



October 25, 2013

ALC File: 47403

DELIVERED BY ELECTRONIC MAIL

L. John Alexander
Cox Taylor, Barristers Solicitors Notaries
Burnes House, 3rd Floor, 26 Bastion Square
Victoria, BC, V8W 1H9

Dear Mr. Alexander:

RE: Composting Facility at 6341 Old East Road Operated by Stanhope Dairy Farm Ltd. ("Stanhope") and Foundation Organics Ltd. ("Foundation") – Central Saanich

This letter is in response to your July 2, 2013 letter and corresponding documents. In addition, the Agricultural Land Commission (the "ALC") received a second letter from you, also dated July 2, 2013, but received via fax on September 10, 2013.

The above noted composting facility is being operated, or has been operated, on the property legally identified as:

PID: 009-409-653
Section 16, Range 5 East, South Saanich District, Except the Right of Way of the Canadian Northern Pacific Railway, Containing 2.05 Acres More or Less, as shown on Plan 3 RW

Civic Address: 6341 Old East Road, Victoria, BC V8Y 1R7

(hereinafter referred to as the "Property")

The registered owners of the Property are:

Gordon James Rendle and Robert Roderick Rendle

(hereinafter referred to as "Mr. G. Rendle" and "Mr. R. Rendle", respectively, or the "Rendles" collectively)

Your letters, noted above, are both in reference to a letter from Thomas Loo ("Mr. Loo"), ALC Compliance and Enforcement Officer, dated May 15, 2013, in which Mr. Loo ordered the production of documents under Section 49 of the *Agricultural Land Commission Act* (the "Act"). These documents were to be related to the "*Land Base*" of the farm operation and the "*Operations*" of the agricultural activities and businesses on the Property.

The May 15, 2013 letter from Mr. Loo was followed by a June 24, 2013 letter, also from Mr. Loo, indicating that "*the deadline as set by the order [the May 15, 2013 letter] was June 15, 2013. We still have not received any information to date.*"

Your July 2, 2013 letter and documents forwarded with said letter have been reviewed by the ALC and only some of the details requested in Mr. Loo's May 15, 2013 letter have been provided. In the circumstances, the ALC conducted inquiries into the land base associated with the Stanhope farm operation and the Foundation composting facility located on the Property.

On May 16, 2011, the ALC sent a letter to the Rendles indicating the following:

Based on the information provided by Stanhope Dairy Farm, Mr. Matt Mansell and Dr. John Paul, the Commission believes the proposed composting facility located at the Stanhope Dairy Farm home property is consistent with section 2(2)(m) of BC Regulation 171/2002 (Agricultural Land Reserve Use Subdivision and Procedure Regulation).

For clarity, section 2(2)(m) of BC Regulation 171/2002 (Agricultural Land Reserve Use, Subdivision and Procedure Regulation, hereinafter referred to as the “Regulation”) states:

(2) The following activities are designated as farm use for the purposes of the Act and may be regulated but must not be prohibited by any local government bylaw except a bylaw under section 917 of the Local Government Act or, if the activity is undertaken on treaty settlement lands, by a law of the applicable treaty first nation government:

(m) the production, storage and application of Class A compost in compliance with the Organic Matter Recycling Regulation, B.C. Reg. 18/2002, if all the compost produced is used on the farm;

Although section 3(1)(p) of the Regulation permits the “*production, storage and application of Class A compost...if at least 50% of the compost measure by volume is used on the farm*”, this permitted use may be “*prohibited by a local government bylaw*”. The Corporation of the District of Central Saanich (“Central Saanich”) Land Use Bylaw No. 1309 (as amended by Bylaw No. 1429) states that:

Compost prepared in the agricultural zone must be applied to land that is included in the same farm business as the land on which the composting occurs, and may not be sold or removed from the premises on which it is produced...[Emphasis added]

The *Stanhope Dairy Composting Facility Operational Plan*, dated December 27, 2010 indicated in section 3.4.2 that the “*composting facility will have the capacity of producing up to 5000 tonnes of compost per year.*” The intended distribution was described as:

A minimum of 80 ha is being actively farmed by Stanhope Dairy, which means that compost will be applied at a rate of 62.5 tonnes per hectare....Assuming a nitrogen concentration of 1.5% by dry weight, and assuming that the compost is 50% moisture, the annual nitrogen application rate of 468 kg N ha per year. An intensively managed forage crop will remove 400 to 600 kg N per ha, which is in excess of the anticipated amount of compost that will be applied.

