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TALBOT COUNTY AGRICULTURAL RESOLUTION BOARD

TALBOT COUNTY, MARYLAND

Board Hearing

Regarding the Foster Farm

November 15, 2022; 9:00 a.m.

Talbot County Community Center

10028 Ocean Gateway

Easton, MD

AGRICULTURAL RESOLUTION BOARD MEMBERS:

Travis Hutchison

Robert Greenlee

Lewis H. Smith, Jr.

Shawn Smith

Reported by

Diane Houlihan

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">I N D E X</p> <p>1 ATTENDEES:</p> <p>2 Michael Duell</p> <p>3 Talbot County Chief Code Compliance Officer</p> <p>4 Bill Schmidt, LEHS</p> <p>5 Supervisor, Office of Environmental Health</p> <p>6 Talbot County Health Department</p> <p>7 Lance Young, Esq.</p> <p>8 MacLeod Law Group</p> <p>9 Mark Spencer Cropper, Esq.</p> <p>10 Spencer Ayres Cropper, Esq.</p> <p>11 Ayres, Jenkins, Gordy &amp; Almand</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p>	<p style="text-align: right;">Page 4</p> <p>1 So again, we had our hearing on this</p> <p>2 matter back in February. When we left that</p> <p>3 hearing, we left with the evidence portion of</p> <p>4 the hearing being concluded. The testimony</p> <p>5 portion of the hearing was concluded.</p> <p>6 It was the intent of the Board to come</p> <p>7 back after a certain amount of days to</p> <p>8 deliberate. This Board is not allowed to</p> <p>9 deliberate in private. They have to deliberate</p> <p>10 in public and come to a conclusion based on the</p> <p>11 evidence that has been received.</p> <p>12 After the evidence was submitted at the</p> <p>13 end of the last hearing in February, there was</p> <p>14 additional information that came in from the</p> <p>15 complainants after that hearing. That had the</p> <p>16 effect of postponing this hearing several</p> <p>17 months. The Board allowed certain information</p> <p>18 to come in from the county staff as well as</p> <p>19 from the Foster Farm and respondents and</p> <p>20 Mr. Cropper, who represents those individuals.</p> <p>21 So we've received that evidence, and I</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">TRANSCRIPT OF PROCEEDINGS</p> <p>1 MR. YOUNG: Everybody, my name is Lance</p> <p>2 Young. I'm the attorney for the Board.</p> <p>3 Before we get started, I just want to give</p> <p>4 an explanation, a summary of where we are in</p> <p>5 this process to everybody.</p> <p>6 The hearing on this matter was held back</p> <p>7 in February of this year. I want to just</p> <p>8 remind everybody to begin with what the purpose</p> <p>9 of the Board is and what the purpose of this</p> <p>10 hearing is.</p> <p>11 And under the county ordinance, what this</p> <p>12 Board is permitted to do is to decide whether a</p> <p>13 particular agricultural practice does or does</p> <p>14 not conform to generally-accepted agricultural</p> <p>15 practices. In addition, if the Board finds a</p> <p>16 particular practice alleged in a complaint does</p> <p>17 not conform to generally-accepted agricultural</p> <p>18 practices, it may specify and recommend</p> <p>19 alternative practices which do conform.</p> <p>20</p> <p>21</p>	<p style="text-align: right;">Page 5</p> <p>1 just want to read into the evidence what that</p> <p>2 Board has received since the last hearing.</p> <p>3 From the county, we have received a Talbot</p> <p>4 County Planning and Zoning staff report, which</p> <p>5 was supplemental to the original report that</p> <p>6 was submitted, citizen complaints that came in</p> <p>7 regarding midges, Mr. Schmidt and Mr. Duell</p> <p>8 photographs, complainant photos and videos,</p> <p>9 Mr. Littin's identification letter of the midge</p> <p>10 insect, and Dr. Littin's response to Bill</p> <p>11 Schmidt's questions.</p> <p>12 In addition to those documents which have</p> <p>13 been received and submitted into evidence,</p> <p>14 we've also received a memorandum from Mr. Mark</p> <p>15 Cropper on behalf of the Foster Farm dated</p> <p>16 October 27, 2022.</p> <p>17 All of those additional evidence and</p> <p>18 documents have come into evidence after the</p> <p>19 last hearing.</p> <p>20 So we are reconvening today for the</p> <p>21 limited and sole purpose of the Board to now be</p>

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1 able to deliberate, to talk about the evidence  
 2 that's been received by them and come to a  
 3 conclusion at the end of -- and hopefully one  
 4 of these Board members will be able to make a  
 5 motion that the Board can vote on. And what  
 6 they'll vote on is whether or not the  
 7 complained about agricultural practices do or  
 8 do not confirm to generally-accepted  
 9 agricultural practices.

10 So with that, I'll hand it over to  
 11 Mr. Hutchinson, the chairman.

12 MR. HUTCHISON: Thank you. I think just  
 13 start by reminding everybody who we are.

14 I'm Travis Hutchinson. I'm chairman of  
 15 the Resolution Board.

16 MR. L. SMITH: Lewis Smith.

17 MR. GREENLEE: And Bob Greenlee.

18 MR. HUTCHISON: And we also have Shawn  
 19 Smith from Soil Conservation. He is an adviser  
 20 to the Board. He's a member of the Board, but  
 21 he's a non-voting member. The three of us are

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1 voting members.

