



Legal and Regulatory Review

Agri-Energy and Waste Management Forum
Pacific Agriculture Tradeshow

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Regulation of Nutrient Management in BC – Overview and Update

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REGULATORY OBJECTIVES

- Supply nutrients to soil at appropriate rates, timing and methods
- *and, at the same time,*
- Minimize the risk of pollution through loss of nutrients through runoff into surface water, leaching into groundwater and emissions into the air

REGULATORY APPROACHES

- Approaches vary widely across Canada - all try to balance the competing regulatory objectives
- Some provinces regulate only through the Agriculture Ministry (e.g. AB), while others also regulate through the ministry responsible for environmental protection (e.g. BC)
- Federal role primarily advisory, supporting the regulatory initiatives of the provinces (e.g. Environmental Farm Plans)

CURRENT BC REGULATION

- Regulated under the 1992 *Agricultural Waste Control Regulation* (under the *Environmental Management Act*)
- Regulation adopts the 1992 *Code of Agricultural Practice for Waste Management*
- Agricultural waste may only be stored on a farm if produced or used on the farm

- Prescribes minimal requirements for storage facilities
 - sufficient capacity
 - prevent escape that causes pollution
 - maintain in a manner that prevents pollution
 - setbacks - 15 m from watercourse and 30 m from domestic water supply
 - field storage limitations – 2 weeks or 9 months with setbacks

- No direct discharge to watercourse or groundwater
- Only for use as fertilizer or soil conditioner
- No application of agricultural waste,
 - on frozen land
 - in diverting winds
 - on areas with standing water
 - on saturated soils
 - at rates exceeding the amount required for crop growth
- if runoff causes pollution or goes beyond the farm boundary

- Composting
 - only agricultural waste produced on the farm or produced elsewhere but composted for use on the farm
 - at least 15 m from watercourse and 30 m from source of domestic water
 - in a manner that does not cause pollution
- Other requirements
 - disposal of deadstock
 - grazing and seasonal feeding areas

PROPOSED CHANGES

- Comprehensive regulatory reform proposal released in a Policy Intentions Paper in January 2012 – first comprehensive review in 20 years
- Consultation period ended May 31, 2012 (119 responses received)
- BC Environment currently working with an agriculture industry working group
- 2nd Policy Intentions Paper will be issued soon – includes revisions to changes proposed in 2012

- Proposal is to shift to a new code of practice
 - Minister's Regulation under s. 22 of the EMA
 - legally enforceable standards
 - focus on desired environmental conditions rather than prescribed agricultural practices
- Primary environmental issues of concern:
 - Surface water quality
 - Groundwater quality
 - Cumulative effects
 - Air quality – odour, particulate and GHGs

- New storage requirements
 - Expanded definition of storage facility
 - Minimum setback distance of >30 m from watercourse, well or property lines
 - Storage facilities for larger operations to be designed by a qualified professional
 - Minimum 1 year storage
 - Requirements for cover (roof), walls and impermeable floors
 - Phase-in for existing storage facilities – 1 to 7 years

- New containment requirements for on-site transport of agricultural wastes or by-products (e.g. compost, digestate)
- New short term field storage requirements - wastes stored in the field >2 weeks would need to meet storage facility requirements (3 to 5 year phase-in)
- New requirements for composting and curing of agricultural wastes

- Land application – general requirements to encourage effective nutrient management
- Implementation of nutrient management plans (NMPs)
 - to apply to all agricultural operations employing land application of agricultural wastes, by-products or other nutrient sources
 - tool to reduce risk of environmental harm
 - risk-based approach for determining NMP and application requirements – using screening tool

- NMP proposal recognizes need for flexibility – options for preparing an NMP would include:
 - use sector-specific standardized plan
 - follow guidelines developed by BC Agriculture
 - apply for EFP under Canada-BC Environmental Farm Program
 - have QP prepare NMP

- New monitoring requirements:
 - baseline soil testing
 - nutrient testing
- New record-keeping requirements – 10 years
- Code of Practice to be supported by guidelines and/or BMPs (with no force of law)

WHAT'S GOING ON ELSEWHERE?

