instead that this excerpt supports the respondent farm's position that there were constraints on where the barns could be located on the east site due to drainage considerations and not that the entire east site is unsuitable for mink barns.

164. The barns located on the farm's east site are set back 550 feet (or 168 metres) from the road, which is greater than the 300 feet (or 90 metre) set back required by the Township of Langley. This greater distance places the barns to the rear of the new Cross residence. The panel accepts the evidence of the farm that it voluntarily set the new mink sheds back further than recommended so that they would not be directly in line with Mr. Cross' new residence. The panel also notes that the sheds are sited 150 feet from Mr. Cross' property line and that his new residence and barns are located a further distance from that.
165. The expert panel recommended the construction of a berm between the farm's east site and the Cross property which is consistent with what other BCFIRB panels (in the decisions referred to above by Mr. Cross) have ordered. The panel also notes that the respondent farm advised Mr. Cross that it was willing to construct a berm but that Mr. Cross did not find this to be an acceptable solution to his complaints.
166. In conclusion, the panel finds no site specific factors that would lead us to conclude normal farm practices for the respondent farm would differ from customary or standard mink farm practices.

***Odour:***

167. Both of the complainants submitted that the manure management practices of the farm were inadequate and resulted in the strong odour they experienced in the evenings during the summer and fall months. For the reasons set out above, the panel finds that the source of the odour was from spreading manure on the respondent farm's fields and that there is insufficient evidence to conclude that odours came from other areas of the farm or farm operations.
168. Mr. Cross relied on the following excerpt from the farm's Agrologist report in support of his submission that soil conditions on the farm were unsuitable for growing crops and therefore manure spreading was not an acceptable farm practice:

The home [or west] farm site does not lend itself to large scale intensive field crop production because of the rolling topography, small fields and the variety of soil types present [however]...hay and pasture are considered good agricultural uses.

The new farm [or east site] also contains similar relatively poor soils ...The front part (30-40%) of the property contains a better topography and could be used for crop production with drainage, soil removal along with improvements to soil texture and fertility improvements. The producer is in the process of improving this section of the property with selective levelling and the addition of composted mink manure. The eastern portion [or back] of the property is severely impacted, from an agricultural perspective, by Homestead Creek and some associated wetlands.

169. The respondent farm submitted that its practice of spreading raw or partially composted manure on the fields twice per season not only accorded with the usual and accepted practices of other mink farms but also complied with the Code to the Agricultural Waste Control Regulation<sup>3</sup>. The farm further submitted that its manure management practices exceeded those of other mink farms insofar as it is developing a nutrient management plan to ensure that manure is not over-applied to the fields.
170. The panel finds that the respondent farm's manure spreading practices are consistent with those practiced by other mink farms. In particular, the panel accepts the evidence of the expert panel that it is proper and accepted practice for raw or partially composted mink manure to be spread on fields. While the expert panel stated that the farm could "enhance its practices" by composting manure prior to spreading, the panel notes that this is not a practice followed by other mink farms. The panel finds that there is no evidence that the respondent farm has unnecessarily spread manure or that it has (with the exception of one occasion) overspread manure on its fields. The panel also finds, contrary to Mr. Cross' submission, that the Agrologist report does not conclude that the farm's manure spreading is unnecessary or unsuitable for the type of crop (ie. perennial forage) grown on those fields.

***Birds (Crows and Seagulls):***

171. Mr. Cross testified that he has been disturbed by crows and seagulls for a number of years and believes that they fly overhead and roost on his barns and house because of feeding opportunities on the respondent farm. He submits that the open-sided mink sheds allow the nuisance birds to access mink feed both on top of the cages and when it falls through to the ground. Mr. Cross also submits that the only way to exclude the birds from this feed source is to fully enclose the mink sheds as other farming industries such as poultry operations have done.
172. The respondent farm gave evidence that it has experimented with various bird scare devices over the years such as lasers and Bird Guards, and more recently it has used propane cannons, screechers, shotguns and falconry.

