

LYONS, ET AL

V.

**PAN AMERICAN NURSERY PRODUCTS INC.,
PAN AMERICAN HOLDINGS COMPANY LTD.**

DECISION WITH REASONS

JANUARY 2004

NORMAL FARM PRACTICES PROTECTION BOARD

**IN THE MATTER OF THE FARMING AND FOOD PRODUCTION
PROTECTION ACT, 1998**

**AND IN THE MATTER OF AN APPLICATION TO THE BOARD UNDER
SECTION 5 OF THE FARMING AND FOOD PRODUCTION PROTECTION
ACT, 1998**

BOARD FILE: 2004-01

BEFORE:

**ROBERT G. STEPHENS, CHAIR
ANDY MILLAR, MEMBER
RON VERSTEEG, MEMBER**

PARTIES:

**CINDI LYONS
ROBERT MUDRYK
STANLEY HARRIS
And
ELMA HARRIS, APPLICANTS**

**PAN AMERICAN PRODUCTS INC.
PAN AMERICAN HOLDING COMPANY LTD., RESPONDENTS**

APPEARANCES:

TIMOTHY O'DRISCOLL, FOR THE APPLICANTS

ROBERT G. WATERS, FOR THE RESPONDENTS

DECISION

PURPOSE OF THE HEARING

This Application is made by the Applicants Cindi Lyons, Robert Mudryk, Stanley and Alma Harris under Section 5 of the *Farming and Food Production Protection Act, 1998* for a determination that

- a) The Respondents use of a right-of-way for vehicular traffic to access its greenhouse and nursery operation is not a “normal farm practice” within the meaning of the Act;
- b) The Respondents warehousing and distribution of products which are neither grown nor processed at their Millgrove facilities is not a “normal farm practice.”

A site visit was conducted by the Panel on the morning of December 3, 2003, in the presence of the acting Secretary of the Board, Counsel for the Applicants, Counsel for the Respondents, the Applicants and the Respondents.

BACKGROUND

The Respondents carry on a greenhouse and nursery operation at its premises at 1156 Edgewood Road RR #1, Millgrove, Ontario in an area known as Edgewood, near the hamlet of Millgrove (City of Hamilton) on two parcels of land located northeast of the intersection of Edgewood Road and a private right-of-way.

The Respondents purchased its westerly 14-acre parcel in 1995 and its 86 acre easterly parcel in 1997. The westerly portion of 14 acres was purchased from Terra Greenhouses Limited which had been carrying on the greenhouse and nursery operation for a number of years. Following the purchase, the Respondents’ greenhouse and nursery operations have been significantly and systematically expanded.

In the subject area, Edgewood Road runs north-south and the right-of-way runs east-west from a T-intersection on the east side of Edgewood Road. Title to the Respondents’

westerly parcel includes deeded access to the right-of-way, but title to the Respondents' easterly parcel does not. The Respondents' easterly parcel abuts the Respondents' westerly parcel to the east.

The Respondents' property abuts Lyons' property to the east.

The right-of-way was created in 1970. In addition to the Respondents' property, the right-of-way services three residences, Mudryk's, the home of Pat and Lori McCourt and a rented residence owned by the Respondents. The right-of-way passes by the homes of the Applicants Harris and Lyons. The width of the right-of way is 66 feet which is identical to the width of Edgewood Road.

The site of the Respondents' operation is in an area partially residential and partially agricultural. The Respondents' property is zoned agricultural. The nursery is a permitted use.

An alternate access route to the Respondents' facilities is a laneway which leads to the Sixth Concession West in the former Township of Flamborough, now in the City of Hamilton, through the 86 acre easterly parcel. During the busy season (March 1 to June 30), most of the truck traffic to the site is over the right-of-way. During the balance of the year access can be obtained through the laneway except when it is too wet.

APPLICANTS

CINDI LYONS

The Applicant Cindi Lyons and her husband Rick purchased and moved to their home in Edgewood in May of 1999. The property is situated at the north-east corner of Edgewood Road and the right-of-way. The Lyons property abuts the Respondents' property to the west. The Lyons have a son Carl, who is 11 years old.

ROBERT MUDRYK

The Applicant Robert Mudryk, his wife and two sons live on property they purchased in October 1994. The property abuts the right of way to the south, opposite the Respondents' greenhouse and nursery operations. Their lot is 10 acres in size.

STANLEY AND ALMA HARRIS

The Applicants Stanley Harris and Alma Harris live on a property which they purchased in 1997 located at the south-east corner of Edgewood Road and the right-of-way. Their home is directly opposite the Lyons home.

RESPONDENTS

The Respondent, PAN AMERICAN PRODUCTS INC. is operating a greenhouse and nursery business on land owned by the Respondent, PAN AMERICAN HOLDINGS COMPANY LTD. at RR #1, Millgrove, ON. The site consists of approximately 100 acres. The Respondents purchased the business from Terra Greenhouses Limited in 1995.

There are 191,000 square feet of greenhouse space, 2,400 square feet of cooler space, 15,000 square feet of shipping space, 7,000 square feet of warehouse and 18,000 square

feet of potting facilities at this site. The items shipped from this site are bulb products and “container grown” potted plants. The Respondents wholesale several nursery products such as clematis vines, flowering shrubs, small fruits, perennials, seed potatoes, onion sets, spring and fall bulbs, and their primary focus, bare root, packages and container grown rose bushes.

FARMING AND FOOD PRODUCTION PROTECTION ACT, 1998

The Farming and Food Production Protection Act, 1998 (the “Act”) provides the statutory framework for this Application. The sections of the Act which are relevant to this Application are:

Section 1

Section 1 (1) of the Act defines “normal farm practice” as a practice that

- a) “is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances”, or
- b) “makes use of innovative technology in a manner consistent with proper advanced farm management practices”.

Section 1 (2) of the Act defines “agricultural operation” to include, inter alie:

1(2)(c) the production of agricultural crops, green house crops, maple syrup, mushrooms, nursery stock, tobacco, tree and turf grass, and any agricultural crops prescribed by the Minister;

1(2)(i) the processing by a farmer of the products produced primarily from the farmer’s agricultural operation;

1(2)(j) activities that are a necessary but ancillary part of an agricultural operation such as the movement or transfer of vehicles for purposes of the agricultural operation;

Section 2 (1) provides that:

“A farmer is not liable in nuisance to any person for a disturbance resulting from an agricultural operation carried on as a normal farm practice.”

Section 5(1) provides that :

“A person directly affected by a disturbance from an agricultural operation may apply to the Board, in a form acceptable to it, for a determination as to whether the disturbance results from a normal farm practice.”

Section 5(4) provides that :

After a hearing, the Board shall,

- a) dismiss the application if the Board is of the opinion that the disturbance results from a normal farm practice;
- b) order the farmer to cease the practice causing the disturbance if it is not a normal farm practice; or
- c) order the farmer to modify the practice in the manner set out in the order so as to be consistent with normal farm practice.”

OPERATION OF THE RESPONDENT

For the purposes of this Hearing, the relevant portion of the Respondents’ agricultural operation consists of

- a) The Respondents use of the right-of-way for vehicular access and egress, and
- b) The warehousing and distribution of products which are neither grown nor processed at the Respondents’ Millgrove facilities.

POSITION OF THE PARTIES

APPLICANTS

Mr. O’Driscoll, on behalf of the Applicants submitted that :

1. The high volume of trucks using the private right-of-way to access the Respondents greenhouse and nursery facilities is grossly excessive and because of the disturbances resulting therefrom does not constitute a “normal farm practice”.
2. The right-of-way is not a public road, but it is merely a right-of-way over private property. It should not be equated with a public road. When the right-of-way was granted, the parties clearly could not have contemplated that it would be used by hundreds of transport vehicles annually. A review of the intent of the Parties at the time the grant was established would show that the present increased usage is outside the scope of the original grant.
3. The Respondents’ easterly lot does not have the legal benefit of the right-of-way.
4. All of the Applicants lived in their present homes before the Respondents’ operations generated the excessive traffic resulting from the expansion of its facilities.
5. The warehousing and shipping of products which are neither processed nor grown on site is not an “agricultural operation” as defined in Section 1 (2) of the Act and can not be justified on the basis that such products happened to come from another operation owned by the Respondents particularly when such other operation is located thousands of miles away in another jurisdiction.
6. The Applicants’ complaints would be resolved if the Respondents completed the alternate access to their operations and discontinued the use of the private right-of-way.

RESPONDENTS

Mr. Waters on behalf of the Respondents submitted that :

1. The Respondents' greenhouse and nursery operation is an "agricultural operation" as defined by the Act and is a "normal farm practice".
2. The complaints outlined by the Applicants do not reach the level of a "disturbance" within the meaning of the Act.
3. Both the westerly portion of the Respondents property purchased in 1995 and the easterly portion purchased in 1997 have full rights of access to the right-of-way.
4. The Applicants' concerns regarding the safety of their children is not a "disturbance" within the meaning of the Act.
5. The warehousing and distribution of products at the Millgrove site qualifies as an "agricultural operation" within the meaning of the Act even if the product is grown and processed in a different location, so long as the warehousing and distribution and the growing/processing are part of the same "farmer's agricultural operation".
6. It is the normal and acceptable custom within the nursery, greenhouse and horticultural community in Ontario for the Respondents to supplement material grown on their Millgrove site with material grown and processed at other nursery locations owned by the Respondents.
7. Reasonable solutions are available which would resolve the Applicants' concerns regarding the claimed disturbances.

