

File: 44200-50/EMB 99-10

July 24, 2000

DELIVERED BY FAX AND REGISTERED MAIL

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Dear Sirs/Mesdames:

**RE: AN APPEAL BY VAN NUYS FARMS FROM A DECISION OF THE
BRITISH COLUMBIA EGG MARKETING BOARD CONCERNING A
TEMPORARY RESTRICTED LICENSE - FREE-RUN**

By letter dated May 29, 2000, the British Columbia Egg Marketing Board (the "Egg Board") has requested that the British Columbia Marketing Board (the "BCMB") dismiss the appeal of Marilyn and Rolf Van Nuys (the "Appellants") as it was filed outside the 30 day time limit imposed by the *Natural Products Marketing (BC) Act* (the "Act").

The BCMB Panel deciding this application has received and reviewed the following correspondence related to the Egg Board's application:

- May 15, 1999 Notice of Appeal with the Appellants' April 15, 1999 request to the Egg Board and the Egg Board's April 20, 1999 decision;
- Pre-hearing conference report dated June 24, 1999;
- July 20, 1999 request for intervenor status from Golden Valley Foods Ltd. ("Golden Valley");
- May 3, 2000 letter from Appellants requesting appeal process resume with Egg Board's letter of April 18, 2000 attached;
- May 29, 2000 letter from Mr. Jim Collins recapping May 29, 2000 pre-hearing conference;

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**British Columbia
Marketing Board**

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- May 29, 2000 letter from Egg Board applying to dismiss appeal;
- May 30, 2000 letter from the Intervenor, Golden Valley;
- June 9, 2000 letter from Appellants;
- June 27, 2000 letter from Egg Board; and
- July 5, 2000 letter from Appellants.

The Egg Board takes the position that the Appellants' appeal was filed outside the 30-day time limit imposed by s. 8(1)(a) of the *Act* and as such, should be dismissed. The Appellant argues that special circumstances exist which justify the BCMB to exercise its discretion to grant an extension of the time for filing an appeal.

The chronology appears to be as follows. The Egg Board issued its policy on the Temporary Restricted License Quota ("TRLQ") Program on December 18, 1998. The TRLQ Program created temporary licenses that allowed approved producers to grow organic or free-range eggs without purchasing quota. In January 1999, the Appellants requested that free-run production, in addition to organic and free-range production, be considered for the TRLQ program. The Egg Board considered the request and on January 22, 2000 advised the Appellants that the TRLQ program would remain restricted to organic and free-range production. By letter dated April 13, 2000, after noting that their grader was still short of free-run eggs, the Appellants re-applied to the Egg Board to have free-run production included in the TRLQ program. The Appellants received a notification by fax dated April 20, 1999 that this request was also denied. On May 15, 1999, the Appellants filed their appeal of the April 20, 1999 decision.

The initial pre-hearing conference was held on June 24, 1999. At that point in time, the Egg Board advised that it did not intend to raise any out-of-time issue "based on the fact that the Appellant was aware that its policy governing the April 20, 1999 decision was established in December 1998."

The Egg Board requested and received an adjournment of the appeal in order to allow further discussions between the parties. These discussions proceeded until approximately March or April 2000. On May 3, 2000, the Appellants requested that their appeal resume. By letter dated May 29, 2000, the Egg Board raised the out-of-time issue.

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DECISION

The Appellants point to several reasons for their delay in commencing this appeal, ranging from the time of year and business commitments to the need to obtain legal advice. They also argue that the issue to be heard is important not only to themselves but to their grader, Golden Valley, as well. The Egg Board takes the position that no special circumstances exist to warrant an extension of the time for filing an appeal. The Egg Board argues that the appeal is without foundation as it is a simple confirmation of the December 16, 1998 policy and its letters of January 22 and April 20, 1999 do not create new opportunities for appeal.

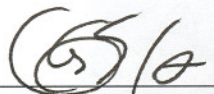
The Panel is of the opinion that completely independent of the "special circumstances" advanced by the Appellants, this appeal ought to be heard. This appeal has proceeded to pre-hearing conference, the purpose of which is to explain to the parties involved how the appeal process will unfold and to clarify the issues between the parties. The Egg Board made a decision at the June 1999 pre-hearing conference to not raise the out-of-time issue. Subsequently, at the Egg Board's request, the appeal was adjourned to allow settlement discussions. These continued through to March or April 2000. In the Panel's opinion, the Egg Board, having confirmed the Appellants' right of appeal through lengthy settlement discussions, cannot now rely on the out-of-time defense to dismiss the appeal.

To allow the Egg Board to raise the out-of-time issue when it has both expressly and implicitly waived its right to do so, would be a serious injustice to the Appellants. This injustice is compounded by the fact that the Appellants are less experienced in conducting an appeal and are likely less familiar with the *Act*. The Egg Board owes a duty of fairness to its regulated producers. In this case, fairness dictates that this appeal be heard.

Had the issue of fairness not arisen, the fact that this appeal extends beyond just the Appellants and has significant implications for other producers and grading stations in BC creates, in the Panel's opinion, further special circumstances warranting an extension in the time for filing the appeal.

Accordingly, the Egg Board's application is dismissed and the Panel directs that the appeal be heard in a timely fashion.

BRITISH COLUMBIA MARKETING BOARD
Per



Christine J. Elsaesser, Vice Chair