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<sup>3</sup> The Code of Agricultural Practice for Waste Management (Code) to the Agricultural Waste Control Regulation sets out requirements for handling, storing and using manure as fertilizer. If a farmer complies with the requirements under the Code, then the farmer is exempt from the application of sections 6(2) and (3) of the Environmental Management Act which regulates the collection, storage and disposal of waste by a business or industry.



173. The respondent farm submits that open style mink sheds are customarily used in the mink industry. Witnesses on behalf of the respondent farm that have extensive experience in the mink industry testified that open-sided mink sheds are widely employed in mink farming because they provide the mink with natural light and ventilation, factors that are essential for mink health and fur quality. The respondent farm noted that the 1988 Mink Code acknowledges this by stating that “mink sheds are normally open sided” and that “mink should be kept in enclosed buildings only if environmental conditions interfere with the natural needs of the mink.”
174. The respondent farm gave evidence that it has experimented with netting the sides of the sheds but that this has limitations in that the mink fur accumulates in the mesh and reduces the ventilation in the sheds. The respondent farm also gave evidence that it has designed its new sheds on the east site with gates on the ends to keep birds out. The respondent farm noted that it has had some success in deterring birds from feeding on the mink cages by placing food further back on the end cages and by covering over the mink food with wire lids to prevent bird access..
175. Mr. Williams testified that there were limitations with exclusion netting on mink sheds and that he was not aware of any other mink farm that used exclusion netting. He indicated that while some mink farms may have a bird control program, quite a few just use a shotgun. Mr. Candalerio also testified that he was aware of the limitations of netting mink sheds and observed that in his experience all mink farmers could do to deter birds was to keep the production site clean and, where not prohibited, also use propane cannons.
176. The expert panel testified that the open-sided mink sheds and feeding method used on the respondent farm are widely used on other mink farms in British Columbia and across Canada and that enclosed sheds are rare. Further, the expert panel stated that although there did not appear to be a correlation between the presence of the nuisance birds (as reported by Mr. Cross) and the feeding times on the respondent farm, the farm could enhance some of its operations to deter birds as follows:
- a. By reviewing how food materials are currently being delivered to the farm so that the birds cannot access it from open bins before it is processed into mink food;
  - b. By exploring the possibility of composting raw manure from under the pens before spreading it on the fields to make it less attractive to seagulls; and
  - c. By continuing to explore mechanical means to limit access of birds to the mink production area.
177. The panel is persuaded by the broad mink industry experience of Mr. Candalerio obtained over many years in the mink industry and we accept his evidence that it is usual and accepted practice on mink farms to deter birds by keeping the production area clean and using propane cannons where permitted. The panel finds based on the evidence of many of the witnesses that the respondent farm’s level of cleanliness exceeds that of many other mink farms. The panel also finds that the respondent farm has taken steps to exclude birds from its mink production area by experimenting with netting and gates on

the mink sheds and covering feed. The panel further finds that the farm has been experimenting with different types of bird scare devices and techniques and that these practices have met with some success and overall exceed the bird control measures used on other mink farms.

178. Consequently, the panel finds that while open sided mink sheds likely contribute to a bird presence on the farm, viable alternatives to this design that will allow for natural light and air flow into the sheds which is essential to animal health and welfare and pelt quality are currently not available. To deal with the bird presence, the panel finds that the respondent farm has employed various bird control measures and that its practices in this regard not only meet but exceed normal farm practice in the mink industry. The effectiveness of the farms' bird control measures is evident in that since the farm integrated falconry into its bird control program, the number of birds in the immediate vicinity has dropped dramatically.