- Prairies
 - nutrient management regulation within mandates of agriculture ministries
 - limited NMP requirements
- Québec
 - regulated under EQA
 - annual NMP required for all land application
- Atlantic Canada
 - very limited nutrient management regimes

REGULATION OF NUTRIENT MANAGEMENT IN ONTARIO

- New regulatory regime introduced in 2002 as one of the responses to the Walkerton tragedy
- *Nutrient Management Act, 2002* and companion Regulation
- Enforced by the Ministry of the Environment

- Regulates the management of all materials that are applied to land by the agricultural industry, municipalities and other generators of materials containing nutrients
- Requires preparation of both NMP and nutrient management strategy (NMS)
- Significant focus in Ontario on non-agricultural source material (NASM), such as biosolids

- Nutrient Management Strategy (NMS)
 - deals with **generation and storage** of nutrients
 - required on a phased-in basis for all farms
 - approval required for new projects, operation within 100 m of municipal well and farms receiving off-farm material for anaerobic digester
- Nutrient Management Plan (NMP)
 - deals with the **application** of nutrients
 - required if livestock numbers > 300 nutrient units (NU) or farm is within 100 m of municipal well

- NASM Plan
 - deals with on-farm storage and application of NASM
 - need to meet beneficial use criteria
 - requires approval for specified activities
- Regulation prescribes a range of standards
 - land application (e.g. no application <150 m from top of bank, minimum depth to groundwater, rates)
 - outdoor confinement areas
 - siting, construction and storage
 - vegetated filter strips

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Environmental Issues in Agriculture: Anaerobic Digestion & GHG Emissions Regulation in B.C.

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AGENDA

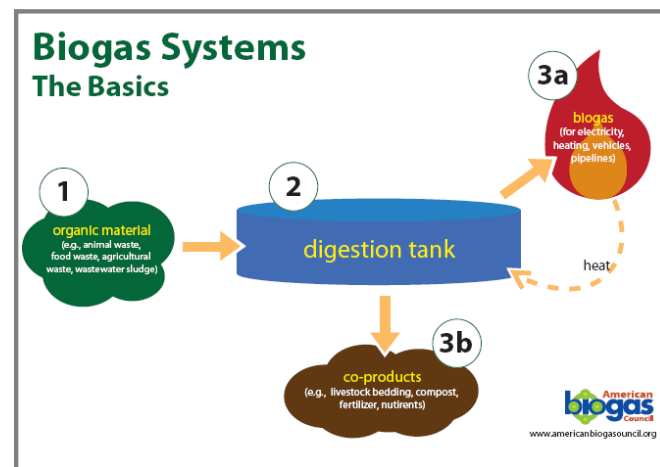
- Overview of Anaerobic Digestion
- Regulation of On-Farm Anaerobic Digestion
- Waste Discharge Authorization
- Digestate Management

AGENDA

6. Metro Vancouver Air Quality Management Bylaw
7. Permits and Approval Process
8. Proposed new Air Quality Management Bylaw
9. Do's and Don't for Air Quality Permits and Applications
- 10. West Coast Reduction Case*

What is Anaerobic Digestion?

- The microbiological process by which organic matter is broken down by micro-organisms in an oxygen-free environment, producing biogas and other useful by-products
- Biogas can be used to produce electricity and heat or it can be upgraded to to biomethane, a natural gas substitute
- Example: Seabreeze Dairy Farm in Ladner → Canada's Newest Anaerobic Digester



Benefits of Anaerobic Digestion

- Benefits of anaerobic digestion (AD) include:
 - Odour reduction
 - Pathogen reduction
 - Greenhouse gas minimization
 - Reduced requirement for herbicides as a result of weed seed destruction and improved nutrient management
 - Useful by-products (e.g., biogas, solid and liquid digestate) which can be utilized on the farm or further processed and sold

Types of Anaerobic Digesters

- The production of biogas through AD can be achieved through a variety of methods including:
 - complete mix systems
 - plug flow systems
 - upflow anaerobic sludge blanket
- The most likely systems for on-farm application in BC are complete mix and plug flow



Overview of Regulatory Process

- All relevant regulatory bodies should be considered prior to initiating an on-farm AD project including:
 - Agricultural Land Commission (ALC)
 - Local and Municipal Government
 - Environmental Assessment Office (EAO)
 - Ministry of Environment
 - Ministry of Agriculture
 - Federal legislation