This information was reiterated in the *Agrologist’s Report for Compost Application at Stanhope Dairy*, dated January 4, 2011 and prepared by Dr. John Paul, Ph.D, P.Ag. (“Dr. Paul”). However, in the documents supplied as part of your July 2, 2013 package Dr. Paul states, in a letter dated April 26, 2013, that the “*design capacity for the compost facility is up to 10,000 tonnes of finished compost, of which 5000 can be used on the land owned or leased by Stanhope dairy.*” Dr. Paul’s statement is clearly inconsistent with the Act, Regulation, Central Saanich bylaw(s) and the December 27, 2010 *Stanhope Dairy Composting Facility Operational Plan*.

Although Dr. Paul's statement raised much concern for the ALC, the investigation into the land base continued to be with respect to the "*minimum of 80 ha*" being actively farmed and a total compost application of 5,000 tonnes per year.

In or around the end of April 2011 Mr. Matt Mansell ("Mr. Mansell") provided the ALC with "*maps of land currently farmed in Central Saanich by Stanhope Farm.*" Mr. Mansell also provided a letter from Mr. Ridley A. Wikkerink, dated March 4, 2011, of Wedgewood Holsteins indicating that "*Stanhope & Wedgewood have jointly owned cattle housed at the Cobble Hill Farm for 24 years... We harvest livestock feed off 120 acres of land owned by Wedgewood & approximately 100 acres of lease land to feed the livestock.*" The business relation between Stanhope and Wedgewood Holsteins Ltd. was further clarified by Mr. G. Rendle in an email to Mr. Colin Fry of the ALC on October 21, 2013 in which Mr. G. Rendle stated that the "*partnership with Wedgewood Holsteins Ltd has been most productive...*" Although the Wedgewood Holsteins Ltd. operation in Cobble Hill could perhaps be described as a related farm, it would not constitute part of the Stanhope farm operation as it relates to the Regulation.

With regard to the "*maps of land currently farmed in Central Saanich*" provided by Mr. Mansell, Mr. Loo specifically order documents related to these properties. Specifically, Mr. Loo attached "*the documents received from Mr. Mansell identifying the properties being used by Stanhope for the deposition of finished compost*" to the May 15, 2013 letter and requested the following:

1. *Are they being used by Stanhope for the purposes of depositing finished compost?*
2. *If so, are they being leased, rented or other? What is the nature of those agreements?*
3. *Please provide copies of any leases, rental agreements or signed letter from the Registered Owners with the terms of the agreement to this office.*
4. *Are there any other lands being used by Stanhope that have not been identified and what is the relationship to your farm?*
5. *Type of agricultural products which are grown on those parcels*
6. *Any volumes of finished compost which have been applied to said lands*

Your July 2, 2013 package did not address these questions; as a result the ALC contacted the registered owners of the twelve (12) properties identified by Mr. Mansell as forming part of the Stanhope farm operation. Every registered owner has advised the ALC that they have never had a lease, rental agreement or such other mutually agreed to arrangement with Stanhope thereby allowing Stanhope to farm their properties and/or place composted material on their properties, or; if an agreement did exist, it has subsequently been terminated and/or did not involve the placement of composted material. Based on this investigation, the ALC has concluded that the sole area actively farmed by Stanhope is the Property.

Although the Property is approximately 40 hectares in size, due to the composting facility, farm buildings, access roads, etc., only approximately 34 hectares is in cultivation and available for the application of compost from the onsite facility. Based on the 62.5 tonnes per hectare per year compost application rate identified in the December 27, 2010 *Stanhope Dairy Composting Facility Operational Plan*, noted above (and also stated in the *Foundation Organics Composting Facility Operation Plan* dated August 30, 2013 submitted to the Capital Regional District (the

“CRD”) as part of an application to amend the current recyclers licence), the total compost that could be applied to the Property per year would be approximately 2,125 tonnes.