EVIDENCE

WITNESSES FOR THE APPLICANT

ROBERT MUDRYK

The Applicant, Robert Mudryk testified that he, his wife and two sons, moved to their present home in 1994. The property abuts the right-of-way to the south opposite the Respondents' greenhouse and nursery operations. His property has deeded use of the right-of-way and consists of approximately 10 acres.

Mr. Mudryk grew up in a rural area and his incentive to move to the Millgrove area was to have more land, more freedom of movement and a safe place for his children to play. He describes the Edgewood area as being very quiet when he moved there.

In 1994, the greenhouse and nursery business now operated by the Respondents was operated by Terra Greenhouses Ltd. and the business was operated on a much smaller scale than it is now. The nursery consisted of 14 acres on which all existing office buildings, permanent glass greenhouses, two greenhouses and a rental home were located.

Following the Respondents purchase of the business in 1995 several new greenhouses were constructed. The last greenhouse to be constructed was a large greenhouse with a 7 bay garage. It was constructed in 2002 on the 86 acre easterly parcel of land which the Respondents purchased in 1997. Mr Mudryk was not sure of the dates when the various other greenhouses were constructed after 1995.

It was Mr Mudryk's evidence that the traffic on the right-of-way was minimal when he first purchased his property. The increased volume in traffic and number of large tractor

trailers using the right-of-way has had a significant impact on his family and has adversely affected their enjoyment of their property. His evidence regarding the claimed disturbances resulting from the vehicular traffic on the right-of-way is summarized under the following headings.

1. **Noise**

Mr Mudryk's house is located almost directly across the road from one of the Respondents' glass greenhouses. The right-of-way passes directly between the greenhouse and Mr. Mudryk's home. The noise from the trucks echoes off the greenhouse which magnifies the noise level at the location of his home which is located 100 feet south of the right-of-way. The noise level is greater at night when the background noise is reduced. He is forced to keep the windows closed in their home to keep out the noise. They do not have air conditioning.

Mr. Mudryk has been diagnosed with a sleeping disorder and the noise from the trucks prevents him from getting enough sleep. He testified that it is possible to get used to the background noise of the trucks on Edgewood Road but not the trucks using the right-of-way because the noise from the trucks using the right-of-way is "intermittent and without notice". "It jolts you" he said. His wife is a normal sleeper but the noise from the trucks still wakes her sometimes. He felt that if the vehicles entered through the new access laneway "we would still hear the noise from Edgewood Road but the combined noise level would be reduced by 80%".

2. **Vibration**

Mr Mudryk testified that he can tell when a truck is approaching on the right-of-way because the windows in the house rattle and the vibration can be felt at the front of his house. He stated that “we get rattling but nothing falls off the walls”.

Mr. Mudryk explained that the source of water for his home is a well located in his front yard. The well is located in sandy soil and he expressed his belief that the vibrations from the trucks using the right-of-way travel through the ground and loosen the sand from the walls of the well causing the sediment filters to be plugged. He testified that the filters were collecting more sediment now than previously , and in the spring of 2003 he removed 2 feet of sand from the bottom of the well. He stated that the “vibration is a product of heavy trucks”.

In cross examination Mr. Mudryk confirmed that his well water has been tested for potability and the quality of the water is good. He stated that he could not be sure that the vibration created the problems with his well but he suspected that it did. He has not considered installing a sand point well.

3. **Safety**

Mr. Mudryk testified that the right-of-way is 66 feet wide but the traveled portion is 21 to 22 feet. There are no sidewalks on the right-of-way nor on Edgewood Road. There is a telephone pole located on the north-east corner of the right-of-way where the right-of-way intersects Edgewood Road. The telephone pole obstructs trucks turning from Edgewood Road on to the right-of-way.

The school bus stop for the local children is located on Edgewood Road in close proximity to its intersection with the right-of-way. The buses stop in an area that they perceive to be a safe spot to pick up and drop off the school children, and until the expansion of the Respondents facilities and the increased truck traffic which accompanied it, the location of the bus stop did not raise concerns for the childrens safety. He stated that he did not know of a safer spot for the bus to stop because “trucks come and go in all directions”. Moving the bus stop in either direction on Edgewood Road from the intersection would force the children to walk on Edgewood Road in traffic.

Mr. Mudryk produced a series of colour photographs taken between 2001 and 2003 (Exhibits #7 and 8) which purport to illustrate the bottleneck of traffic created when the school bus stops to pick up children at a time when a large truck is in the vicinity of the school bus. Mr Mudryk testified that the photographs give a representative picture of the traffic congestion that occurs at the intersection of Edgewood Road and the right-of-way on many occasions. The right-of-way is sometimes blocked for several minutes by trucks attempting to enter and emergency vehicles might be unable to access his property during those times. One photograph shows a truck passing the school bus when the school bus is stopped which Mr. Mudryk indicated depicts the inherent danger for children caused by the congestion of the traffic at the intersection.

It was Mr. Mudryk’s evidence that local children are dropped off and picked up at that bus stop by three different buses each day. He perceived the situation to be so dangerous that he felt it necessary to accompany the children as they went to the bus and again when

they came home from school. Sometimes he needed permission from his employer to be away from work in order to do so.

Mr. Mudryk expressed his concerns about the danger resulting from the Respondents' employees racing their cars, skidding, weaving and trying to pass trucks on the right-of-way. He has expressed his concerns to some of the Respondents' employees. He testified that in a number of days after such concerns being expressed, "they get back to their bad habits or just laugh and give obscene gestures".

Mr. Mudryk's evidence was that he has contacted the School Board and expressed his concerns about the safety of the children at the location of the bus stop. The school Board has not yet responded.

4. Diesel Exhaust

Mr. Mudryk testified that the diesel exhaust fumes from the trucks using the right-of-way are toxic to human health. His concern is that every one becomes exposed to diesel fumes when trucks pass close to their homes on the right-of-way. The particulate matter in diesel fumes remains in the air for weeks and it can cause lung cancer and other fatal diseases to children. If access was by the new laneway it would alleviate his concern about diesel fumes. It would take the fumes further away and "while it would still be in the air it would create a buffer". Mr. Mudryk feels it necessary to keep the windows on his home closed even in warm weather to keep out the fumes. He feels the presence of the fumes make it is unsafe for his children to play outside the home at any time.

5. Lights

Mr. Mudryk testified that the lights on one of the Respondents' buildings were lit from March 24 until May. They are illuminated constantly throughout the night and shine directly into his bedroom window. He stated that he has installed blackout shades in the windows. He feels that the Respondents' do not need lights for security reasons. He pointed to the fact that on one occasion the doors on one of the buildings were open for 3 days continuously which demonstrates that security is not a concern. He wondered "why was it necessary to have the lights on?" "It couldn't have been for a security reason."

During cross examination Mr. Mudryk testified that some of the residents of Edgewood Road have approached Bell Canada with respect to removing a telephone pole located at the north-east corner of the intersection of the right-of-way and Edgewood Road which restricts the trucks making the turn onto the right-of-way. He did not know the status of those talks. No one to his knowledge had approached Hydro One about changing the location of the Hydro pole on the opposite side of Edgewood Road.

Mr. Mudryk testified that his family have not cancelled family get togethers because of the truck traffic on the right-of-way. He stated that his family did not do a lot of things outside except for yard work.

He felt that if the right-of-way was widened from 21 feet it would make it easier for the trucks to enter the right-of-way and it would reduce the congestion of traffic at the intersection, however, he felt that the speed of the trucks would increase which might make it more dangerous for the children.

CINDI LYONS

The Applicant, Cindi Lyons, testified that she and her husband Rick and son Carl moved to their home in Edgewood in May of 1999. They had previously lived in Waterdown, a more urban centre. When she moved to Edgewood, she was aware that the Respondents carried on a greenhouse and nursery operation but she did not know the extent of it. Ms. Lyons testified that the nature of the Respondents greenhouse nursery business is the same now as it was in 1999 but the scale of the business is much larger. She did not view the Respondents operation as a problem until the large expansion in the greenhouse facilities after 1999 which she said resulted in a large expansion of the truck traffic using the right-of-way. Ms. Lyons' evidence of the disturbances resulting from the large increase in truck traffic is summarized as follows:

Safety

Ms. Lyons' main concern was that the large increase in truck traffic using the right-of-way has compromised the safety of the children living in close proximity to the right-of-way. The absence of sidewalks on the right-of-way and on Edgewood Road is part of the problem because in the absence of sidewalks the children tend to walk on the right-of-way and on Edgewood Road.

She testified that moving the location of the bus stop away from the intersection was not a solution to the problem because the danger lies in the children walking down the right-of-way to get to the bus stop. It was her evidence that she lives in constant fear of the safety of her son and other children using the right-of-way and this concern has had an adverse affect on her family life and the ability of her family to enjoy their home.

She expressed her concern about the dangerous way drivers sometimes use the right-of-way such as by playing “chicken” and by cars passing the trucks. She did not feel that she should be put in the position of having to walk her child to the bus to make sure that he makes it.

She feels that the inability of large trucks to easily negotiate the turn off Edgewood Road on to the right-of-way is the main contributor to the problem. The drivers sometimes must back in to the right-of-way or make more than one attempt to enter which creates traffic congestion at the intersection. Congestion renders the right-of-way an unsafe place for the children. The problem of traffic congestion is also the result of the large number of vehicles using the right-of-way.

It was Ms. Lyons belief that if the Respondents used the alternate access laneway to the Sixth Concession West it would reduce the traffic on the right-of-way and reduce the risk to the children. She stated that “we would be back to the environment which existed when we purchased the home”.