Regulatory Bodies: Agricultural Land Commission

- Legislation governing the ALC applies where AD project is located within the Agricultural Land Reserve (ALR)
- ALC is responsible for approval of “non-farm” use applications in the ALR
 - *Agricultural Land Commission Act*, SBC 2002, c 36 (ALCA)
 - Section 25 provides for “non-farm” use applications
 - Typically, a nutrient management plan is required
 - *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*, BC Reg 171/2002

Regulatory Bodies: Local Governments

- Regional districts and municipalities set out various regulatory processes which apply to on-farm AD projects including:
 - Bylaws
 - Land use zoning regulations
 - Solid and liquid waste management plans
 - Building permits and codes
 - Business licences
- Consider a variance application
- Section 25 (3) of the ALCA requires local government authorization for non-farm use applications before being forwarded for consideration by the ALC
- Best to contact local government early in planning process!



Regulatory Bodies: Environmental Assessment Office

- EAO conducts environmental assessments of proposed major projects in BC as required under the *Environmental Assessment Act*, SBC 202, c 43
- *Reviewable Projects Regulation*, BC Reg 370/2002
 - Sets out the types of projects which may trigger an environmental assessment
 - Thresholds for large scale waste and/ or energy projects may trigger an assessment of large-scale industrial AD projects (projects of 5MW or greater)
 - On-farm AD project unlikely to trigger an assessment

Regulatory Bodies: BC Ministry of Environment

- The Ministry is responsible for environmental risks associated with on-farm AD projects, including waste streams
- On-farm AD projects may be regulated under:
 - *Waste Discharge Regulation*, BC Reg 320/2004 (WDR)
 - *Agricultural Waste Control Regulation*, BC Reg 131/92 (AWCR)



Federal Triggers

- *Canadian Environmental Protection Act, SC 1999, c 33*
 - *Environmental Emergency Regulations (“E2 Regulations”)*
- *Fisheries Act, RSC 1985, c F-14*



Feedstocks

- The feedstock determines the type of waste discharge authorization required by the Ministry, if “agricultural waste”:
 - including manure, used mushroom medium and agricultural vegetative waste” the only requirement is compliance with the Agricultural Waste Control Reg (Code for Agricultural Practice for Waste Management)
- The Ministry’s policy is to use a list of acceptable feedstock (see the draft Guideline dated May 2010)
- The Guideline says feedstocks are:
 - Acceptable
 - Limited
 - Unacceptable



Acceptable Feedstock

- “As is” to go into digester, including
 - Manure
 - Used mushroom medium
 - Residues from primary crop production
 - Organic waste matter derived from drying or cleaning of field corps or nut crops on farms
 - Used or diverted grain, malt, hop flowers etc. from brewing or wine making process
 - Clean milk
 - Corn, canola-based mash, glycerine, etc.
 - Plant matter
 - Certain waste products from animal feeds
 - Whey

Limited Feedstock

- Requires pasteurization (requires pasteurization, e.g., 70°C for 1 hour)
- Includes:
 - Biosolids
 - Dissolved air floatation waste
 - Domestic septic tank sludge
 - Fat, oil and grease
 - Fish wastes
 - Recyclable food for humans
 - Hatchery waste
 - Milk processing waste
 - Paunch manure
 - Pet food, pet food residues
 - Poultry wastes
 - Red-meat waste
 - Animal feed waste

Unacceptable Feedstock

- Includes:
 - Catering waste from means of international transport (e.g., airplane food waste, cruise ship food waste etc.)
 - Hazardous waste



Unacceptable Feedstock (cont'd)

- Mortalities from infectious diseases
- Organic wastes containing solvents, fuels and petroleum products, resins and plastics
- Specified risk material (as defined by the Canadian Food Inspection Agency)

EMA Waste Discharge Regulation

- EMA provides that wastes from “prescribed” industries, trades, businesses, operations and activities require authorization (listed in schedules)
- If not “prescribed” no authorization required but must not cause “pollution” generally
- **AD is a “prescribed” activity but classification varies depending on feedstock, process and products produced**

- Site specific waste discharge authorization required in most cases
- Three of the most common waste discharge authorization types include:
 1. Permit
 2. Solid or Liquid Waste Management Plan (SWMP/LWMP) & Subsequent Operational Certificate
 3. Compliance with Code of Agricultural Practice for Waste Management as set out in the *Agricultural Waste Control Regulation*

1. Permit

- For facilities using mixed feedstock (agricultural and non - agricultural waste) or non - agricultural waste exclusively, and the facility is not required to be authorized under the local government's SWMP/LWMP
- Categorized as “Commercial Waste Management or Waste Disposal Industry” in Schedule 1 of the WDR

Permit continued ...