*Noise:*

179. Mr. Cross submits that the farm should not be allowed to use propane cannons as part of its bird management practices because they are intended for crop protection only and the farm is using them to keep birds from mink feed instead of taking more effective measures such as enclosing the mink barns. He seeks an order that the farm be prohibited from using propane cannons for bird control and only be allowed to use non-audible methods such as falconry.
180. The respondent farm's evidence was that it started using propane cannons in late 2010 when Mr. Cross and other neighbours complained about birds and that the farm only uses them when there are large numbers of birds present. The farm also gave evidence that it hired Mr. Worley in October of 2012 to develop a bird control program which included the use of falconry. All of the parties agreed that the falconry was effective at significantly reducing bird numbers. The farm was subsequently able to reduce its reliance on falconry by having an employee walk around the property each day with a shotgun and orange vest (in an attempt to imitate the falconer). The farm submits that this practice, supplemented with the occasional visit from the falconer, has been so effective that it has not used the propane cannons for bird control since October of 2012 because bird numbers have diminished significantly.
181. The panel rejects the unsupported assertion of Mr. Cross that propane cannons are only intended for crop protection. Although propane cannons are more commonly known for their use on berry and grape operations, the British Columbia Ministry of Agriculture farm practice factsheet entitled "South Coastal BC Wildlife Damage Control" (provided in Mrs. Ormston's book of documents) describes propane cannons as one of various audible scare devices used to "scare wildlife away from crops, livestock and farm animals" and refers to a second Ministry farm practice factsheet entitled "Starlings and Livestock Farms". That second factsheet also refers to the use of propane cannons as having application on livestock farms as part of an integrated bird control program. While the panel does not consider these publications by themselves as establishing normal farm

practice, the publications do demonstrate that the Ministry acknowledges that propane cannons have a broader application than just crop protection.

182. BCFIRB's 2009 [Review of the Use and Regulation of Propane Cannons in the South Coastal Region](#) (an incomplete copy of which was provided in Mrs. Ormston's book of documents) states in part as follows:

#### 5.3.2.1 Management of Livestock Feed

There are many different ways that livestock producers can manage starling populations at their operations. Preventing the establishment of significant bird populations on the site is important, as once starlings are established it can be very difficult to get rid of them. Maintaining the overall tidiness of the operation is seen to be important, as are more specific measures such as containing feed sources, excluding birds from buildings and feeding areas, and restricting access to potential roosting sites. The wide variety of methods for achieving such measures are described in detail in many widely available extension resources, including the Farm Practices Factsheet on *Starlings and Livestock Farms* prepared by BCMAL's Strengthening Farming Program. As at berry farms, an integrated approach to bird predation management is generally understood as being more effective at livestock operations than is relying on a single deterrence tool (see Section 5.3.1).

This publication demonstrates that BCFIRB has also acknowledged (in its supervisory capacity) that propane cannons when used as part of an integrated approach to bird predation management have a broader application than just crop protection.

183. The panel finds that these general statements regarding the broader application of propane cannons are supported by the specific evidence given by Mr. Candelario (use of propane cannons on mink farms is a necessary part of bird control in that industry) and the expert evidence of Mr. Worley (an effective bird control program includes not only keeping the production area free of spilled feed and limiting bird access to mink barns but also making use of propane cannons and shotgun shots "to keep the birds on edge"). Consequently, the panel concludes that it can be normal farm practice to use propane cannons on mink farms when they are used strategically and as part of an integrated bird predation management plan.
184. BCFIRB hearing panels have previously found that the current [Ministry Guidelines for the use of Audible Bird Scare Devices for South Coastal BC \(Guidelines\)](#) in general constitute proper and accepted customs and standards for use of propane cannons on blueberry farms in that area. See [McMurtry v Sekhon \(BCFIRB, January 29, 2010\)](#), [Mitchell v Bhullar \(BCFIRB, June 10, 2011\)](#) and [Fisher v Sidhu, \(BCFIRB, May 24, 2013\)](#). While there are no similar guidelines for the use of propane cannons on livestock farms, the panel considers that the Guidelines provide useful guidance for the operation of propane cannons in other types of farming generally, in particular in requiring farmers to take a strategic approach to the use of propane cannons and other audible bird scare devices as part of an *integrated bird management plan*.