Ms. Lyons expressed her concern that the Respondents were not making use of the alternate access route at times when it would be suitable for use. She indicated that there was a rope preventing entrance to the alternate access at its intersection with the Sixth Concession West. She expressed her belief that this was the case most of the time.

It was Ms. Lyons' evidence that if the right-of-way at the intersection of Edgewood Road was widened it would not ease her concerns for the safety of the children but rather increase her anxiety because the drivers who know the area would drive faster in making the turn on to the right-of-way.

Traffic

Ms. Lyons testified that she maintained a log (Exhibit #12) detailing the truck traffic on the right-of way during the nine months from January 1 to July 31, 2003 at a time when she was home due to illness. The log records the number of trucks entering the right-of-way from Edgewood Road but does not record the trucks leaving the right-of-way. The log is not a complete record because some trucks would have entered on a few occasions when she was not at home and the log does not record courier trucks entering the right-of-way. It was her evidence that many types of courier trucks use the right-of-way on a regular basis and there is a constant flow of traffic on many days. Four or five employees drive their vehicles on the right-of-way all year long and during the busy season that number would increase to perhaps 15 vehicles. According to her log, during the month of May 2003, 165 trucks entered the right-of-way. That was the largest number recorded for any one month. The three busiest months for truck traffic were April, May and June.

Dust

Ms. Lyons testified that her family must keep the windows of their home closed to keep out the dust. The dust is largely a result of large trucks travelling on the right-of-way. It would be necessary to dust the house once or twice every day if the windows were not kept closed. She stated that she has asked the Respondents to place calcium on the road

and they have done so. To her knowledge, users of the road other than the Respondents have not applied calcium to the road nor have they helped to maintain the road. She stated that at times the amount of dust interferes with her family's outdoor activities. She indicated that her family has been forced from gardening and barbequing due to the dust.

Noise and vibration

Ms Lyons testified that it was difficult to get used to the noise from the trucks using the right-of-way, because the noises were of different intensity and "you don't know how long the noise will last". She said that when you hear the noise "it wakes you up". The noise disrupts your meal and "your mealtime entertainment is watching trucks try to negotiate the corner". In describing the noise she stated that there was no peace and quiet and the noise was "right in your face". She described the noise as a constant rumbling of trucks which sound like "they'll come through your house". She stated that when the trucks apply their brakes the house vibrates and on two occasions light fixtures have fallen from the ceiling. She described the noise from the squealing of tires, the applying of brakes and the racing of motors as stressful as it "prevents one from sitting down for an hour to talk and have peace and quiet". She stated that the stress and tension was less because of the noise, dust and vibration than it was from her concern for the safety of the children.

Non-grown/processed products

It was Ms. Lyons' evidence that the Respondents' bills of lading No. 37724 and 37725 were for product orders placed on her behalf. The bills of lading are for products which are neither grown nor produced but only warehoused and distributed from the Respondents' facilities at Millgrove.

RICK LYONS

The evidence of Rick Lyons was substantially the same as that of his wife Cindi Lyons.

A summary follows:

Traffic

When his family originally moved to the property most of the trucks using the right-of-way were smaller trucks such as cube vans. There was very little traffic, nothing like it is now. At this time, the amount of traffic was not problematic for his family. During the second year after they purchased the home, larger trucks such as tractor trailers frequently used the right-of-way for access to the Respondents' facilities. In the springtime there is a "continuous flow of trucks". "The trucks come day or night". There was traffic on some weekends and the volume depended upon the season. "You couldn't tell what day it was from the truck traffic". He estimated that eight employee vehicles and various trades people used the right of way on a regular basis each day.

He was aware that his wife was keeping a log recording the number of trucks entering the right-of-way and he believed the log to be accurate.

Dust

Mr. Lyons evidence was that dust was only a problem when the weather is dry. It is more of a problem when dump trucks use the right-of-way because they raise a considerable amount of dust. He referred to one week when "five hundred or more dump trucks used the right-of-way for access for the full seven days". The dump trucks were involved in construction and were not involved in the regular activities of the Respondents' nursery. His evidence was that it is necessary to keep the windows of his home closed to keep out

the dust and to regularly wash down the deck. The dust comes from the right-of-way but also from Edgewood Road. He felt that most of the dust on Edgewood Road results from the dirt being dragged out by the trucks leaving the right-of-way and also from some farm vehicles that use Edgewood Road. He stated that very few farm vehicles use Edgewood Road and that one would only see a farm tractor a couple of times a week.

Noise and Vibration

Mr. Lyons testified that the noise from the trucks can be heard inside the house with the windows closed. “You can hear the rumble and feel the vibration”. He said that the noise gets to you after a while and you wonder “what is coming next”. “It is on your mind”. “You are turned on to it” “It is irritating”. He stated that light fixtures had fallen off the ceiling of their home. In order to prevent that from happening again he now tightens the screws on the light fixtures regularly.

Safety

Mr. Lyons expressed his concern for the safety of the children in the location of the school bus stop because of the interaction of the bus with trucks attempting to enter the right of way. His evidence was that it is always on your mind. He is out in the morning to make sure that the children don't forget about the trucks. He feels a main contribution to the problem is the difficulty in manipulating the corner off Edgewood Road on to the right-of way for the large trucks. Negotiating that corner “is a function of good driving.” “Some drivers can do it and some can't”. The pole at the north-east corner of the intersection of Edgewood Road and the right-of-way makes the entrance to the right-of-way from Edgewood Road more difficult. He felt that the widening of the right-of-way would definitely help however, he expressed his concern about the possibility that the

trucks would go faster and create additional safety problems. He testified that if the Respondents did not sell products that they do not grow on the premises the traffic would be reduced. He described the present situation as intolerable. He would not recommend anyone move to that location “because it is not a pleasant situation and it is not the same situation as it was in 1999”. He felt that if the traffic using the right-of-way was diverted to the alternate access laneway all parties could co exist.

During cross examination, Mr. Lyons confirmed that when he and his wife purchased the property in 1999 he was aware that there were other businesses in the immediate vicinity of his residence including a mushroom growing operation on one side and the greenhouse and nursery operation at the rear. He confirmed that the windows of their home are closed during the daytime when he and his wife are not at home to prevent theft. He acknowledged that during some months of the year it was very quiet and there was very little traffic. He stated that he would not recommend widening the road because of the possibility that the speed of the trucks would increase. He confirmed his biggest complaint to be the volume of traffic and the implications it has for the safety of the children.

WITNESSES FOR THE RESPONDENTS

ALBENIE L COMEAU

Mr. Comeau is a truck driver that delivers pallets to the Respondents’ premises between February and June. During the busy season, he makes deliveries to the Respondents’ facilities every 3 ½ hours commencing at 8:00 p.m. continuing during the night until 4:30 a.m. During the rest of the year he only infrequently visits the premises.

Mr. Comeau stated that his tractor trailer has a total length of 72 to 74 feet. The leased truck is maintained and or repaired every 4 months. In describing the noise of the truck, he stated that it makes the noise that all trucks make but that it does not rattle. Older trucks, he said, can make more noise.

It was his evidence that the Telephone pole and Hydro pole at the intersection of Edgewood Road and the right-of-way and the narrowness of the right-of-way create problems for truck drivers in entering and exiting the right-of-way. He indicated that he has also had a problem with low hanging tree branches on the right-of-way. He stated that the trucks using the right-of-way do create some dust but that if the driver is careful it is not a big problem.

Mr. Comeau stated that when possible he uses the alternate access laneway off Concession 6 West. He acknowledged that he received a facsimile from the Respondents telling him how to go to that location and that he has been given a key to the gate at Concession 6 West to allow him to access the site. He described the alternate access as muddy in the spring and unpassable. He uses the Concession 6 West access when it is either frozen or very dry. He stated that if the laneway had a proper surface it could be accessible for all season use depending on how bad the spring thaw was. He stated that even on major highways there is a problem with the damage caused to the roads by the spring thaw. The alternate access would be better for his purposes than the right-of-way because the road is wider and closer to where he is required to drop the deliveries.

Colin Field

Colin Field testified that he is an employee of the Respondent, Pan American Nursery Products Inc., working at the Millgrove, ON farm. He is a sales representative for the Company, but has additional functions. He has recently been dealing with the concerns of neighbours arising from the alleged disturbances on the right-of-way.

Mr. Field reviewed the background of the Respondents' operation both at the Millgrove facility and at the site in Surrey, B.C. In 1995, the Respondent, Pan American Holdings Ltd., the land holding division, purchased 14 acres including offices, warehousing, buildings and greenhouses at RR #1 Millgrove and in 1997 Pan American Holdings Ltd. bought an adjacent 86 acres of property which abuts the original 14 acres on the east. He described the Millgrove operations as a supplier of container or "potted" products to Eastern Canada.

Mr. Field reviewed the site details of the property at Millgrove and described the nature of the business conducted at that location. The largest part of the business is high volume potted plants that are grown at and shipped from the Millgrove site. A small portion of the business consists of the warehousing and distribution of bulbs or bulk business which constitutes approximately 1% of the total volume of the plants' business shipped from the Millgrove facility. He explained these items are shipped to the Millgrove facility from the Corporations' head facility in British Columbia or direct from other parties. He referred to page 31 of the Respondents' spring catalog for 2003, which itemizes a list of products warehoused and distributed but not grown or processed at the Millgrove site.

