



Minutes of the Clark County

Air Pollution Control Hearing Board Meeting

August 11, 2016

I. CALL TO ORDER

Chair Daniel Sanders called the meeting of the Air Pollution Control Hearing Board to order at 1:31 p.m. A quorum was present and Affidavits of Posting of the agenda were provided as required by the Nevada Open Meeting Law. The Affidavits will be incorporated into the official record.

PRESENT: Daniel Sanders, Chair
Evan S. Wishengrad, Esq., Vice-Chair
Craig Schweisinger
Ryan L. Dennett
Karen Purves

ABSENT: William Kremer

APPROVED APC HEARING BOARD
DATE: DECEMBER 8, 2016
BY: ERAN BREITWEISER
Board Secretary

LEGAL COUNSEL: Leslie A. Nielsen, Esq.

DAQ STAFF: Ralph McCullers, Compliance and Enforcement Manager
Ryan Breitweiser, Administrative Secretary

OTHERS
PRESENT: Lea Kain, DAQ; Jeffrey Robb, DAQ; Pam Thompson, DAQ;
Patricia Ringgenberg, DAQ; Paul Noe, Star Nursery

II. PUBLIC COMMENT

There were no public comments.

III. APPROVE MINUTES OF APRIL 21, 2016

Chair Sanders called for comments, changes, or corrections to the April 21, 2016 minutes. Board Member Schweisinger motioned the minutes be approved. The motion was seconded by Vice-Chair Wishengrad. Chair Sanders called for a vote on the motion, and asked those in favor of approving the minutes from the meeting on April 21, 2016 to signify by saying aye. It was met by a chorus of ayes. There was no opposition. The motion passed.

IV. BUSINESS ITEMS

A. CERTIFICATE OF EXEMPTION

Chair Sanders stated all three business items fall in the same category and are topics the board has heard in the past. He continued, saying the first two business items are renewals of Certificates of Exemption, and the third is a new request for a Certificate. Chair Sanders noted that the representative from Ponto Nursery, Inc. (Ponto) was unable to attend the meeting, but a representative from Evergreen Distributors, Inc. (Evergreen) is in attendance. The Chair stated he will have discussion on all three Certificates at one time, then vote on each agenda item separately.

Board Member Purves then asked what the grain count associated with “less than 15% of the pollen released by a . . . traditional European Olive tree” (Clark County AQR 44.3.2) was as mentioned in the Air Quality Regulation. Paul Noe approached the testimony table and stated he is employed by Star Nursery, but here to testify on behalf of Evergreen. Mr. Noe was then sworn in. He stated he is aware of the 15% of the traditional olive tree low pollinating requirements, but is unaware of the grain count number associated with that requirement. Chair Sanders stated his understanding is this strain of olive tree was DNA tested to meet air quality requirements of Southern Nevada. Ralph McCullers, Department of Air Quality (DAQ) Compliance and Enforcement Manager, confirmed that Chair Sanders’ statement was correct.

Vice-Chair Wishengrad pointed out a misspelling on Evergreen’s tree tag (bates stamped EDR0003). Then Board Member Purves asked if all non-pollinating trees are fruitless or if some non-pollinating trees can bear fruit. Mr. Noe stated if plants do not pollinate, then they will not bear fruit. He continued, stating that Wilsonii olive trees are not non-pollinating or fruitless. They can produce fruit, but it will be 15% or less than traditional olive trees.

- 1. PONTO NURSERY, INC** – Request for renewal of Certificate of Exemption for distributing and marketing of low pollinating olive trees for the next three (3) years. (Current Certificate expires: December 9, 2016.)

Mr. McCullers requested the action on business item 1 be postponed until the next Hearing Board meeting in October or December. He explained that new information has been presented

to staff which necessitates additional review before DAQ can recommend the board renew Ponto's Certificate of Exemption. He explained that Ponto's distribution plan was initially submitted in 2004, and recently received invoices make it necessary to postpone the renewal until DAQ receives more information from Ponto. Chair Sanders asked if Ponto is aware of the postponement and if the postponement will affect their business. Mr. McCullers stated the information from Ponto was made available on Wednesday (1 day prior) and Ponto's current Certificate of Exemption is valid until December 9, 2016. Board Member Schweisinger made a motion to defer the request for renewal of Ponto Nursery's Certificate of Exemption until the next meeting. Vice-Chair Wishengrad then asked Mr. McCullers what type of further investigation must be completed, and if he could expound upon what type of issue was discovered. Mr. McCullers responded stating that staff has determined that the nursery is selling labels, and the postponement is an attempt to correlate trees to the labels that were sold. He explained that Ponto sells very small plants or liners, and Ponto has stated attaching labels to the plants is not practical. Mr. McCullers stated he has seen invoices which state how many labels have been sold, but DAQ is looking to associate each label with evidence of a tree being sold. Vice-Chair Wishengrad then asked Mr. Noe if he is aware of sellers that Evergreen and Ponto have in common. Mr. Noe stated he is not aware of any. Chair Sanders asked for clarification that the continued investigation only affects Ponto Nursery. Mr. McCullers replied that only Ponto is affected. Board Member Dennett asked who the nurseries obtained the labels from. Mr. McCullers stated the nurseries print their own labels, which contain sequential numbers for tracking. Board Member Dennett asked if DAQ is investigating if Ponto sold more labels than trees. Mr. McCullers responded stating that at this time DAQ is merely trying to associate sold labels with sold trees. Vice-Chair Wishengrad asked if Mr. McCullers was referring to bates stamp PNR0012-0016. Mr. McCullers confirmed he was. Chair Sanders returned to the motion to continue business item 1, renewal of Certificate of Exemption for Ponto Nursery until the next meeting. Board Member Dennett seconded the motion. Chair Sanders called for a vote on the motion, and asked those in favor of to signify by saying aye. It was met by a chorus of ayes. There was no opposition. The motion passed.