2 Ms. Shannon Dill, the Talbot County  
 3 Extension agent, is out of town this week. I  
 4 did contact her about this meeting and see if  
 5 she had anything she wanted to add. And at  
 6 that point, she said no, she was good with the  
 7 hearing that we had and whatever we decide  
 8 today.

9 We have from Talbot County.

10 MR. DUELL: Mike Duell, chief code  
 11 compliance officer, Talbot County Planning and  
 12 Zoning.

13 MR. SCHMIDT: Bill Schmidt, Talbot County  
 14 Health Department, Office of Environmental  
 15 Health.

16 MR. HUTCHISON: And we are being recorded  
 17 today. Everything we say is being on record.  
 18 So remind upfront we have to speak loud and  
 19 clearly. Okay.

20 We'll get started.

21 Shawn, do you have anything that you want

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1 to share at this point?

2 MR. S. SMITH: No, not necessarily.

3 Just want to remind you all that, you  
 4 know, my role I guess in this is as an adviser,  
 5 as the last time. I'm not an investigator.

6 Kind of if you guys have any questions  
 7 that might pertain to anything that Soil  
 8 Conservation does or does not deal with, I'll  
 9 be happy to add anything.

10 Soil Conservation in general is not a  
 11 regulatory body. We are purely a technical  
 12 body that advises and works with farmers and  
 13 land owners to address natural resources  
 14 concerns.

15 So if there's anything I can be helpful --

16 MR. HUTCHISON: I just want to make sure  
 17 that if you have anything you wanted us to  
 18 think about going into it that we need to be  
 19 aware of --

20 MR. S. SMITH: Not necessarily, no, no.

21 MR. HUTCHISON: As we're discussing and

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1 you think of something, let us know.

2 MR. S. SMITH: Okay.

3 MR. HUTCHISON: So it's up to us three  
 4 now. After all that information that we have  
 5 here, as you can see, we have a lot of it, so  
 6 kind of figure out a good place to start and  
 7 everything.

8 MR. GREENLEE: I'll start with a question  
 9 I think to Lance. And that is is there a  
 10 difference between a generally-accepted  
 11 agricultural practice and a best management  
 12 practice?

13 MR. YOUNG: I think that is completely at  
 14 the discretion of this Board to determine what  
 15 is a generally-accepted agricultural practice.

16 Best management practices is very much a  
 17 term of art. And I would say that you can say  
 18 that one is a best management practice but also  
 19 be an acceptable practice, but they're not  
 20 necessarily the same thing.

21 MR. HUTCHISON: I would say yes, there is

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1 a difference.  
 2 Part of the issue down there was how it  
 3 was incorporated, how the material was spread.  
 4 Mr. Foster incorporated with a turbo till,  
 5 which is considered a best management practice.  
 6 What he was trying to do there is leave as much  
 7 ground cover as possible on the ground, not  
 8 disturb the soil as much. There would be less  
 9 erosion and everything.  
 10 And for the most part, the  
 11 environmentalists are going to say that's what  
 12 they want us to use to incorporate material and  
 13 disturb less ground as possible.  
 14 In this case, with the product that was  
 15 applied in the over, it was should have been --  
 16 it would have been better if it had been a  
 17 heavy disk that had been used. It would have  
 18 turned up more dirt and covered more of that  
 19 up. So that was more of a general agricultural  
 20 practice. So that should have been used.  
 21 And on that note, I have been in touch

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1 with MDA, (Inaudible) Schmidt, assistant  
 2 secretary of agriculture. Sent me revised  
 3 regulations that go in effect January 1, 2023,  
 4 on specifically food processing residuals.  
 5 Basically that's what comes from the Sea  
 6 Watch plant, Mountaire, and Allen's.  
 7 From March 1st through September, through  
 8 September, I guess it's to December 15th, once  
 9 they apply the food processing residuals for  
 10 all crops except pastures and hay fields, a  
 11 person applying food processing residuals shall  
 12 directly inject the material into the soil or,  
 13 B, incorporate the material into the soil as  
 14 soon as possible but no later than the end of  
 15 the day the application is made. If  
 16 unincorporated, the incorporation must be --  
 17 result -- if incorporated, the incorporation  
 18 must result in 95 percent of the soil coverage  
 19 the material, shall consist of heavy disking,  
 20 (inaudible) applying, or use of primary  
 21 tillage. Vertical till equipment may not be

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1 used to incorporate the material. A person  
 2 shall plant a harvestful crop no later than 14  
 3 days after the application of the material when  
 4 the field is complete.  
 5 They've had other complaints across the  
 6 State. So they went and took the part out  
 7 where before it was acceptable. When  
 8 Mr. Foster did it, it was acceptable from MDA  
 9 to use the turbo till to work that in. Now the  
 10 State is saying they have to use something  
 11 heavier and incorporate more of it at one time.  
 12 MR. S. SMITH: And earlier.  
 13 MR. HUTCHISON: Yes. And once it's  
 14 spread, it needs to be done that day and  
 15 everything.  
 16 SPEAKER: End of the day.  
 17 MR. HUTCHISON: Then they also added --  
 18 that's up to October 31st.  
 19 After October 31st, a person may not apply  
 20 non-injectable food processing residuals to  
 21 land from November 1st through the calendar day