The Respondents have 8 full time employees. That number is increased by 14 when “potting” commences in January. A further 15 employees are added during the busy season which is between March 1st and June 30th. He stated that during the busy season most of the access to the site is through the right-of-way and during the balance of the year, access can be obtained through a laneway, when it is passable, which leads to the Sixth Concession West in the former Township of Flamborough, now in the City of Hamilton.

Mr. Field reviewed the dates of construction of the various greenhouse facilities constructed after the Respondents purchased the business from Terra Greenhouses Ltd. in 1995. All of the existing greenhouses, with the exception of the large greenhouse containing 7 loading bays which was constructed in 2002 on the 86 acre easterly portion, are located on the original westerly 14 acres. Two greenhouses were constructed in 1997, four in 1999, two in 2000, two in 2001, two in 2002 and four in 2003.

Mr. Field reviewed the Respondents’ efforts to construct an alternate access route leading to the Sixth Concession West. He stated that the construction was in compliance with all Zoning By-laws and the Official Plans of Flamborough and Hamilton-Wentworth. Consent was obtained from the Conservation Authority to allow the laneway to be constructed in an area designated as Woodland Swamp.

JOHN BONAS

John Bonas testified that he is an employee of the Respondent Pan American Nursery Products Inc., and works out of the Millgrove facility. He is the Nursery Manager for the Company. He is also involved with sales.

Mr. Bonas testified that complaints from neighbours commenced approximately six months after Cindi and Rick Lyons moved to their home at the intersection of Edgewood Road and the right-of-way. He testified that the Respondents had received complaints regarding noise and dust on the right-of-way and he understands their concern is also for the safety of the children. He reviewed the types of complaints which have been received and the efforts of the Respondents to deal with those complaints. He stated that there have been several complaints to the Hamilton Police which appear to stem from the speed, frequency, time and volume of trucks entering and exiting the right-of-way. Several complaints were received from the Applicant, Stan Harris, claiming the trucks entering and leaving the right-of-way damaged his grass. There have been numerous complaints to the By-Law Officer about trucks entering the site or leaving the site after 7:00 p.m. at night. There have been complaints from the Applicant, Robert Mudryk, that his laneway has too many potholes.

Mr. Bonas testified that in an effort to accommodate the neighbours, the Respondents changed their work hours to 7:30 a.m. to 4:00 p.m. rather than 8:00 a.m. to 4:30 p.m. so that the employees would be at work before the school buses arrived in an effort to alleviate what the neighbours considered to be a problem of the employees arriving and leaving at the same time as the school buses. The Respondents complete the snow

removal on the laneway which Mr. Bonas testified benefits all the users. In addition the Respondents spread calcium on the right-of-way on a regular basis to keep dust down. He arranged for “Go Slow” signs to be posted on the right-of-way.

Mr. Bonas reviewed the Respondents’ negotiations with the Halton Region Conservation Authority between 1999 and 2001 to allow the construction of a roadway for an alternate access. This roadway, on the 86 acre easterly parcel of land, is an extension of the previously existing roadway which had become derelict. The intent was to join it to the right-of-way on the Respondents original property. Mr. Bonas testified that since 1999, the Respondents have worked intermittently on the construction of the roadway. He described the limiting factor constructing the roadway to be the swamp through which the access road must pass. The various approvals which were necessary before the Respondents could proceed with the construction of the roadway were obtained. Several thousand tires which had been left on the site by previous owners have been removed. To date, more than two thousand loads of fill and material have been trucked to the site and at this time the road is passable for many months of the year. Their difficulty is that the road is not passable during the Respondents’ busiest season. The laneway was constructed to provide access under good weather conditions only and was not built to any Municipal standards.

It was his evidence that in response to complaints from the neighbours, the Respondents have for the past two years tried to direct truckers to the Concession 6 West access and have provided notices to all of the trucking companies with whom they deal on a regular

basis. In addition they have tried to direct staff to use the alternate entrance. The Respondents are continually trying to improve the road. The Respondents are prevented from using the Concession 6 West entrance during half load season. The Traffic By-law for the City of Hamilton provides that Concession 6 West cannot be used during the months of March and April. Edgewood Road, however is not subject to such restrictions. Mr. Bonas reviewed the efforts of the Respondents to engage an Engineering Consultant for the purpose of improving the road. The Respondents have obtained estimates from local contractors for the work to be done but at the present time the costs are prohibitive and beyond the reasonable means of the Respondents to continue to carry on a competitive business and complete the road at the same time. The Respondents need time to improve this road. In the meantime, as farmers, the Respondents believe that they have legal access through the right-of-way in concert with the neighbours.

It was Mr. Bonas' evidence that the Respondents have spent \$109,873.00 to date constructing the alternate access and the cost of completing the laneway to all season standard would be a further \$133,980.00 according to the estimate. He stated that the cost is a major factor that determines the feasibility and speed at which the road can be completed. In addition to the cost estimate of \$133,980.00 to complete the road portion would be the cost of landscaping the laneway. The total probable cost would be closer to \$200,000.00. It is not the intention of the Respondents to abandon the road but to schedule the construction in such a way that is economically feasible.

Mr. Bonas testified that it was the Respondents' initiative for the construction of the alternate access. They recognize the need to find an easier more suitable access.

During cross-examination, Mr. Bonas stated that prior to the time the Respondents purchased the nursery business from Terra Greenhouses Ltd., the property had been used as a growing farm. He stated that in May, 1995, there were probably three trucks a day using the right-of-way and those trucks would have been either tractor trailers or 5 tonne trucks. Terra Nurseries Ltd. had two trucks of their own which were both 5 tonne trucks. Those trucks delivered products to the facility two times per day. The facility operated year round.

HASAN GILANI

Hasan Gilani is an employee of Courtland's Engineering Consultants Inc., in Kitchener and is the Senior Geotechnical Engineer. He was sworn as an expert in the field of Road Construction and Engineering.

Mr. Gilani testified that his employer was retained by the Respondents to carry out a Geotechnical investigation for a proposed gravel surfaced driveway at the Respondents' Millgrove farm and to provide recommendations for strengthening the seasonal access laneway as required to provide all seasonal access to the Respondents' facility from Sixth Concession West.

Following the investigation and report, two quotes were obtained for the proposal. One quote did not meet the recommendation of the report and Mr. Gilani suggested that it not

be considered. The other quote did satisfy the requirements of the report and the quoted price was \$133,980.00. The quote does not include landscaping.

It was Mr. Gilani's evidence that the work that has been done to date on the road although helpful in creating the roadway is not adequate to provide a road that will provide year round access.

JEFF OLSON

Jeff Olson is an Officer of Brookdale Treeland Nurseries Limited "Brookdale," being its Vice-President. His evidence was that he is very familiar with the Respondents' operation at Millgrove. The "Brookdale" operation is similar to that of the Respondents. Most of the products sold at the "Brookdale" Schomberg site are grown on site. It is a container operation and distribution centre. The "Brookdale" nursery is two times the size of the Respondents' nursery and operates on 135 acres fully developed as apposed to 14 acres for the Respondents main facility.

Mr. Olson testified that there are a minimum of 30 and a maximum of 70 tractor trailers loading each day during the busy season at "Brookdale".

The "Brookdale" facilities are located at the corner of Highway #27 and the 17th Concession side road. The location in relation to neighbouring residents is similar to the Respondents' facilities. The distance from Highway #27 to the entrance of the "Brookdale" facility is 500 feet and the driveway is 500 feet long so the distance from the Highway to the facility is 1000 feet. One half of the driveway is paved and asphalt

covers the parking area. There are two neighbours who reside within 50 to 100 feet of the entrance. Most neighbouring parcels are 10 acres in size. There are 30 houses within one half mile of the nursery. There are no residences which abut the driveway.

Mr. Olson testified that trucks can create disturbances and in an effort to reduce the disturbances, “Brookdale” does not allow overnight parking on the property and it insists that refrigerated units be shut off to keep the noise down. Part of the laneway has been paved to solve dust problems and calcium is used where there is no paving.

It was his evidence that the material grown at Schomberg is supplemented with products from other farms. Customers require products which are not grown at Schomberg and if “Brookdale” only sold products that were available at the Schomberg location, the product line would not be attractive to customers. It was his evidence that the “Brookdale” policy of distributing products which are not grown nor processed at the “Brookdale” facility is a policy representative of the industry.

Mr. Olson estimated that the volume of the trucks servicing the facility would be 5 times that of the Respondents’ facility.

**THE MATERIAL FINDINGS OF FACT MAY BE SUMMARIZED AS
FOLLOWS:**

The right-of-way

Access to the Respondents’ nursery facilities is by way of a right-of-way over lands owned by Patricia and Lori McCourt whose residence is located on the south side of the

right-of-way. The right-of-way is 66 feet wide and was created by a deed dated December 16, 1970. The Respondents' westerly 14 acres of land has deeded access to the right-of-way. The easterly 86 acres does not. The easterly 86 acres abuts the westerly 14 acres.

There are two homes located on the north side of the right-of-way and three homes on the south side. The right-of-way services three residences (Mudryk's, McCourt's, and a residence rented out by the Respondents) and passes by the Harris and Lyons residences. The traveled portion of the right-of-way is approximately 21 to 22 feet wide. There is a Telephone pole located at the northeast corner of the intersection of the right-of-way and Edgewood Road and a Hydro pole is located on the west side of Edgewood Road opposite the Telephone pole above referred to. There are no sidewalks on the right-of-way. The Harris' and Lyons' residences are located at the southeast corner and northeast corner respectively of the intersection of Edgewood road and the right-of-way. The portion of the right-of-way on either side of the traveled portion has been assimilated into the lawns of the homes which abut the right-of-way.