- Any feedstock
- Option for facilities using biogas to produce more than 5 megawatts of electricity under peak load and not required to be regulated by a local government's SWMP/LWMP
-
- Categorized as “Electrical Power Industry” under Schedule 1 of the WDR



2. Solid or Liquid Waste Management Plan & Operational Certificate

- For facilities using mixed feedstock (agricultural and non - agricultural waste) or non - agricultural waste exclusively, and the facility is required to be authorized by the local government's SWMP/LWMP
- Amendment to SWMP/LWMP may be required
- Categorized as “Municipal Solid Waste Management” in Schedule 1 of the WDR

3. Compliance with the Code

- The AWCR attaches the “Code of Agricultural Practice for Waste Management” which describes environmentally sound practices for using, storing and managing wastes, such as manure, by-products and other materials used in agriculture
- Authorization required for facilities using 100% “agricultural waste” feedstock which is defined as including:
 - *“manure, used mushroom medium and agricultural vegetation waste”*
- Farm must be classified as a “farm” by the *Assessment Act*, RSBC 1996, c 20

Agricultural Waste Control Regulation Consultation Process

- The Ministry is doing a comprehensive review of the AWCR with the intention of revising the regulation
- Policy Intentions Paper for Consultation developed
- Public consultation period ended May 31, 2012
- Currently in further consultation with agriculture industry

Digestate Management

- “Digestate”: the resulting by-product (liquid and solid) of AD
- Can be used for fertilizer, animal bedding or further processed and sold
- In the DRAFT Guideline, the Ministry established a 3 tier system to classify AD projects based on percentages of “non-agricultural” feedstock source:
 - Tier 1: On-farm AD facility using 100% “agricultural waste” as defined in the AWCR
 - Tier 2: On-farm AD facility importing up to 25% non-agricultural waste (by volume per year)
 - Tier 3: On-farm AD facility importing more than 25% non-agricultural waste
- Best practice recommendations for digestate management for the various tiers of AD facilities

Metro Vancouver (formerly, the Greater Vancouver Regional District)

- Metro Vancouver is authorized to “**prohibit, regulate and otherwise control the discharge of air contaminants**”
- The B.C. *Environmental Management Act* authorizes Metro Vancouver to establish prohibitions, regulations, rates or levels of fees, conditions, requirements and exemptions for different persons, operations, activities, industries, trades, businesses, air contaminants or works, and for different classes of persons, operations, activities, industries, trades, businesses, air contaminants or works ...

Applicable Bylaws

- Air Quality Management Bylaw No. 1082
- Air Quality Management Fees Regulation Bylaw No. 1083

Table 1 – Air Contaminant Emission Fees for Authorized Discharges

Column 1 (A) Air Contaminant	Column 2 (B) Emission fee per tonne of air contaminant
Particulate Matter (filterable and condensable from solely combustion sources)	\$300
Particulate Matter (filterable and condensable from solely non-combustion sources)	\$30
Fine Particulate Matter (filterable and condensable from combined combustion and non-combustion sources, not fuelled solely by natural gas and/or propane)	\$300
Particulate Matter (all other filterable from combined combustion and non-combustion sources, not fuelled solely by natural gas and/or propane)	\$30
Nitrogen Oxides (NOx)	\$50
Photoreactive volatile organic compounds (photoreactive VOC)	\$60 (for the 2011 calendar year) \$100 (beginning in 2012)
Non-photoreactive volatile organic compounds (non-photoreactive VOC)	\$30
Sulphur Oxides (SOx)	\$100
Total Reduced Sulphur (TRS)	\$150
Hazardous Air Pollutants	\$1,000
Other (not otherwise specified)	\$30
Odour (fee per billion odour units)	\$50

Air Contaminants and Odour

- **“Air Contaminant”** means any substance that is emitted into the air that
 - (a) injures or is capable of injuring the health and safety of a person
 - (b) injures or is capable of injuring property or any life form;
 - (c) interferes or is capable of interfering with visibility;
 - (d) interferes or is capable of interfering with the normal conduct of business;
 - (e) causes or is capable of causing material physical discomfort to a person; or
 - (f) damages or is capable of damaging the environment; ...
- **“Pollution”** means the presence in the environment of substances or contaminants that substantially alter or impair the usefulness of the environment; ...