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1 of February, the last calendar day of February  
 2 the following year. The material must be  
 3 stored.  
 4 You can still do injectable food  
 5 processing residuals up to December 15th. But  
 6 after December 16th through the end of  
 7 February, the liquids, material has to be  
 8 stored also. So that, some regulation that  
 9 goes into effect January 1st.  
 10 MR. S. SMITH: It's my understanding, too,  
 11 that if you inject, it has to be into a  
 12 standing crop as well. Is that in there? It  
 13 has to be into a cover or a commodity crop.  
 14 MR. HUTCHISON: Yes. A person may apply  
 15 food processing residuals into soil growing an  
 16 existing crop or cover crop up until  
 17 December 15th.  
 18 So yes. Sorry about that.  
 19 MR. S. SMITH: (Inaudible.)  
 20 MR. HUTCHISON: And the note that  
 21 Mr. Schmidt sent me thinks that will help with

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1 the odor issues by having it incorporated into  
 2 the ground better and quicker.  
 3 MR. GREENLEE: So the practice at the time  
 4 that it was incorporated was generally  
 5 accepted?  
 6 MR. HUTCHISON: Yes.  
 7 MR. GREENLEE: And in terms of a finding  
 8 that might improve the situation in the future,  
 9 that finding has already been made by MDA?  
 10 MR. HUTCHISON: MDA, that's correct.  
 11 MR. L. SMITH: Best management practices  
 12 have been evolving ever since we started  
 13 no-till and will continue. And I'm sure that  
 14 this process that we started this year with  
 15 this has resulted in those changes are welcome.  
 16 MR. HUTCHISON: MDA did contact me during  
 17 the year before they were going to have a  
 18 nutrient management meeting and asked what we  
 19 come to a conclusion at that point. They were  
 20 very interested in hearing about this outcome  
 21 today.

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1 MR. GREENLEE: So if I can ask you a  
 2 question.  
 3 Thank you, guys, for that.  
 4 Have you or the department ever heard of  
 5 midges to the extent that they've recently been  
 6 as part of this hearing?  
 7 MR. S. SMITH: No. And it was interesting  
 8 to see some of that reading that stated that  
 9 the midges are here. It just happened to be a  
 10 perfect storm as far as the amount of material  
 11 that was brought in, the time of the year, the  
 12 temperature, everything, that kind of added.  
 13 No. In general, we haven't heard anything  
 14 to that extent applied with any other  
 15 amendments, particularly poultry manure or  
 16 something like that. We haven't heard of any  
 17 kind of issues with that much of an issue with  
 18 midges, no.  
 19 MR. GREENLEE: Presumably that perfect  
 20 storm has occurred in some way, shape, or form  
 21 throughout recent history, temperature wise,

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1 application, all of that. Right?  
 2 So this is, somehow this is an unusual  
 3 case?  
 4 MR. S. SMITH: No. I don't say it's  
 5 unusual.  
 6 It hasn't happened probably in a year in  
 7 Talbot County locally. So that's just -- I  
 8 wouldn't say it's unusual.  
 9 MR. GREENLEE: And that was part of my  
 10 question. If y'all are aware of that it's  
 11 happened literally anywhere?  
 12 MR. S. SMITH: No, I'm not aware of it.  
 13 To this extent, no, I haven't heard.  
 14 MR. GREENLEE: Thank you.  
 15 MR. S. SMITH: Yeah. So just curious. So  
 16 there's two questions, right?  
 17 There's the question of is it an  
 18 acceptable practice for incorporating. Right?  
 19 So we talked about that.  
 20 But then there's also is it a  
 21 generally-accepted practice to stockpile and

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1 store that material. Right?  
 2 MR. YOUNG: Yeah. They can address any of  
 3 the specific complaints of the complainants,  
 4 yes.  
 5 MR. GREENLEE: So then to that point, is  
 6 stockpiling a generally-accepted agricultural  
 7 practice?  
 8 MR. S. SMITH: I would say yes, it is a  
 9 generally-accepted practice.  
 10 Traditionally, it's generated on a farm.  
 11 There are imported materials, poultry manure is  
 12 one of them, that people do import and  
 13 stockpile for use.  
 14 I believe MDA's, and I don't think Tom is  
 15 here, but I believe MDA's, their determination  
 16 would say that this is -- you could stockpile  
 17 this material. That's accepted practice, if  
 18 you will.  
 19 MR. HUTCHISON: It says in this update I  
 20 got from them that...  
 21 MR. S. SMITH: Has that changed? Is that

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1 anything new with that?

2 MR. HUTCHISON: No. What it says...

3 MR. S. SMITH: (Inaudible.)

4 MR. HUTCHISON: Non-injectable food

5 processing. After October 31st, a person may

6 not apply non-injectable food processing

7 residuals to land from November 1st to the last

8 day of February the following year. A person

9 must store this material.

10 So you have to store it somewhere.

11 MR. S. SMITH: Right.

12 MR. HUTCHISON: So if it's stockpiled,

13 that's how you store it.

14 I guess chicken manure, you can't haul it

15 off. Once March 1st rolls around, you start to

16 spread, you can't take time to haul everything

17 and get all your ground up at that point in

18 time. So there has to be a place to stockpile

19 it and have it somewhere close to where you

20 want it to get all your work done and

21 everything.