Traffic on the right-of-way

Robert Mudryk described the traffic when the Respondents purchased the nursery operation in 1995 as being minimal. That evidence was corroborated by similar evidence of John Bonas. The trucks that were using the right-of-way at that time were mostly 5 tonnes stake trucks and the odd tractor trailer. Traffic at that time was not seen as a problem. The amount of traffic has increased since 1995 in proportion to the rate at which the Respondents' business has expanded. Evidence of all the Applicants'

witnesses was that the traffic did not become a significant problem until after 1999. There was no evidence that traffic was a problem during any part of the year except during the Respondents' busy time from March 1st to June 30th.

The Applicant, Cindi Lyons maintained a log which recorded the number of trucks entering the right-of-way from Edgewood Road during the period from January 1st to July 31st, 2003. A review of her log shows the following:

1. There were no trucks recorded as having used the right-of-way on weekends during the months of January, February, March and July. The total number of trucks using the right-of-way on weekends during the seven month period was 9.
2. Except for the months of April, May and June the greatest number of trucks recorded for using the right-of-way for any one month was 30.
3. The maximum number of trucks recorded for any one month was 165. This occurred in May.
4. In May, the average daily number of trucks per day in May was 5.3.
5. In May, the total number of trucks entering the right-of-way between 8:00 a.m. and 8:30 a.m. was 5.
- 6.. During the 7 months that the log was maintained there were 9 days during which 10 trucks or more entered the right-of-way. There were such 3 days in April, 5 in May and 1 in June.
7. John Bonas produced a log which recorded the number of Bills of Lading issued to trucks using the right-of-way during 2003 from January 1st till August 29th. The log recorded 139 trucks for the month of May.

The Respondents' log shows a total annual number of trucks using the right-of-way as follows:

1999 49

2000 297

2001 296

2002 328

2003 467(to August 29th , 2003)

Mr. Bonas advised that the records for 1999 and 2000 were lost and that the figures shown are a best estimate.

Relevant Dates

The Applicants' Stanley and Elma Harris purchased their home in 1977.

The Applicants' Cindi Lyons and Rick Lyons purchased their home in 1999.

The Applicant Robert Mudryk purchased his home in 1994.

There was no evidence called to establish the date that nursery operations began at the Millgrove site, however, it appears that a nursery has been operating at the Respondents' Millgrove site since prior to 1977. (The witness statement of Stanley Harris states "the location of our house at the junction of Edgewood Road and the privately owned Lorne Avenue posed no problem with respect to traffic servicing the DeRoos Gladiola Nursery.")

The Respondents' purchased the nursery business from Terra Greenhouses Limited in 1995. Since the Respondents purchased the business, the greenhouse nursery operations

have expanded with new greenhouse facilities being added according to the following schedule.

a) on the original westerly 14 acres

2 greenhouses in 1997

4 greenhouses in 1999

2 greenhouses in 2000

2 greenhouses in 2001

2 greenhouses in 2002

4 greenhouses in 2003

b) on the easterly 86 acres

1 greenhouse in 2003

Alternate Access Laneway

Commencing in 1999, the Respondents commenced negotiations with the Halton Region Conservation Authority to allow the construction of a roadway to serve as an alternate access. Since that time the work has progressed intermittently on the construction of the access. The proposed roadway is bounded by land designated as Wetland Swamp. In order to provide access to the buildings that are in existence on the Respondents' property it is necessary to cross between two wetland areas. Various required approvals were obtained. Since construction began, approximately 2000 loads of fill have been brought in. The road has been gradually improved and is passable for some months of the year when the road is dry or frozen. The road is impassable during wet weather and during the spring thaw. The road is not an alternative for the trucks accessing the Respondents' facilities during the Respondents' busiest season. The City of Hamilton Traffic By-Law

prevents the use of Concession 6 during half load season in the months of March and April and accordingly the use of the alternate access is not suitable during that time. The cost of construction to date is \$109,873.00. The cost to complete the road to allseason standard is estimated to be \$133,980.00 not including the cost of landscaping which could increase the cost to \$200,000.00.

THE LEGISLATION – THE *FARMING AND FOOD PRODUCTION PROTECTION ACT, 1998* (“THE ACT”)

This Application is brought under the Act. At the outset, it is appropriate to look at the preamble for some guidance as to the purpose and interpretation of this legislation. It states as follows:

“it is desirable to conserve, protect, and encourage the development and improvement of agricultural lands for the production of food, fibre and other agricultural or horticultural products.

It is in Provincial interest that in agricultural areas, agricultural uses and normal farm practices be promoted and protected in a way that balances the needs of the agricultural community with Provincial health, safety and environmental concerns.”

This Application was made under Subsection 5(1) of the Act, which provides as follows:

“ a person directly affected by a disturbance from an agricultural operation may apply to the Board in a form acceptable to it, for a determination as to whether the disturbance results from a normal farm practice.”

After a hearing, the Board may take any one of the following actions:

- (5)(4) After a hearing, the Board shall
- a) dismiss the Application if the Board is of the opinion that the disturbance results from a normal farm practice;

- b) order the farmer to cease the practice causing the disturbance if it is not a normal farm practice; or
- c) order the farmer to modify the practice in the manner set out in the Order so as to be consistent with normal farm practice.”

In order to properly interpret Subsection (5) (1) it is necessary to consider various definitions. Section 1 of the Act contains the relevant definitions for this Application are:

“DISTURBANCE” means “odour, dust, flies, light, smoke, noise and vibration;”

“Normal farm practice” means a practice that,

- a) is conducted in a manner that is consistent with proper and acceptable customs and standards are established and followed by similar agricultural operations under similar circumstances, or
- b) makes use of innovative technology in a manner consistent with proper advanced farm management practices;”

At the commencement of the Hearing, Mr. O’Driscoll, on behalf of the Applicants agreed that the Respondents are carrying on an “agricultural operation” and that the operation is a “normal farm practice” within the meaning of the Act. However, he does not consider the following be normal farm practices.

- a) the Respondents use of the right-of-way for vehicular traffic to access its greenhouse and nursery operation is not a “normal farm practice” within the meaning of the Act;
- b) the Respondents warehousing and distribution of products which are neither grown nor processed at their Millgrove site is not a “normal farm practice”;

The onus of proof falls on the Applicants to establish that they were persons directly affected by a disturbance from an agricultural operation and once that has been proven, the onus shifts to the farmer to establish that the farm practice with respect to his agricultural operation is a normal farm practice within the meaning of the Act.

THE ISSUES

The following is a summary of the issues to be considered.

A) Have the Applicants established on a balance of probabilities that any one of them has been directly affected by a disturbance from the agricultural operation of the Respondents?

B) Assuming that the answer to A is “yes”, then the Board must determine whether or not the Respondents’ practice is a normal farm practice within the meaning of the Act. In determining whether or not the Respondents’ practice is a “normal farm practice” the following issues will be addressed.

1) Is warehousing a necessary and integral part of processing?

2) Is there a requirement in the Act that “processing” must take place at the same location as the warehousing in order for warehousing to be considered an “agricultural operation” within the meaning of Section (1)(2) of the Act?

3) Is the Applicants’ concern for the safety of children a “disturbance” within the meaning of the Act?

4) Does the Board have jurisdiction to review the intent and contemplation of the Parties at the time that the right-of-way was granted, for the purpose of determining if the present usage is inside the scope of the original grant?

5) Does the Board have the jurisdiction to determine that the Respondents’ easterly parcel of land does or does not have legal access to the right-of-way.

FINDINGS AND REASONS

A) Have the Applicants established on the balance of probability that any one of them has been directly affected by a disturbance from the agricultural operation of the Respondents?

The disturbances complained of by the Applicants were noise, vibration, dust, diesel fumes and concerns regarding the safety of their children.

It is therefore incumbent upon the Applicants to establish on the balance of probability that one or more of them have been directly affected by one or more of the disturbances.

Cindi Lyons and Rick Lyons testified that the traffic on the right-of-way creates dust which necessitates closing the windows of their home and which, on occasion, has compelled them to retreat to the house while doing yard work or barbequing.

Mr. Mudryk, whose home is located approximately the same distance from the right-of-way as the Lyons' home, did not in his evidence indicate that dust was a disturbance. All of the Applicants' witnesses testified that noise from the trucks could be heard while inside their home with the windows closed. The noise interrupts their sleep. Mr. Mudryk admitted that he has been diagnosed with a sleeping disorder and so the noise affects him more than it does his wife who he said wakes on occasion as a result of the noise. All of the Applicants' witnesses testified that vibration from the trucks is a significant disturbance. In the case of Cindi and Rick Lyons, the vibration shakes loose the light fixtures from the ceiling. Mr. Mudryk suggested that the vibration is causing the sand filters in his well to plug. Mr. Mudryk expressed his concern about the health risk created by diesel fumes from the trucks. He felt that the fumes were a health concern although there was no evidence that anyone in his home had suffered any ill effects from diesel fumes. Neither Cindi Lyons nor Rick Lyons expressed any concern about diesel fumes. The witness statement of Stanley Harris contained a statement that the windows in the Harris home were kept closed partly because of the diesel fumes.

All the evidence of the Applicants' witnesses was anecdotal and was not backed up by any technical evidence. This Board has previously held that whether or not a person is directly affected by a disturbance is a threshold test. One must only meet that threshold test in order to have the onus of proof shift to the farmer to prove that his practice is a normal farm practice.