Permits and Approvals

- **Permits**

11 The district director may issue a permit to allow the discharge of an air contaminant subject to requirements for the protection of the environment that the district director considers advisable and without limiting the generality of the foregoing the district director **may do one or more of the following in the permit:**

(1) place limits and restrictions on the quantity, frequency and nature of an air contaminant permitted to be discharged and the term for which such discharge may occur;

(2) require the holder of a permit to repair, alter, remove, improve or add to works or to construct new works and to submit plans and specifications for works specified in the permit;

(3) require the holder of a permit to give security in the amount and form and subject to conditions the district director specifies;

(4) require the holder of a permit to monitor, in the manner specified by the district director, an air contaminant, the method of discharging the air contaminant and the places and things that the district director considers will be affected by the discharge of the air contaminant;

(5) require the holder of a permit to conduct studies, keep records and to report information specified by the district director in the manner specified by the district director;

(6) specify procedures for sampling, monitoring and analyses, and procedures or requirements respecting the discharge of an air contaminant that the holder of a permit must fulfill.

The proposed New Bylaw will apply to:

- Facilities that process organic materials including farms and farm processes, facilities that compost organic waste, rendering plants, animal feed plants, mushroom media composting facilities, intensive agricultural feedlot activities, and anaerobic digesters processing non-agricultural waste



Classification System



- Facilities will be classified into low risk sources, medium risk sources, and high risk sources based on the amount of odour released into the community, the sensitivity of the receptors, and the offensiveness of the odours
- This classification will determine the action the facility will be required to take, as well as the fees the facility will be required to pay

Criticisms of proposed new Bylaw

- Fees imposed will be determined by the use of odour units, the same method of monitoring and testing which the Board in *West Coast Reduction* found to be too imprecise to be used for compliance purposes
- Fees lessen the financial resources available to be utilized to develop odour reducing solutions within the facilities at issue
- The complaints system is unreliable
- The new Bylaw undermines the public interest in sustainable management of organic wastes, as articulated by Metro Vancouver itself in a series of recent formal policy pronouncements, specifically: the Integrated Solid Waste and Resource Management; the Zero Waste Challenge: Goals, Strategies and Actions Zero Waste Challenge; and the Regional Organics Strategy Regional Organics Strategy

Indirect Tax?

- Those facilities classified as high risk will face charges of **\$5 per year for each person exposed to a specified level of odour**
- The new policy will shift the cost of odour enforcement onto high-risk odour-generating facilities at \$5 per person per year for those that are impacted (as determined by Metro Vancouver)
- The level of odour will be determined by odour units, to be measured by an odour panel who will assess the odour in accordance with internationally accepted methodologies



West Coast Reduction Case

- 2010 decision out of the British Columbia Environmental Appeal Board, *West Coast Reduction Ltd. v. British Columbia (Ministry of Environment)*
- West Coast sought to set aside the decision of the Air Quality District Director to amend their existing air permit to add various requirements, conditions, criteria, standards, guidelines and objectives all relating to the eventual reduction in the amount of odour emitted from their rendering plant
- “battle of the experts”



Environmental Appeals Board

Key Points from the *West Coast Reduction Case*

- The Board found that the amendments were wrongfully imposed by the Director, as he did not have the authority or jurisdiction to impose the requirements at issue
- The Board found that the complaints process utilized by the GVRD provides significant room for error, and did not provide sufficient information to determine whether or not the amendments were necessary for the protection of the environment
- It was found to be more likely that the amendments were an attempt to placate the public rather than to provide a real solution to the odour issue. As a result, the Board found that the Director's amendment of the permit was an improper exercise of discretion



West Coast Reduction Case

- In relation to the use of odour units, the Board found that the Director does have authority to introduce a new unit of measurement into a permit amendment in certain situations
- “The notion that odour units can be used as an indicator of an environmental "smell" is simply too flawed to be used as a method of determining compliance, and is therefore not suitable for determining whether the environment is adequately protected.”

West Coast Reduction Case (cont'd)

- “Given that there are many steps in the process of attempting to calculate odour units which are problematic, and which contain so many points of bias and subjectivity, the Panel finds that the ultimate number or value coming out of an odour unit measurement cannot be relied upon as meaningful, particularly for the purposes of evaluating compliance with a mandatory term of a permit.”