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1 MR. GREENLEE: And there's been no

2 evidence submitted that Mr. Foster or the

3 Foster Farm did anything outside of the dates

4 that you've mentioned?

5 MR. HUTCHISON: Not that I've seen.

6 MR. GREENLEE: And not necessarily prior

7 to what happens as of 1/1/23, but during the

8 time period in question?

9 MR. HUTCHISON: Yes.

10 MR. GREENLEE: Okay.

11 MR. HUTCHISON: There was a question

12 brought up on the Right to Farm Act. If an

13 agriculture, (inaudible) culture, or commercial

14 fishing or seafood operation has been underway

15 for a period of one year or more and if the

16 operation is in compliance with applicable

17 federal or State level -- there was a question

18 on whether this -- it says it's covered after

19 one year of operation.

20 So the question was with Mr. Foster buying

21 that farm and not taking over the farming lease

Page 20

1 until, what was it, spring of 2020, he would

2 not have been the operator at this farm for

3 more than one year before they filed a

4 complaint.

5 The way I read that, it's an agricultural

6 operation. So the way I look at it,

7 Mr. Foster's farm is an agricultural operation

8 that's been in existence for years.

9 And in this case, Denali, that spreads and

10 stores the product, has been in business for

11 many years.

12 So I don't look at it as a first-time

13 operation.

14 Talked to a few people and asked them to

15 read that, that clause, and that's the

16 consensus we've come up with, that it's not a

17 first-time operation.

18 Others, you two may not agree with that,

19 but that's how I read that.

20 MR. GREENLEE: And the effect of that

21 again, Travis, is what? That one year issue

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1 means what to this hearing?

2 MR. HUTCHISON: That since that was his

3 first year farming that ground, they're saying

4 since they complained during October about the

5 Right to Farm Act, so we should vote against

6 it. That's the way I understand they're

7 looking for there.

8 But to me, what's to stop any farmer that

9 has a land rented out from under him, if farmer

10 A has a farm, farmer B rents it out from him

11 next year, why doesn't farmer A go file a

12 complaint against farmer B that next year,

13 that's his first year on the farm, about

14 something he's doing there.

15 So I think it's talking about a brand new,

16 if he did a new project, new, something brand

17 new to the area and everything is the way I

18 interpret that.

19 MR. GREENLEE: So had it been less than a

20 year, then these complaints would be valid or

21 invalid?

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1 MR. HUTCHISON: They would be valid, the  
 2 way they understand the rule for (inaudible).  
 3 MR. GREENLEE: And the consensus from your  
 4 conversations is that they're immaterial and  
 5 they would be invalid?  
 6 MR. HUTCHISON: That's the way I read it  
 7 and a couple of other people I've asked to read  
 8 it.  
 9 MR. GREENLEE: Okay.  
 10 MR. L. SMITH: Mr. Foster has been using  
 11 these kinds of materials for years. So he's  
 12 not, he's not a newcomer to this. That's for  
 13 sure.  
 14 MR. HUTCHISON: Just want to look through  
 15 my notes, see if there's anything else I had  
 16 that I wanted to discuss.  
 17 You have something?  
 18 MR. L. SMITH: No. I'm just kind of  
 19 looking through Mrs. Lewis' request for us to  
 20 consider. One of them was the proximity to  
 21 towns and all of that.

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1 Under the Right to Farm law, I mean there  
 2 are regulations of setbacks, but there is no  
 3 mention that I found that there's any, you  
 4 know, so many miles from a residential  
 5 development.  
 6 And a lot of her, you know, the offensive  
 7 odors and I think a lot of those issues will be  
 8 resolved with the actions MDA has taken to  
 9 quite a degree.  
 10 MR. HUTCHISON: Also, Mr. Foster has  
 11 agreed not to take material from Sea Watch. I  
 12 think most people agree that's where the  
 13 strongest odor come from. As long as he  
 14 doesn't accept that, I think that will cut down  
 15 on a lot of the odor also.  
 16 Do you have any more questions?  
 17 MR. GREENLEE: I do not.  
 18 MR. HUTCHISON: Do you two gentlemen have  
 19 questions that you want us to go over or think  
 20 we need to discuss while we're here?  
 21 MR. DUELL: I know I raised in Chapter 128

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1 the question with Mr. Cropper about the welfare  
 2 in the ordinance.  
 3 And after hearing that testimony, I just  
 4 would like to hear how you gentlemen feel, if  
 5 the welfare of those people who live in that  
 6 area was impacted as a result of this incident?  
 7 MR. GREENLEE: I will say that I don't  
 8 think that's why we're here. I'm not  
 9 insensitive to it. I'm somewhat sympathetic to  
 10 it, but I don't think that's why we're here.  
 11 MR. HUTCHISON: I certainly can tell  
 12 through the testimonies there's strong  
 13 feelings, and you can tell it was pretty  
 14 terrible to deal with for a while.  
 15 So I feel bad about that. But like I  
 16 said, everything he was doing at that time was  
 17 legal. It was within the ordinance of MDA.  
 18 Our county (inaudible) said that they were in  
 19 compliance with their nutrient management and  
 20 everything.  
 21 So I think we asked Denali and Mr. Foster