Although we question the credibility of some of the Applicant testimony with respect to concerns regarding safety of the children and the intensity and quantity of the disturbances resulting from the trucks using the right-of-way, we find that there is sufficient evidence to establish that some of the named disturbances directly affected at least some or all of the Applicants. The Applicants are entitled to have the Board proceed to investigate the issue of whether or not the Respondents' farm operation is a normal farm practice.

B) Whether or not the Respondents practice is a normal farm practice within the meaning of the Act?

The first of the 5 sub issues to be considered is whether warehousing is a necessary and integral part of processing.

1) Is warehousing a necessary and integral part of "processing"?

It was the position of Mr. O'Driscoll that the definition of "agricultural operation" in Section 1(2) of the Act does not include warehousing (no matter how short-term in nature) and/or distribution of products which are neither grown nor processed by the farmers' operation.

Mr. Waters submitted that warehousing is such a necessary and integral part of “processing” that warehousing is an “agricultural operation” within the meaning of Section 1 (2).

“Section 1(1) defines “processing “ as including

“sawing, cleaning, treating, grading and packaging” to the extent that these activities relate to the products primarily from and are conducted as part of an “agricultural operation”.

In considering the definition of “processing”, we asked the question “would it be reasonably possible to process a product without having a warehousing or storage component to the operation?” We are of the opinion that it is not possible. When a product is delivered to the location where it is to be processed, it must be warehoused immediately prior to, during or immediately after processing even if it is to be delivered to another location for ultimate warehousing and sale. Warehousing is not one of the included activities in the definition of “processing” in Section 1(2)(i), however, we find that warehousing is a necessary and integral part thereof.

2) Whether the warehousing and distribution of non-grown/processed on-site products is a “normal farm practice”?

We can find nothing in the legislation to suggest that warehousing can only qualify as an “agricultural operation” when the warehoused goods are “processed” at the same location as they are warehoused and distributed. We believe that the “processing” and “warehousing” could be completed at two of the Respondents’ farm operations even if in different locations. In such a case, the subsequent warehousing in Millgrove of the product previously processed at a different location would qualify as “an agricultural

operation” within the meaning of Section 1(2) of the Act. Such an interpretation is in keeping with the integrated nature of farming. It is common practice that the same farm operator will have several different integrated farm operations in different locations. The locations chosen might reflect the availability of the required growing conditions, the availability of land, an adequate supply of labour and many other considerations. It may be that those various integrated farm operations are located within a few miles of each other or as in this case, widely spread. Where those integrated farming activities are all part of the “farmers agricultural operation”, each of the parts that make up the whole are part of an “agricultural operation”. Accordingly, products warehoused and distributed at the Millgrove site, which were “processed” at another site would be an “agricultural operation” so long as both sites were part of the “farmers’ agricultural operation”.

Mr. Olson testified that his company supplemented material grown on his company’s main site in King Township with material from their other farming locations in the Port Hope area. He testified that this policy represents the proper and acceptable customs within the nursery, greenhouse and horticultural community and that it represents the type of agricultural operation which currently exists in that industry in Ontario.

Mr. Olsons’ evidence was corroborated by the Respondents’ witness, John Bonas. He stated that customers attending the Respondents’ garden centre expect a variety of product. They want one stop shopping for their garden supplies and the normal practice in the nursery business is to supplement the products grown/processed at one site with products grown/processed at another of the “farmers’ agricultural operations”. The

evidence of Mr. Olson and Mr. Bonas regarding the normal practice in the province was not contradicted by other evidence and we accept their evidence in that regard.

We are of the opinion that an Order by this Board that the Respondents cease the practice of warehousing and distributing products at the Millgrove site on the grounds that the product was not “processed” or “grown” at the site would ignore the realities of the integrated nature of agricultural operations and would not be in keeping with the spirit and intent of the legislation. We find that the warehousing and distribution at the Millgrove site of products “processed” in British Columbia, another of the Respondents’ farm operations is an “agricultural operation” within the meaning of the Act.

3) Are the Applicants’ concerns for the safety of children a “disturbance” within the meaning of the Act?

The evidence of the Applicants was that their greatest concern was for the safety of the children while walking on the right-of-way, waiting to be picked up by the school bus and departing from the school bus. The Applicants allege that the stress and anxiety resulting from such concerns amounts to a “disturbance” within the meaning of the Act.

We find that the stress or anxiety of the Applicants resulting from safety issues in the context of this case, is not a defined “disturbance” which would allow the Applicants to support an Application under Section 5(1) of the Act. Mr. O’Donnell submitted that the reference to safety in the preamble of the Act was indicative of the Boards’ jurisdiction to consider “safety” issues. It is our opinion that where the preamble speaks of it being in

“the Provincial interest that “normal farm practices” be promoted and protected in a way that balances the need of the agricultural community with Provincial health, safety and environmental concerns” (emphasis mine), the reference to safety is to safety concerns associated with the named “disturbances” in Section 1(1) of the Act.

The preamble to the Act clearly contemplates that safety is one of the underlying reasons for the Act. The jurisdiction within this Board must operate is clearly set out in the Act. The Applicants have made numerous safety related submissions to the Board, each of which may be a valid safety concern, but each of which fall outside the jurisdiction of this Board, into the realm of the Highway Traffic Act, or other such enactments.

In any event, while safety is not a “named disturbance,” it is one of the site-specific circumstances which the Board must consider when determining “normal farm practice”.

4) Does the Board have jurisdiction to review the intent and contemplation of the parties at the time the right-of-way was granted for the purpose of determining if the present usage is inside the scope of the original grant?

There was no evidence called at this Hearing to suggest that the original grant of the right-of-way to the Respondents’ predecessors in title was limited in any way. The evidence was that the Respondents have deeded use of the right-of-way and that the Respondents and their predecessors have used the right-of-way for access to the nursery operation since the right-of-way was granted. In the absence of any evidence to the contrary, we conclude that such use is appropriate.

It may be that the Respondents' present use of the right-of-way is beyond the scope of the use anticipated in the original grant. However, in the absence of any evidence establishing such a limitation, it is not necessary to consider the issue of jurisdiction.

5) Does the Board have jurisdiction to determine that the Respondents' easterly parcel of land does or does not have legal access to the right-of-way.

It is the position of the Applicants that the easterly 86 acre portion of the Respondents' land does not have deeded access to the right-of-way and that accordingly, trucks servicing the seven-bay greenhouses constructed in 2002 on the easterly parcel of land would not have legal access to the right-of-way. It is the position of the Respondents that access to the right-of-way for the trucks servicing the greenhouse located on the easterly portion of the property is gained by virtue of the fact that the easterly portion abuts the westerly portion, which does have deeded access.

We find that a determination of this issue is beyond the jurisdiction of this Board.

Whether or not the Respondents have a legal right to use the right-of-way is not an issue involving normal farm practice.

Considering the issue of safety

The Applicants allege that the right-of-way is an unsafe place for children due to the excessive volume of truck traffic accessing the Respondents' facilities. However, the Applicants' evidence suggests that several factors contribute to what they perceive to be unsafe conditions, the volume of traffic being one of those factors.

The narrowness of the travelled portion of the right-of-way at 21-22 feet makes passing difficult, so that when an employee of the Respondents' attempts to pass a truck on the right-of-way or when an emergency vehicle attempts to access the right-of-way at the same time as a truck, an unsafe situation results. The location of a Telephone pole and Hydro pole on opposite sides of Edgewood Road limits the turning radius for trucks entering or leaving the right-of-way. A pile of stones placed on the right-of-way near the Harris' property narrows the entrance to the right-of-way for trucks traveling south on Edgewood Road and attempting to turn on to the right-of-way. There are no sidewalks on the right-of-way nor on Edgewood Road, the result of which is that the children going to or coming from the school bus are more likely to walk on the right-of-way which becomes a safety issue if a truck at the same time enters the right-of-way. The bus stop is located near the intersection of the right-of-way and Edgewood Road. Due to the difficulty in making a turn onto the right-of-way the trucks must go very slowly or back in or manoeuvre back and forth and in effect make two or three attempts. All of these manoeuvres, because of the extra time required create traffic congestion at the intersection and create what the Applicants' consider to be a safety issue for the children at the bus stop and on the right of way. The large volume of truck traffic using the right-of-way would exaggerate these safety concerns. The evidence suggests that safety concerns result from a combination of the volume of traffic and the fact that the traffic cannot easily access the right-of-way.

All of the Applicants' witnesses testified that widening the right-of-way and moving the Telephone pole and Hydro pole from their present location on Edgewood Road would make turning easier, quicker and would eliminate some of the safety concerns. However, they were concerned that if it was made easier for the trucks to enter or exit the right-of-way, the trucks might go faster and that in itself would become a safety issue.

The right-of-way granted to the Respondents predecessors in title is 66 feet wide. It was intended that the right-of-way was for vehicular access. Calling the right-of-way a private right-of-way does not mean that it is not to be used as a road. In the absence of any evidence to the contrary, we must assume that the right-of-way servicing three homes and a business was intended to be used as a road for all purposes. There was no evidence at this hearing to suggest that the original grant was limited in any way.

The limited width of the travelled portion of the right-of-way and the location of impediments to the use of the right-of-way, appears to be a result of all stake holders, including those who have deeded access to the right-of-way, the owners of the right-of-way, the Telephone and Hydro Authorities and perhaps the municipality failing to act in the best interest of those using the right-of-way.