Dr. Paul, in the *Agrologist’s Report for Compost Application at Stanhope Dairy*, dated January 4, 2011, states that the “5000 tonnes of finished compost that is being proposed by Stanhope Dairy will provide approximately 37,500 kg N...” and that an “actively growing forage crop in Southcoastal BC can remove 300-600 kg N per hectare from the soil in one growing season. The baseline N requirements for Nutrient Management Planning for forage grass in southcoastal BC is 300 kg N per ha.” Based on Dr. Paul’s figures, the 5,000 tonnes of compost being applied solely to the Property would result in a nitrogen application rate of approximately 1,102 kilograms of nitrogen per hectare per year. This would appear to be excessive with respect to the forage crop requirements indicated by Dr. Paul.

In completing this investigation of the Stanhope farm and Foundation composting facility located on the Property, the ALC has concluded that the information provided in advance of its May 16, 2011 letter is not consistent with the current understanding of the farm and composting operation. **The ALC does not believe the current composting operation is compliant with the Act and Regulation, and considers that the operation constitutes an unauthorized non-farm use of land in the Agricultural Land Reserve.**

The ALC also received your “Without Prejudice” letter to Young Anderson, counsel for Central Saanich, dated September 30, 2013, in which you indicate that the “Stanhope group intends to approach the Capital Regional District and the Agricultural Land Commission providing similar undertaking, and inviting these regulators to work cooperatively with Foundation Organics Ltd. on a completely new operating plan designed to address all relevant concerns including volumes of food scraps, types or inputs, process monitoring and control, new infrastructure for odor control, and other adjustments to the property that may be necessary.” Please be aware, the appropriate process by which to engage the ALC in such discussions would be the submission of a Non-Farm Use Application pursuant to Section 20(3) of the Act.

Your September 30, 2013 letter also indicates that your clients have “decided the best way to proceed it [sic] to cease all activities...” and that “[n]o production will be commenced unless and until there is consensus on reasonable assurances that the central issue of odor can be adequately addressed and controlled.”

In addition, the ALC has been requested by the CRD to review and comment on an “Application to Amend Recycler Licence Application – Licence #2001-05-01L” on September 5, 2013 and October 23, 2013. In brief, this amendment request is to increase the total combined annual tonnage from 10,000 tonnes, under the original license, to 18,500 tonnes received to the facility on the Property per year. In light of the ALC investigation, the current composting facility is not compliant with the Act and Regulation, subsequently; any increase would compound the existing non-compliance issue on the Property.

The ALC is also aware of the outcome of an appeal to the suspension of the Composting Facility Recycler Licence for the Property. The CRD, in its October 11, 2013 letter to the Rendles and Mr. Mansell, stated that:

Effective October 11, 2013, as a result of non-compliance outlined above, Composting Facility Recycler Licence 2011-05-01L is suspended. Furthermore, you

are directed to remove all existing compost from within the Compost Building and direct the material to an alternate composting facility or to the landfill for disposal by October 25, 2013.

This ALC supports this direction from the CRD and confirms that compliance with this direction would be in compliance with the Act and Regulation.

Based on all of the above, I, as Chief Executive Officer, will immediately issue a “Stop Work” order should your clients recommence composting activities on the Property without first obtaining approval of the non-farm use from the ALC.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read 'Richard Bullock', is centered on the page.

Richard Bullock, Chief Executive Officer

cc: Gordon Rendle and Robert Rendle – **via electronic mail**
Matt Mansell – **via electronic mail**
Patrick Robins and Ken Neurauter, District of Central Saanich – **via electronic mail**
Russ Smith and Larisa Hutcheson, Capital Regional District – **via electronic mail**
Dr. Murray Fyfe, Vancouver Island Health Authority – **via electronic mail**
Conrad Bérubé, Ministry of Environment – **via electronic mail**
Jim Collins, Farm Industry Review Board – **via electronic mail**
Rob Kline and Michael Schwalb, Ministry of Agriculture – **via electronic mail**