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1 not to bring the terrible stuff back. So I  
 2 think we've addressed that. So hopefully that  
 3 won't be as much of a problem in the future and  
 4 everything.  
 5 So I think that's all we can ask him, get  
 6 him to change at this point in time is not to  
 7 bring any of the Sea Watch material back.  
 8 And if they find, if they bring a load in  
 9 from a chicken plant, and I think at one point  
 10 somebody from Denali said that the stuff  
 11 smelled a little stronger than they smelled in  
 12 the past, if they get a load of something in  
 13 there that smells stronger, I guess whatever  
 14 company shipped it in there, make them pay to  
 15 ship it back out as quick as possible to try to  
 16 avoid these things.  
 17 Yes, sir.  
 18 MR. SCHMIDT: I do feel it should be, the  
 19 point should be made concerning the stockpiling  
 20 of these food processing materials. Where, you  
 21 know, the stockpiling of these materials may be

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1 in compliance with MDA regulations that allows  
 2 stockpiling, the practices of stockpiling these  
 3 materials on the concrete impervious surface  
 4 was not acceptable.  
 5 We found evidence of runoff of these  
 6 materials, which we believe could be  
 7 contributing to a water pollution concern as  
 8 well as --  
 9 MR. M. CROPPER: Mr. Chairman, I'm going  
 10 to object.  
 11 This is additional testimony. Mr. Schmidt  
 12 and Mr. Duell are witnesses, just like a police  
 13 officer in a prosecution case. If they're  
 14 going to be allowed to introduce additional  
 15 testimony and make arguments to persuade this  
 16 Board to take a certain action, then you have  
 17 to reopen this hearing and you have to allow me  
 18 to represent my client.  
 19 That's not what my understanding is we're  
 20 doing here today. And I would ask that  
 21 everything Mr. Duell and Mr. Schmidt just said

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1 be stricken from the record or else you open  
 2 this matter back up. But this is  
 3 inappropriate.  
 4 He's trying to persuade you to take a  
 5 position, which is an additional debate based  
 6 upon new evidence. I object.  
 7 MR. YOUNG: I would say you can ask him to  
 8 limit any discussion to evidence that's already  
 9 on the record.  
 10 MR. HUTCHISON: There is some evidence.  
 11 They have pictures from the bunkers and stuff  
 12 that's in this package. So I think what he's  
 13 talking about, we've already -- it's -- we've  
 14 got pictures of it and it was brought up at the  
 15 first hearing and everything.  
 16 MR. M. CROPPER: I agree.  
 17 But to the extent he's going to be able to  
 18 make arguments as to what action you should  
 19 take, then I should be allowed to do the same.  
 20 And that's not my understanding of today's  
 21 hearing.

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1 But if he's going to be allowed to try and  
 2 persuade you, I should be allowed rebuttable.  
 3 And that's going to open this back up to  
 4 further debate. Thank you.  
 5 MR. HUTCHISON: My response to him was  
 6 going to be that that's above our pay grade.  
 7 If there's seepage and stuff going on  
 8 there, you have to go to authorities. We can't  
 9 make a decision on that. We can't overturn  
 10 what MDA and different ones say.  
 11 If this material is not applied to the  
 12 land, it's going in the landfill, which I don't  
 13 think is a good option either. So we're in a  
 14 no-win situation.  
 15 Best, my argument is the best option for  
 16 it is to be put on the ground and used as a  
 17 nutrient to grow a crop.  
 18 Storing it, it's just like chicken manure.  
 19 If you ride down the road and you see people  
 20 that pile it up and do a good job of  
 21 stockpiling it, and there's others that don't.

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1 We just need to make sure that when it's  
 2 stockpiled and stored, it needs to be stored in  
 3 a proper way and everything. But that's not  
 4 our -- our Board can't do anything about that.  
 5 It has to go to MDA or wherever. So that issue  
 6 needs to be taken up elsewhere.  
 7 As we're concerned, stockpiling it is an  
 8 acceptable practice and MDA says it has to be  
 9 done starting now through March 1st.  
 10 MR. GREENLEE: Agree.  
 11 MR. HUTCHISON: There was a lot of  
 12 questions in here from Ms. Lewis and others  
 13 that we just don't have the authority to rule  
 14 on. It has to go to State agencies and  
 15 everything. And everything that we heard from  
 16 the State agencies at our hearing is that  
 17 everything was in compliance. So that's all we  
 18 can go on.  
 19 MR. L. SMITH: (Inaudible.)  
 20 MR. HUTCHISON: Have any more questions?  
 21 Shawn, have we said anything we need to be



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1 corrected on or any suggestions?  
 2 MR. S. SMITH: No. But I do know that  
 3 through the Soil Conservation District, we work  
 4 with producers who address waste storage. We  
 5 do that on a fairly routine basis.  
 6 We have been approached by the Fosters to  
 7 design or to come up with some solutions to  
 8 their storage issue down there. So I can  
 9 provide an update to the Board that we're  
 10 planning on doing a thorough extensive survey  
 11 of the entire drainage area and trying to come  
 12 up with reasonable solutions if they're going  
 13 to continue to stockpile any type of soil  
 14 amendment or waste product.  
 15 And that may include roof and cover on the  
 16 concrete bunkers. That may include diversions  
 17 of some type to avert the clean water from that  
 18 area.  
 19 So we're just not -- we're working on that  
 20 right now.  
 21 We were approached in June of this year to