Edgewood Road is a two way paved road with a 66' road allowance. It is typical of paved roads in rural areas. Most rural roads pass through numerous scattered hamlets where school children get picked up and dropped off by a school bus. Sidewalks are not a common feature in many small hamlets.

The Applicants contend that trucks enter and exit the right of way when the bus is picking up and dropping off children thereby creating unsafe conditions on the right of way and in the area of the bus stop. The truck log maintained by the Applicant, Cindy Lyons, contains an entry for April 27th, 2003, indicating that the children were waiting for a bus at 8:05 a.m. We assume then that the pick up is sometime between 8:00 and 8:15 a.m. During the month of May, 2003, the busiest month for trucks using the right of way, the log records three trucks entering the right of way between 8:00 a.m. and 8:15 a.m. If that period were extended to 8:30 a.m. the number of trucks entering the right of way is five. Cindy Lyons' evidence was that the log is not intended to be an accurate record of the trucks exiting the right of way. We note the log records three trucks exiting the right of way during that period of time. We do not view such numbers as supportive of the Applicant's position that the volume of traffic on the right-of-way is a significant safety concern for children going to the school bus or waiting for the school bus.

If the bus arrives at a time when a truck is entering or exiting the right of way, logic tells us that the bus would slightly alter the pick up or drop off spot to avoid a situation that could be unsafe.

The evidence of Mr. Mudryk was that the School Board was advised of the Applicants' safety concerns and that they hadn't replied. We find it unusual indeed that a School Board would not respond after receiving notice of a parent concern about unsafe

conditions for the children, unless they were satisfied that the busing situation at that location was appropriate.

The Applicants' evidence was that there are 35 children under sixteen in the "neighbourhood" and several of those children use the same bus stop as the Applicants' children, yet only two of the four Applicants, Cindi Lyons and Robert Mudryk and one parent, Rick Lyons attended to express their concerns at this Hearing. Of the five homes that abut the right of way, the residents of three of those homes did not testify. It does not appear from the evidence that the safety of the children on the right of way or at the bus stop is a significant community concern. Nor was there any evidence that any occurrence involving an injury or near injury had ever occurred on the right-of-way or near the intersection as a result of the Respondents' use of the right-of-way.

DISTURBANCES

The Applicants have been affected by "disturbances" of dust, noise, vibration and diesel fumes. In determining if the Respondents' "agricultural operation" is a "normal farm practice" we have considered the impact of the "disturbances" upon the Applicants. We have considered the types of interference, the severity, the duration and the character of the neighbourhood.

The Applicants Cindi Lyons and Rick Lyons testified that the dust resulting from vehicular traffic on the right-of-way causes them to keep their house windows closed. If they did not keep the windows closed it would be necessary to "dust" once or twice per day. Rick Lyons testified that it is necessary to wash down the deck occasionally. On

occasion dust causes Cindi Lyons to go into the house interrupting barbequing or gardening. The witness statement of the Applicant, Stanley Harris states that “we have experienced inconvenience from diesel exhaust fumes and road dust which has compelled us to keep windows closed at all times”. The Applicant Robert Mudryk did not complain of road dust in his evidence.

We note that the home of Robert Mudryk is located at approximately the same distance from the right-of-way as are the homes of the Applicants’ Harris and Lyons.

Edgewood Road is paved but has gravel-sand shoulders. Vehicles travelling on Edgewood Road would raise some dust especially when wheels travel on the shoulder. Some of the dust would necessarily drift to the Harris and Lyons homes. That is especially so in this case where trucks turning onto the right-of-way must cross the shoulder of Edgewood Road before reaching the right-of-way.

The only logical way to explain the difference in the impact of dust on the Applicants’ Lyons and Harris and the Applicant, Mudryk, who did not complain of road dust would be to account for the influence of dust originating on Edgewood Road which would be more likely directly affect Lyons and Harris whose homes abutt Edgewood Road, but would be less likely to drift to the Mudryk home, located further away from Edgewood Road.

The evidence was that the Respondents have regularly applied calcium to the right-of-way to keep the dust down. That would also explain in part way Mr. Mudryk who lives a

considerable distance away from Edgewood Road has no dust while the Harris' and Lyons' homes which abut Edgewood Road are significantly impacted by dust.

Cindi and Rick Lyons testified that they hear the noise from the trucks even with the windows closed. The witness statement of Mr. Harris was silent on the issue of noise from vehicular traffic although he lives across the road from the Lyons. As previously stated the homes of the Harris and the Lyons are located an equal distance from Edgewood Road and the right-of-way and one could expect that the impact from the noise of the trucks would be the same for each of them. Mr. Mudryk testified that the noise keeps him awake. He acknowledged that he has a sleeping disorder so that the noise has a greater impact on him than his wife who he said is a regular sleeper but who wakes up sometimes because of the noise.

The traffic on Edgewood Road would travel faster and in greater volume than traffic on the right-of-way. We conclude that a significant amount of the truck noise in the vicinity of the Lyons, Harris residences is from vehicular traffic on Edgewood Road. That assumption is supported by the evidence of Mr. Mudryk who testified that if there were no traffic on the right-of-way he would still hear the noise from Edgewood Road but that the noise level would be reduced by 80%. Given the location of the Lyons and Harris homes next to Edgewood Road, the absence of truck noise in the right-of-way would reduce the noise level at their homes much less than it would for Mr. Mudryk.

It was the evidence of the Applicants' witnesses that the noise from the trucks on the right-of-way is different than the background noise of the trucks on Edgewood Road because you "don't know when it's coming or when it will leave". Is that any different than the noise from the trucks on Edgewood Road?

We accept the evidence of Cindi and Rick Lyons that vibrations from the large trucks using the right-of-way causes the light fixtures in their home to be shaken loose from the ceiling. The impact of vibration described by Mr. Mudryk was somewhat less at the location of his home. He said "we get rattling but no fixtures fall down". For reasons previously stated with regard to noise, we expect the vibrations at the Lyons' home are enhanced because of their proximity to the traffic on Edgewood Road. Included in the witness statement of Mr. Harris is the following statement. "There has been structural damage to our house, mainly cracked plaster and brick work, which I attribute to the significant vibrations caused by the loaded trucks". We accept the evidence contained in the witness statement of Mr. Harris is corroborating the evidence of other witnesses for the Applicants but only to the extent that the witness statement is consistent with the evidence of the other witnesses. However, his statement regarding vibration goes beyond corroboration and alleges a significantly greater impact from vibration than was contained in the evidence of the other witnesses. The witness statement of Mr. Harris is not under oath and was not subject to cross examination.

Normal Farm Practice

The leading case on the meaning of “normal farm practice” is the Ontario Court of Appeal’s decision in *Pyke v. Tri Gro Enterprises Ltd.* (2001) 55 O.R. (3rd) 277 (C.A) (leave to appeal refused by the Superior Court of Canada) (200) SCCA 493 (S.C.C.) It is common ground that if the activities of the Respondents qualify as “normal farm practice”, the Applicants’ claim must be dismissed.

The inquiry into whether a farming operation qualifies as a “normal farm practice” is both fact and site-specific. Charron J.A. at paragraph 42 of the *Pyke* case states that “the determination of what constitutes a “normal farm practice” must be made in a proper context, and that, depending on the practice under review, the context may be broad indeed, involving the consideration of many relevant factors including the proximity of neighbours and the use they make of their lands.”

Sharpe J.A. writing for the majority of the Court of Appeal in *Pyke* states, at paragraph 78.

“in my opinion, a broad approach, relating the inquiry to the specific circumstances pertaining to the site with a view to striking an appropriate balance between the rights of the affected property owners and nuisance creating farming operation, is borne out by the language of the statute. I agree with the Trial Judge that the legislative language in the case that there should be a qualitative or evaluative element to the interpretation of “normal farm practice”.

At paragraph 79, he states, “First, both statutes require that the “circumstances” be taken into consideration. This means that the same practice may qualify as a normal farm practice in one situation, but not in an other, when the circumstances are different. The definition of “normal farm practice” requires that the operation in that issue be assessed with regard to the “customs and standards as established and followed by similar agricultural operations under similar circumstances”.

At paragraph 80, he states, “Second the farming operation must also satisfy the Tribunal hearing the case that, in the circumstances, the customs and standards are, in the words of the 1988 Statute {“proper and accepted”] and “the words of the 1998 Statute {“proper and acceptable”]. The words “proper and acceptable” connote a qualitative, evaluative inquiry. The Shorter Oxford English Dictionary (Oxford: Clarendin Press, 1993) defines “proper” as (inter alia) “of requisite standard or type; fit, suitable, appropriate; fitting, right and “acceptable” as “worth accepting; likely to be accepted; pleasing, welcome, tolerable”. These words qualify and limit the phrase “customs and standards as established and followed by similar agricultural operations under similar circumstances”. I read this qualification as adding another important dimension to the inquiry”.

We find that “proper and acceptable” in the context of the 1998 Statute does not mean “pleasing” or “welcome”, otherwise there would be no livestock farms in Ontario and there would be no vehicles using the right of way. The Respondents’ use of the right of way must be “of requisite standard” and “acceptable” and “tolerable”, and “proper and acceptable”.

The following are some of the site-specific considerations which we took into account in determining whether the Respondents were operating a “normal farm practice”.