Integrated Solid Waste and Resource Management Plan

- The overriding principle of the Integrated Solid Waste and Resource Management Plan is the avoidance of waste through an aggressive waste reduction campaign and through the recovery of materials and energy from the waste that remains. In line with this principle, the Integrated Solid Waste and Resource Management Plan (ISWRMP) has four goals:
 - Goal 1: Minimize waste generation
 - Goal 2: Maximize reuse, recycling and material recovery
 - Goal 3: Recover energy from the waste stream after material recycling
 - Goal 4: Dispose of all remaining waste in landfill, after material recycling and energy recovery

Negotiating Air Quality Permits

- Do your homework and review like permits for like facilities
- If you are capping emissions, make sure you will be able to comply those caps
- Consider your source input for emissions calculations
- Limit reporting obligations and testing requirements
- Build in flexibility for improving your operations or minor changes to works and procedures
- Develop a good relationship with the regulator
- Find a good consultant with expertise for testing and monitoring

Negotiating Air Quality Permits

- Don't forget to calculate your fee
- Don't set emissions caps you can't meet
- Don't accept "no odours"
- Don't assume that the source of complaints is your facility

Right to Farm Legislation

Wendy A Baker, QC

History of Right to Farm Legislation

- Found across Canada and US
- Most provinces enacted legislation by late 1980s

Legislation across Canada

- *Farm Practices Protection (Right to Farm) Act*, RSBC 1996 c. 131
- *Agricultural Operation Practices Act*, RSA 2000, c. A-7
- *The Agricultural Operations Act*, SS 1995, c. A-12.1, amended SS 2013, c.27
- *Farming and Food Production Protection Act*, 1998, S.O. 1998, c.1, amended 2006, c. 35

Purpose of Right to Farm Legislation

- Urban encroachment on agricultural land
- Nuisance complaints
 - Odour
 - Flies
 - Dust
 - Noise
 - Chemical spraying



Nuisance complaints

- Traditional legal model assesses nuisance from the point of view of the complainant
- Unreasonable interference with an owner's use of his or her land
- Complainants can be awarded damages or obtain an injunction to stop the nuisance

Overview of Right to Farm Legislation

- Protects normal farm practices, which are defined:
 - A “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).
- [*Farm Practices Protection (Right to Farm) Act*, RSBC 1996, c.131]

- The analysis of a “normal farm practice” includes an examination of industry practices followed by similar farms under similar circumstances.
- The analysis also includes an evaluation of the context of which the complaint arises. This evaluation may include factors such as:
 - The farm’s proximity to neighbors and the use of their lands;
 - Geographical or meteorological features (such as prevailing winds);
 - Other types of farming in the area; and
 - The size and type of operation.

- “Farm operation” is typically defined in the legislation.
- In the BC Act, “farm operation” includes:
 - Growing, producing and raising animals or plants
 - Clearing, draining, irrigating or cultivating land
 - Any agricultural activity over agricultural land
 - Plantations for specialty wood crops
 - Turf production
 - Aquaculture
 - Raising or keeping game
 - Processing or direct marketing by a farmer of own products

- Where a farm operation conforms to the requirements set out in the *Act*, a farmer will not be found liable in nuisance for odour, noise, dust or other disturbance resulting from the farm operation, and cannot be enjoined from these activities.
- An activity which is not a normal farm practice will not be protected.

Environmental Laws

- Right to Farm legislation does not exempt farmers from compliance with environmental legislation
- *Agricultural Waste Control Regulation*, BC Reg 131/92 does provide exemptions for “agricultural operations” which comply with the Code of Agricultural Practice for Waste Management

Municipal Bylaws

- Municipal zoning and land use bylaws may impact farming.
- Jurisdictional conflict between municipal bylaws and right to farm legislation
 - *Windset Greenhouses Ltd v Corp. of Delta*, 2003 BCSC 570

Farm Practices Protection (Right to Farm) Act, **RSBC 1996 c. 131**

- Designates the provincial board under the *Natural Products Marketing (BC) Act* as the board to hear complaints under the Act.
- BC Farm Industry Review Board (FIRB)

BC Farm Industry Review Board

- Has dual responsibilities:
 - Supervisory board over all marketing boards in the province
 - Hearing body to assess complaints under the Right to Farm Act
- Is a specialized tribunal in the agricultural sector

- Person aggrieved by a disturbance can apply in writing to the Board for determination as to whether the disturbance arises from a normal farm practice
- Person must have a personal interest in the subject matter.
- Multi-party complaints will not be accepted:
 - *Miller v. Panoramic Farms*, BC FIRB, January 8, 2009
- Person must be able to show that he has suffered a grievance, or that he will inevitably suffer a grievance:
 - *RJ Farms & Grain Transport Ltd. v Walker et al.*, 2011 SKQB 185 at para.