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1 take a look at it and to come up with a  
 2 solution. In June, it's not a really good time  
 3 of the year to do a survey in the woods.  
 4 So now with the foliage off and we're able  
 5 to see a whole picture, that's what our plan is  
 6 over the next couple of months, is to come up  
 7 with a solution that the Fosters can implement  
 8 to address any water quality, potential water  
 9 quality issues from the stockpiling of  
 10 materials.  
 11 MR. HUTCHISON: So from my perspective,  
 12 the Fosters acknowledge that in the future,  
 13 they will, even before the State mandated it,  
 14 they were willing to do the deep tillage to try  
 15 to cut down on the odor and everything and not  
 16 do the vertical tillage.  
 17 They've asked Denali not to bring them Sea  
 18 Watch material.  
 19 And now they're looking to improve the  
 20 facility there.  
 21 I haven't seen where they've done anything

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1 that was out of compliance with the Right to  
 2 Farm Act. And it seems like they're trying to  
 3 do things now to improve what they've been  
 4 doing to be better neighbors and stuff. So I  
 5 think that's all we can ask.  
 6 Do you have anything else for us to  
 7 address?  
 8 MR. YOUNG: No. There's nothing I need to  
 9 address.  
 10 If there's nothing else that you want to  
 11 address, then somebody can make a motion to --  
 12 you can make a motion for the stockpiling, you  
 13 can make a motion for the application of the  
 14 substances. For each one, whether or not it's  
 15 a generally-acceptable agricultural practice.  
 16 And you can also, with your motion, have  
 17 recommendations.  
 18 I'm not saying that you need to get to  
 19 that point yet. But if you are, that would be  
 20 the next step.  
 21 MR. GREENLEE: Can you repeat those? Can

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1 you repeat that, please?  
 2 MR. YOUNG: Yes. I think we have two  
 3 areas of complaint. One is the application of  
 4 the Sea Watch material, and the second is the  
 5 stockpiling.  
 6 So one of the Board members, then, would  
 7 make a motion that you want to come to the  
 8 conclusion that it either is or is not a  
 9 generally-acceptable agricultural practice.  
 10 And either way, you can also add  
 11 recommendations to add to your conclusion.  
 12 And then after a Board member makes a  
 13 motion, then you will vote on it as a Board and  
 14 come to a consensus that way.  
 15 MR. GREENLEE: And we will have, each of  
 16 us will have an opportunity to discuss our, now  
 17 our findings and conclusions, right? We're  
 18 still in the data gathering, question asking  
 19 period?  
 20 MR. YOUNG: Yes. I'm not suggesting you  
 21 go right into a vote right now. Yes.

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1 So that might be a logical next step, is  
 2 that each one could just kind of generally  
 3 summarize what your findings are and what your  
 4 conclusions are and then somebody make that  
 5 motion and then vote on it.

6 MR. L. SMITH: The application of the  
 7 materials, I mean I see no fault with the  
 8 Fosters there. They were following guidelines  
 9 that were set forth.

10 But I do believe that actions taken from  
 11 the MDA are positive. I think this whole  
 12 process has changed the Fosters' mind on what  
 13 materials they're certainly going to use.

14 I see a lot of positives coming out of  
 15 this.

16 The -- I think application of these  
 17 biosolids and manures are going to be more  
 18 important all the time. I mean the price of  
 19 nutrients has just gone crazy this year, and I  
 20 don't see it stopping. So these are very  
 21 attractive products to use for nutrients on

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1 crops, and I think the guidelines that had been  
 2 set forth and the new ones will pave the way  
 3 for less problems with the public.

4 MR. GREENLEE: So to be clear, then, at  
 5 this point, we are now presenting our  
 6 individual findings and conclusions as it  
 7 relates to whether or not the practices that  
 8 we've been, have been testified to represent  
 9 generally-accepted agricultural practices.  
 10 Right?

11 So I have several thoughts.

12 One is that I think this is a very narrow  
 13 requirement on our part. It doesn't reflect  
 14 what improvements the Fosters may or may make  
 15 in the future. It doesn't reflect things that  
 16 they've learned about themselves and their  
 17 operation, again, in my opinion.

18 The question is did they conform with  
 19 generally-accepted agricultural practices  
 20 during the course of time that the complaints  
 21 addressed their opinion.

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1 My sense is that we may or may not know  
 2 enough about what they actually did. I don't  
 3 know that there was anything that they did that  
 4 was intentional or out of bounds. But I do  
 5 know that the results were out of bounds.

6 So if you measure best practices or even  
 7 generally-accepted practices by the outcome,  
 8 these outcomes were unacceptable, and on two  
 9 levels, and unprecedented on two levels.

10 One is the level of stench, and two is the  
 11 presence of midges in the swarms that they  
 12 testified to.

13 So I think that somewhere, somehow it's,  
 14 to me, I think over our pay grade, as you said.  
 15 It's left to the scientists and it's left to  
 16 others to come to the conclusion about why  
 17 these things specifically happened. But I  
 18 think we can look at the outcome and see that  
 19 they didn't happen well or appropriately or  
 20 properly.