1. **The degree and extent of the disturbance:**

The greatest concern of the Applicant witnesses was stated to be the safety of their children and the part that the Respondents use of right-of-way plays in creating an unsafe situation. For reasons stated we do not find that the Applicants have made a case that the Respondents use of the right of way for vehicular traffic creates an unsafe situation for the children. Clearly, the volume of traffic has increased greatly. It is equally obvious that the restricted nature of the right-of-way makes turning more time consuming and difficult. However, we do not find that the impact upon the Applicants has been excessive. Except for three months of the year, the greatest volume of traffic using the right of way is 30 per month or 1 per day. During the busiest time, the volume is 5 per day. We do not view such a volume as creating an intolerable situation or a situation where an unreasonable burden is placed upon the Applicants.

Also for reasons stated we find that the dust, noise, vibrations and diesel fumes complained of by the Applicants are partly the result of trucks using the right-of-way and partly the result of vehicular traffic on Edgewood Road. We find that while these disturbances are an inconvenience to the Applicants, the degree and the intensity of the disturbances do not cause “disproportionate” harm to the neighbouring residents.

We have taken both the degree and the extent of the disturbances into consideration and the Court of Appeal in Pyke confirmed that was a proper approach.

2. **Willingness of the Respondents to comply**

Another relevant factor is the acknowledgement by the Applicants that the Respondents' farm operation is a normal farm practice with the two exceptions previously stated. The uncontroverted evidence of the Respondents' witness John Bonas was that the Respondents have responded to the Applicants complaints in many ways such as

1 They changed the hours of work from 7:30a.m. to 4:00p.. to 8:00a.m. to 4:30p.m. so that the Respondents' employees would not be using the right-of-way at a time when children would be walking to the school bus.

2 Calcium is applied to the right-of-way on a regular basis to keep the dust down.

3 Notices were sent to all suppliers of the Respondents' urging them to use the alternate access when possible.

4. "Go Slow" signs were posted on the right-of-way

5 The right-of-way is graded to reduce the vibration.

6. The Respondents, at considerable expense, voluntarily proceeded to construct an alternate access route to the Sixth Concession West. No doubt the Respondents' incentive for doing so was partly the result of the Applicants' complaints that commenced in 1999.

The alternate access route is available for use when the weather is dry or when the ground is frozen. The Respondents have indicated their willingness to reconstruct the alternate access so that it is available for all season use according to a time table, which balances the need for an alternate access with the Respondents ability to pay.

3. **Timing Factor**

The lots on which the Applicants' residences are built were created by severance. There was no evidence to establish the dates that the homes were constructed on those lots but it appears they were constructed prior to the time any nursery business was operating at the location of the Respondents' facility. However, all of the Applicants appear to have purchased their homes after a nursery was established. The witness statement of Mr. Harris suggests the existence of "deRoos Gladiola Nursery" at the time he and his wife purchased their home. It would appear that "deRoos" was a predecessor of Terra Greenhouses Limited from whom the Respondents purchased the nursery business in 1995.

Sharpe J.A. in Pyke stated "I agree that a strict or automatic "first in time, first in right" approach would not be warranted, and that it would result in an unduly restrictive interpretation of the Act that would unduly limit the establishment of new farming operations. However, I would not go to the other extreme and accept the proposition that the timing factor should be excluded as entirely irrelevant. In my view, the relative timing of the establishment of the farming operation and the occupancy of those who complain of the disturbance it creates, is one of the relevant contextual site-specific circumstances to be considered".

The Applicants Cindi Lyons and Robert Mudryk were aware of the existence of but not the extent of the Respondents' operation prior to the time they purchased their property. As stated, the evidence is not clear but the witness statement of Stanley Harris suggests

that a nursery operation was in existence at the time he and his wife purchased their home as it was prior to Mudryks' purchase.

It would have been reasonable to expect the Applicant, Cindi Lyons to make inquiries as to the nature of the Respondents' business prior to the purchase of the home. Had she done so, the considerable expansion plans of the Respondents after 1999 would have been known.

The volume of traffic using the right-of-way to service the Respondents' facilities has increased significantly since the Applicants purchased their properties. However, we do not believe the evidence establishes that the Respondents' farm operation produces a disturbance which is "inappropriate".

4. Respondents and "Brookdale" – a comparison

The definition of "normal farm practice" requires that the operation at issue be assessed with regard to the "customs" and standards as established and followed by similar agricultural operations under similar circumstances". In determining "normal farm practice" we have considered the evidence of Jeff Olsen of Brookdale Treeland Nurseries Limited. He described the "Brookdale" operations as similar to the Respondents' operation at Millgrove. Brookdale is twice the size. There are between 30 and 70 tractor trailers loading each day during the busy season. That is about five times the number of trucks loading at the Respondents' Millgrove facility. The busiest season for both facilities is in April and May, which he said "is a necessary aspect to the operation of a farming enterprise specializing in nursery stock". He stated that the number of rural

residences in the vicinity of each operation was approximately thirty. In each case, there are two residences located within 100 feet of the entrance to the laneway or a right-of-way. Part of each access road is gravel. The significant difference between the two operations is the lack of homes abutting the driveway to the Brookdale facility.

After considering all of the evidence, we find no compelling evidence to suggest that the Respondents' use of the right-of-way accessing its nursery operation and its response to complaints by neighbours is significantly different than the situation, which exists at Brookdale.

5. Nature of the area

The Applicants live in a rural area, zoned agricultural and in close proximity to a busy arterial road and a right-of-way serving as the means of vehicular access for a nursery facility. Some dust, noise and vibration are by-products of living in such a rural environment. The Applicants' concerns about dust, noise and vibration are consistent with the concerns of many rural residents, whose homes front on gravel roads.

Commitment of the Respondents

The Respondents have committed to a higher standard of maintenance for the right-of-way and to completing the alternate access to accommodate all season use as finances permit. We treat the Respondents' undertaking to complete the alternate access as an obligation to be honoured within a reasonable time period. What is reasonable will depend upon the circumstances including the financial ability of the Respondent to complete the access while at the same time, maintaining a viable nursery operation. However, anything less than the Respondents' best efforts considering all of the

circumstances may not be a reasonable response to some legitimate concerns of the Applicants regarding the Respondents' use of the right-of-way.

The Board have been asked to order a deadline for the completion of the alternate access road. Such an order is not possible, given that we have found the Respondent farm operation to be a normal farm practice. However, the undertakings given by the Respondents at this Hearing viewed in light of the progress actually made toward completion of the alternate access based upon all the circumstances would be relevant considerations for any future panel charged with determining if the Respondents' farm operation at that time is a normal farm practice.

DECISION

Having considered all of the evidence, it is the opinion of this Board that the farming operation of the Respondents is a normal farm practice.

Consequently, this Application is dismissed.

The Tribunal thanks Counsel involved in this Hearing for the excellent and well prepared

presentation of the evidence and the argument during the course of this Hearing.

Dated March , 2004

Robert G Stephens- Chair

Ronald Versteeg

Andrew Millar

Normal Farm Practices Protection Board			Board Exhibit Log	
File Name Lyons v. PANP INC		File No. 2002-01		Page 1 of 1
Members Bob Stephens, Chair; Andrew Millar, Ron Versteeg				
List of exhibits put in at the hearing on the 3 rd day of December, 2003				
Property of				
Applicant	Respondent	Other	No.	Description of Exhibit
X			1	Site Plan
X			2	1 st video tape (Truck tape #1)
X			3	Truck tape #2
X			4	(Tab 3) Applicants' Deed
X			5	(Tab 4) Maps Truck routes
X			6	(Tab 5) reduced road maps
X			7	Full book of Truck pictures
X			8	Partial book of Truck pictures
X			9	Environment Canada Web page (Tab 8)
X			10	Tab 7 return email from M.VanZanten
	X		11	Tab 4 Plan 62R16384
X			12	Tab 9 Truck log 2003 expect last three pages
X			13	Tab 6 Aerial photographs
X			14	Invoices for purchases by Cindi Lyons
X			15	Statement by Stanley Harris
	X		16	Tab 27 Al Comeau Witness Statement
	X		17	Tab 1 Colin Field Statement
	X		18	Tab 10 John Bonas Statement
	X		19	Tab 2 Catalogue
	X		20	Tab 26 Truck traffic count
	X		21	Tab 9 Old deeds re: right-of-way
	X		22	Tab 5 Zoning map and legend
	X		23	Tab 6 Official Plan Flamborough
	X		24	Tab 7 Official Plan Hamilton
	X		25	Tab 4 Reference Plan 62R16384
	X		26	Tab 8 Direction Notices pg 61-62
	X		27	Tab 11 Letters (2) from McCourts to PAN AM
	X		28	Tab 12 Letter from Halton Conservation Authority to Pettinato(Pan am lawyer)
	X		29	Tab 13 Permit to build laneway to Conc 6
	X		30	Tab 14 Permit to connect 86 acres to 14 acres
	X		31	Tab 22 Photos
	X		32	Tab 15 Permit application to access from Con 6W
	X		33	Tab 16 Entrance design diagram

	X		34	Tab 17 Letter from Halton Conservation Authority
	X		35	Tab 18 MOE inspection summary
	X		36	
	X		37	Tab 20 Sketch of property by J Bonas
	X		38	Tab 21 New Laneway log
	X		39	Tab 23 Notices to employees of PAN AM
	X		40	Tab 24 Notices to trucking companies
	X		41	Tab 25 City of Hamilton By-Law 01-215
	X		42	Schedule of Expenses to date on laneway
	X		43	Estimate to complete new Laneway (Lafarge)
	X		44	Estimate to complete new Laneway (Fleet)
	X		45	Tab 29 Hassan Gilani CV
	X		46	Tab 30 Courtland Eng Report
	X		47	Tab 31 Statement of Jeff Olsen