As explained in the Guidelines, this means that:

Farmers are responsible for the strategic management of devices, and must take due measures to minimize noise impact on neighbours. To achieve this, farmers:

- should ensure that a Bird Predation Management Plan is completed before the first use of devices in each growing season and that the plan is kept up to date throughout the season. A Bird Predation Management Plan requires that producers monitor bird populations and activity on their properties, utilize a range of approaches or techniques to prevent bird damage, and undertake strategies to minimize both device use and bird habituation to devices;...

185. The panel finds that an integrated bird management plan is fundamental to the use of propane cannons. In other words, a farmer must be able to justify the use of the cannons as being a response to heavy bird pressure. Furthermore, propane cannons must be only one of a number of other techniques and approaches that are used on a farm to manage bird predation. This is intended not only to minimize reliance on the cannons but also to enhance their effectiveness as a pest control tool. Consequently, the panel concludes that propane cannon use as a bird deterrent on mink farms is consistent with normal farm practice in the control of birds provided that a farm takes a strategic approach to the use of propane cannons and other audible bird scare devices as part of an integrated bird management plan. Because livestock farms could require the use of propane cannons on a year round basis (unlike for crops where they are used seasonally), the strategic use of propane cannons dictates that livestock farms be able to demonstrate that they are taking reasonable steps to make use of other devices and techniques in order to reduce their reliance on propane cannons or other audible bird scare devices to a minimum.
186. The panel finds that in 2011 and 2012, the farm used a variety of devices and techniques to manage birds which included experimenting with exclusion netting and gates on mink sheds. The farm used various bird scare devices such as lasers, a Bird Gard, a screecher and propane cannons and also took various measures to prevent bird access to feed materials. The farm designated only a few individuals to be responsible for operating the two cannons and these cannons were operated manually and only in response to bird pressure. As well, the cannons were mounted on skids and were moved to different locations periodically so that the birds would not become habituated to them.
187. In October 2012, the farm hired Mr. Worley to provide falconry services and to prepare a bird predation management plan which for the following 3 month period consisted of the almost daily presence of the falcon on site to scare away birds. The effectiveness of this approach and the implementation of other techniques has permitted the farm to reduce its need for and the costs of falconry services as well as to almost discontinue the farm's use of propane cannons. The farm's bird management plan now involves having a person onsite daily walking the property with an orange vest and shotgun, periodically supplemented with falconry. The panel is mindful of Mr. Worley's evidence that given that falcons cannot fly on rainy days, it may still be necessary to use propane cannons from time to time.
188. The panel concludes that the respondent farm's propane cannon use, while it may not have initially been so, was by 2012 in accordance with normal farm practice. The farm has continuously worked on and improved its bird predation management plan from the time it began using propane cannons in late 2010 in response to neighbour complaints of

nuisance birds. The farm now uses propane cannons strategically and as part of an integrated bird predation management plan that makes use of a variety of devices and techniques, uses cannons only when necessary and in response to significant bird pressure, and has taken action to minimize cannon use and bird habituation to cannons. The panel observes that these measures have been very effective in reducing the respondent farm's reliance on propane cannons to a minimum and in significantly reducing the number of birds on farm.

189. It was not clear from the evidence that the respondent farm maintains an up to date written bird predation management plan or that it keeps written records of bird pressure, as suggested in the Guidelines and in previous BCFIRB decisions. If not, the panel recommends that the farm do so. As noted in the *Sekhon* decision at paragraph 83 "...it is difficult to see how the strategic management requirements are to be met – and shown to have been met – in the absence of such record keeping". We also endorse Mr. Worley's recommendation that to more effectively and efficiently deal with problem birds in the entire area, neighbouring property owners need to take a cooperative approach to bird control so that the respondent farm's bird management plan can be integrated with the efforts of neighbours. This is particularly true in the case of Mr. Cross who has a vested interest in bird control on his poultry operation.

## CONCLUSIONS

190. The Ormston complaint is dismissed in its entirety.
191. The Cross complaint is dismissed in its entirety.

Dated at Victoria, British Columbia this 19<sup>th</sup> day of February, 2014.

## BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Suzanne K. Wiltshire, Presiding Member



Carrie Manarin, Member



Andreas Dolberg, Member