21 And so at this point in time, I would say

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1 that the practices that we have seen, and  
 2 without being specific to say that I understand  
 3 how they were applied or how they were  
 4 incorporated or kind of any of the scientific  
 5 or maybe agriculturally-specific aspects of  
 6 this, I know that we can look at the outcome  
 7 and see that there was something wrong. And  
 8 again, unprecedented.

9 And I'm -- we're all here because we like  
 10 farming and we like everything about it and the  
 11 neighbors as well.

12 So I think from that standpoint, I would  
 13 say that the practices that they employ do not  
 14 conform with generally-accepted agricultural  
 15 practices.

16 MR. HUTCHISON: Thank you. I agree with  
 17 that the smell and the midges were a huge  
 18 problem.

19 But I can't see any evidence saying that  
 20 it was a direct cause by what Mr. Foster did.  
 21 The lady in the Smithsonian said it was very

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1 unlikely that it came in the product.  
 2 Like I said, I wish things had been  
 3 handled different from the get-go, but can't  
 4 change that.  
 5 So be changes made in the future, things  
 6 handled different.  
 7 But I stick with my original thing that I  
 8 think they did -- their practices were very  
 9 acceptable at the time because the  
 10 environmentalists would have been, the  
 11 riverkeeper would have been (inaudible) than  
 12 applauding the turbo till. That's what he  
 13 would prefer, as less tillage as possible and  
 14 everything.  
 15 And I was disappointed in him bringing us  
 16 information from Ridgely about the results, the  
 17 water levels being high at Ridgely and he  
 18 didn't have anything pulled from Trappe. I  
 19 think if it had been in the water down in  
 20 Trappe, that would be a platform for him. He  
 21 should have pulled water samples all that year.

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1 Like I said, the stockpiling, it's got to  
 2 go somewhere. As far as I see, they're allowed  
 3 to do it. The products going to a landfill,  
 4 which is not a good thing either.  
 5 So I just -- there's nothing we can do  
 6 to -- well, I don't know. I guess there's been  
 7 changes made in the MDA level and they're  
 8 always open to make more. They're there to  
 9 listen. And if somebody comes with a good  
 10 argument, they will consider it, make changes  
 11 and everything.  
 12 MR. GREENLEE: I agree with everything you  
 13 just said.  
 14 I just, I find that to be outside of the  
 15 scope of what we were here to do. So...  
 16 MR. HUTCHISON: The changing of their  
 17 practices and stuff, to me that was like part  
 18 of the Resolution Board. That's part of the  
 19 resolution for solving the problems in the  
 20 future and everything. So that's why I think  
 21 it's part of our scope.

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1 We can't make the changes, but we can  
 2 agree that the changes that are being made are  
 3 what need to be done to help make things better  
 4 in the future and everything.  
 5 MR. GREENLEE: Agree with that. And I  
 6 would hope we wouldn't kind of squander that  
 7 opportunity.  
 8 MR. HUTCHISON: No.  
 9 MR. GREENLEE: You know what I mean?  
 10 MR. L. SMITH: I think MDA's saw the  
 11 lessons learned.  
 12 I mean turbo till practices were touted to  
 13 be some of the best tools for incorporating,  
 14 and it is a very good tool for incorporating  
 15 the other materials. But they found out the  
 16 hard way it doesn't do a good job with the Sea  
 17 Watch products.  
 18 And again, I think the Right to Farm law,  
 19 it's vague in a lot of ways, but I think it  
 20 opens up the door to a lot of discussion and  
 21 brings the attention to the MDA and Department

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1 of Environment for issues that can be looked at  
 2 and made improvement in.  
 3 Ready for a motion?  
 4 I'd like to make a motion that on the  
 5 application of the materials that the Fosters  
 6 applied in their fields, I think the Right to  
 7 Farm Ordinance was followed. And I would like  
 8 to see...  
 9 MR. HUTCHISON: Do we need a second on  
 10 that?  
 11 MR. YOUNG: So let's just clarify. The  
 12 motion is that the application of the materials  
 13 that were applied is a generally-acceptable  
 14 practice? Is that the motion?  
 15 MR. L. SMITH: Yeah. The practices at the  
 16 Trappe farm, applying the materials, all the  
 17 materials, I see no reason why it violated  
 18 anything in the Right to Farm Ordinance.  
 19 MR. YOUNG: So then you would ask -- do  
 20 you want to add any recommendations to that?  
 21 You can do that or you can just vote on it.

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1 MR. GREENLEE: Do you need a second?  
 2 MR. YOUNG: Yeah. You would need a second  
 3 and then a vote.  
 4 MR. GREENLEE: Would you second it?  
 5 I'm not going to second it.  
 6 MR. HUTCHISON: Can I second?  
 7 MR. YOUNG: Yeah, you can second it.  
 8 MR. HUTCHISON: I'll second it.  
 9 That's what I didn't know with only three  
 10 of us.  
 11 MR. GREENLEE: Yeah.  
 12 MR. HUTCHISON: Because a lot of  
 13 committees' chairmans aren't allowed to vote,  
 14 but this one I guess I am.  
 15 MR. GREENLEE: And go ahead and call for  
 16 the vote.  
 17 MR. HUTCHISON: All right. We've had a  
 18 motion made that the Right to Farm Act was  
 19 followed at the Trappe Foster's Farm down in  
 20 Trappe. Made and seconded.  
 21 And I'm going to call for a vote. All

