

## **Ponich Poultry Farm v. BC Chicken Marketing Board**

**Decision Date:** December 17, 2001

**Keywords:** grandfathered production rights, specialty production, permit production, integrated operation

**Issue:** Should the Chicken Board issue two specialty permits for 1000 birds each to the appellant?

### **Decision:**

In August of 2000, the Chicken Board created a *New Entrant, Niche Market and Specialty Program* which was intended to formalize specialty production under permit and turn it into quota production after 12 years. For added flexibility, the Chicken Board also decided to grant some permit production so producers could test the viability their specialty products. Under the new regulations, producers producing specialty chicken were “grandfathered” at their previous level of production as of July 1, 2000.

In 2000, the appellant applied for and was issued two specialty permits of 1000 birds per week but did not produce any specialty product under these permits in that year. When his permits expired in December of 2000 he applied to have them renewed but the Chicken Board declined to renew them. The appellant argued that he was entitled to two permits because he had previously been granted two permits, one for himself and one for his wife. The Chicken Board argued that the second permit had been issued due to an administrative error and that the appellant did not qualify for a permit at all, as he had not been growing specialty product on the cut-off date.

The panel first considered whether the appellant qualified for *any* permits under the new regulation. It agreed with the Chicken Board that, according to the *Permit Issuance Guidelines*, the appellant did not fall within the guidelines as he had not been growing any specialty chicken as of July 1, 2000.

The appellant further argued that he deserved to be grandfathered because he had begun to develop a marketing facility and had built his business plan on the basis of having specialty production and therefore, should be allowed time for construction of a facility to use the two specialty permits. The panel found that as the appellant did not realistically expect to be producing specialty chicken for at least two years he should have asked for assurance from the Chicken Board that it would continue to renew the specialty permits for that time period. He should also have been aware of the significant changes in the program. The panel did not accept that there were special circumstances that warranted the granting of a specialty permit to the appellant.

### **Order:**

The appeal was dismissed.