- Complaint is made to BC FIRB
- In some provinces complainants are required to notify the farmer. In BC, FIRB will notify the farm operator/owner
- Before constituting a hearing panel, FIRB has the power to consult with the farmer/operator, and obtain the advice of knowledgeable persons with a view to resolving the dispute

- If FIRB is satisfied that the complainant has complied with the statutory requirements for filing a complaint, and attempts to resolve the matter informally have been unsuccessful, FIRB will constitute a hearing panel of 3 members.
- Hearings are public, and all decisions are posted on website

- At the conclusion of the hearing, FIRB will
 - dismiss the complaint if the activity is found to be a normal farm practice, or
 - order the farmer to cease or modify the practice if the board is of the opinion that the disturbance results from an activity which is not a normal farm practice
- Chair of panel can also dismiss a complaint if subject matter is trivial, application is frivolous or vexatious, or complainant has insufficient personal interest in subject matter of the application
 - *Ofiesh, Elving and Knapp v. Beckwith Farms*, BC FIRB, September 2, 2011

Rulings by FIRB under the Act

- Since 1997 there have been over 80 decisions under the legislation.
- FIRB has given guidance on numerous matters including what a normal farm practice is, and what operations the Act protects

- In 2014, complaints decided by BC FIRB include:
 - Dust from haying and noise related to tractor, weed whipper and chainsaw use (*Barkwill v Lychowyd*, BC FIRB, October 2, 2014)
 - Odours and dust from turkey farm (*Gilbert Huber v Rocky Ridge Turkey Farm Ltd.*, BC FIRB, August 15, 2014)
 - Odour, manure dust, flies and nuisance birds from feedlot operation (*Yunker Nurkowski v Longhorn Farms Ltd.*, BC FIRB, July 31, 2014)

- Herbicide use (*Truax v Hlusek*, BC FIRB, May 27, 2014)
- Odours, nuisance birds (seagulls and crows), flies, and noise from propane cannons and screechers resulting from the respondent farm operations (*Ormstron & Cross v Dogwood Fur Farm Ltd.*, BC FIRB, February 19, 2014)
- Noise generated from roosters (*Taylor v Leasing*, BC FIRB, February 7, 2014)
- Noise, land clearing, burning and an increased rodent population (*Baird v Plasterer*, BC FIRB, January 21, 2014)

Processing Operations

- Processing operations must be a “farm operation” to receive the protection of the Act.
- Processing operations that are “farm operations” include:
 - processing the products of a farm owned or operated by the farmer (*Maddalozzo v BCPCFP*, BC FIRB, September 7, 2011).
- Processing operations that are NOT “farm operations”:
 - products from farms not owned or operated by the farmer (*Maddalozzo v BCPCFP*, BC FIRB, September 7, 2011);
 - an activity, other than grazing or hay cutting, if the activity constitutes a forest practice as defined in the *Forest and Range Practices Act*;
 - breeding pets or operating a kennel; and
 - growing, producing, raising or keeping exotic animals, except types of exotic animals prescribed by the minister;

Impact on Other Legal Proceedings

- In some provinces, the legislation specifies whether a complainant can bring an action in nuisance relating to a farm practice.
- BC does not expressly address whether an action can be brought.
- BC Act specifies restrictions on what orders a court can make in relation to farm practices

- Orders of FIRB can be filed in BC Supreme Court, and such orders will have the same force and effect as if they were judgments of that court
- Appeals of FIRB decisions may be taken to BC Supreme Court within 60 days of notification of the decision
- Appeals are limited to questions of law and jurisdiction

- The Board is a specialized tribunal and within its specialized expertise, its decisions will be granted deference.
- An appeal from an order of the BC Supreme Court to the Court of Appeal may only be taken with leave of the court

- Thanks to Jordan Regehr, articulated student
- Photo Image courtesy of Dan at FreeDigitalPhotos.net

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