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1 those in agreement, say aye.  
 2 MR. L. SMITH: Aye.  
 3 MR. HUTCHISON: Aye.  
 4 Folks who disagree?  
 5 MR. GREENLEE: Nay.  
 6 MR. HUTCHISON: So the vote is two to one.  
 7 MR. YOUNG: Now, that was for the  
 8 application of the substances.  
 9 Are you going to do a separate motion for  
 10 the stockpiling?  
 11 MR. HUTCHISON: Am I allowed to make that  
 12 motion?  
 13 MR. YOUNG: Yeah.  
 14 MR. HUTCHISON: I move that the  
 15 stockpiling at the Foster Farm down in Trappe  
 16 was done according to the Right to Farm Act.  
 17 And I can add on suggestions?  
 18 MR. YOUNG: Yeah.  
 19 MR. HUTCHISON: I am happy to hear that  
 20 they are, been talking to Soil Conservation  
 21 about upgrading their facility there and would

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1 ask that they follow through with that. And if  
 2 they store in the future, that they upgrade  
 3 their facilities and keep a close eye on runoff  
 4 and everything being that close to the stream  
 5 and everything. Or anywhere, I mean any  
 6 location. We need to make sure it's done under  
 7 the best practices that we know for storing,  
 8 how to stockpile it, where to stockpile it.  
 9 MR. GREENLEE: Second.  
 10 MR. HUTCHISON: All right. We've had a  
 11 motion made in favor of the Right to Farm Act  
 12 for stockpiling these products at the Foster  
 13 Farm down in Trappe was in compliance with the  
 14 recommendations that I stated about continuing  
 15 to improve the facility and keep an eye on it  
 16 to make sure that they're doing it the best way  
 17 possible. And if new regulations come out,  
 18 that they stay under them.  
 19 All those in favor of this, say aye.  
 20 MR. GREENLEE: Aye.  
 21 MR. L. SMITH: Aye.

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1 MR. HUTCHISON: Aye.  
 2 Opposed? Got three ayes.  
 3 MR. YOUNG: All right. And then unless  
 4 you have any other business that you want to  
 5 discuss, you can have a motion to adjourn.  
 6 MR. HUTCHISON: Do we need -- I talked to  
 7 you about new members on the Board. Is that  
 8 something we should talk about now?  
 9 MR. YOUNG: No. We can talk about that  
 10 separately.  
 11 MR. HUTCHISON: Okay. All right.  
 12 Well, I want to thank everybody for being  
 13 here today.  
 14 Again, I know it was hard for all of you  
 15 down in Trappe, some of you people that got up  
 16 and testified. It was very hard for you to get  
 17 up and testify against other farmers, fellow  
 18 people that you know, respect in the community.  
 19 So I really do thank everybody for everything.  
 20 So it wasn't an easy decision on any of  
 21 us, and I just thank everybody for their


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1 patience and everything.  
 2 And thank you, gentlemen, for all your  
 3 help. Shawn, Shannon, the two gentlemen.  
 4 MR. DUELL: Mr. Hutchinson, may I make a  
 5 statement?  
 6 I respect the decision of the Board, and I  
 7 recognize that this has to be referred to the  
 8 proper authorities.  
 9 I'd like to talk directly or make this  
 10 directly to Shawn. We did meet with you, both  
 11 Bill and I, and showed you plain pictures of a  
 12 runoff. And nothing has changed since that  
 13 time.  
 14 MR. HUTCHISON: Is this part of the  
 15 hearing?  
 16 MR. YOUNG: No. I think that --  
 17 MR. HUTCHISON: That's something that be  
 18 taken...  
 19 MR. YOUNG: Yeah.  
 20 So you might want to make a motion to  
 21 adjourn the hearing. And then if you want to

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1 discuss that afterwards, you can.  
 2 MR. HUTCHISON: So that's not part of the  
 3 hearing.  
 4 So somebody would like a motion to  
 5 adjourn?  
 6 MR. GREENLEE: So moved.  
 7 MR. HUTCHISON: Thank you. So this  
 8 hearing has been adjourned. Thank you.  
 9 MR. M. CROPPER: Thank you very much.  
 10 Appreciate it.  
 11 (Hearing concluded at: 9:57 a.m.)  
 12  
 13  
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 17  
 18  
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 20  
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1 STATE OF MARYLAND  
 2 I, Diane Houlihan, a Notary Public in and  
 3 for the State of Maryland, County of Baltimore City,  
 4 do hereby certify that the within named, Talbot  
 5 County Agricultural Resolution Board Audio,  
 6 personally appeared before me at the time and place  
 7 herein set according to law, was interrogated by  
 8 counsel.  
 9 I further certify that the examination was  
 10 recorded stenographically by me and then transcribed  
 11 from my stenographic notes to the within printed  
 12 matter by means of computer-assisted transcription  
 13 in a true and accurate manner.  
 14 I further certify that the stipulations  
 15 contained herein were entered into by counsel in my  
 16 presence.  
 17 I further certify that I am not of counsel  
 18 to any of the parties, not an employee of counsel,  
 19 nor related to any of the parties, nor in any way  
 20 interested in the outcome of this action.  
 21  
 AS WITNESS my hand Notarial Seal this 16th  
 day of November 2022 in Baltimore, MD  
  
 Diane Houlihan  
 Notary Public  
 My commission expires September 16, 2025

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