Mr. McCullers requested that business item 1 be noticed as a public hearing. He continued, stating that there is public comment on the agenda, but he would like the record to show that the business items are part of a public hearing. Board Member Schweisinger requested clarification of the request. Leslie Nielsen, Deputy District Attorney, explained that DAQ Procedure Manual contemplates each item on the agenda be publicly noticed for public hearing, which is different than complying with the open meeting law. She then stated that by public hearing, DAQ means that there has been a public notice published in the newspaper, and the public is invited to comment on a specific agenda item. In order for DAQ to not incur a second publication fee for a public hearing notice when business item 1 is taken up at the next meeting, Ms. Nielsen requests the record be clear that the hearing was opened to public comment, but no member of the public wanted to comment, and the public hearing was closed. Vice-Chair Wishengrad asked for further clarification of why agenda items must be open hearings when the open meeting law declares the proceedings as open. Ms. Nielsen referenced the Board of County Commissioners agenda, and stated that their agenda has business items and public hearings separated. She then stated the Chair opens and closes public hearings, and the significance for the board is the public hearing rules are outlined in the procedures manual, not in Nevada law or the rules. Ms. Nielsen would like the public hearing opened and closed so the record is clear no one wanted to testify on the topic. Board Member Schweisinger requested that to facilitate the Chairman, some verbiage be added to the agenda referencing the public hearing. Chair Sanders stated that typically he

would open up the topic for members of the public to participate, but if a more strict approach to the public hearing portion of the agenda is necessary, he would do so. The Chair then recognizes that no one is in the audience to speak on the matter, and then closed the public hearing portion of item 1.

2. **EVERGREEN DISTRIBUTORS, INC.** – Request for renewal of Certificate of Exemption for distributing and marketing of low pollinating olive trees for the next three (3) years. (Current Certificate expires: December 9, 2016.)

Chair Sanders opened up business item 2 to public comment. Seeing none, Chair Sanders closed the public hearing portion of business item 2 and requested a motion. Board Member Schweisinger moved to approve the request. Chair Sanders reiterated the motion was to approve the request to renew the Certificate of Exemption for Evergreen Distributors, Inc. for another 3 years. The motion was seconded by Board Member Dennett. Chair Sanders called for a vote on the motion, and asked those in favor of to signify by saying aye. It was met by a chorus of ayes. There was no opposition. The motion passed.

3. **EVERGREEN DISTRIBUTORS, INC.** – Request for Certificate of Exemption for distributing and marketing of low pollinating olive trees for the next three (3) years.

Chair Sanders opened up business item 3 to public comment. Seeing none, Chair Sanders closed the public hearing portion of business item 3, and requested a motion. Board Member Dennett asked if this strain of tree is similar to the Wilsonii olive tree, which was covered in business item 2. Mr. Noe answered, stating the Little Ollie is a dwarf version of the olive tree, which was segregated out of an olive field. He elaborated that most strains are acquired by mutation. He stated the Little Ollie has been available for about 20 years. He added that Evergreen has been growing it for at least that long. He said the Little Ollie is a small, slow growing, and bushy olive tree, and is typically used as a shaped shrub in landscape. Mr. Noe also stated that he has never seen a Little Ollie olive tree flower. He referenced the “mother plant” which Evergreen uses to propagate all of their Little Ollie plants to sell, and he said that Mark Collins, owner of Evergreen Nursery, has not seen the mother plant flower in the 20 – 25 years of its use.

Board Member Schweisinger moved to approve the request. Chair Sanders reiterated the motion was to approve the request in item 3 for Evergreen Distributors, Inc. The motion was seconded by Board Member Dennett. Chair Sanders called for a vote on the motion, and asked those in favor of to signify by saying aye. It was met by a chorus of ayes. There was no opposition. The motion passed.

V. REPORT BY DAQ STAFF

Mr. McCullers briefly introduced himself and spoke about his background in the environmental industry and successes as the Environmental Director to the Poarch Band of Creek Indians. Mr. McCullers then provided a brief update to the Members on the process revision work being done by the minor source permitting department [*Updates are continued in agenda item V-3*].

1. Board Member Request for Personal Identifiers - Mr. McCullers stated DAQ staff has contacted the majority of volunteer boards in Clark County, and according to the research, it is common

practice that board members are not supplied with personal identifiers. Vice-Chair Wishengrad stated he is a member of the Lone Mountain Citizens Advisory Council (Lone Mountain). He explained that board members on the advisory board are given business cards. Mr. McCullers asked Ryan Breitweiser, DAQ Administrative Secretary, if the Lone Mountain Citizens Advisory Board was one that DAQ contacted. Mr. Breitweiser stated that he did not have that information in front of him. He explained that many of the smaller advisory boards were difficult to get in touch with. Board Member Schweisinger then stated he serves on and participates in various community groups, and introduces himself as a volunteer member of the Air Pollution Control (APC) Hearing Board. He commented that a name badge would help him to be identified as a representative volunteer of the APC Hearing Board, and alleviate him explaining his role. Board Member Schweisinger further clarified that his request was not for business cards or for a county ID; however a name badge would be useful when attending community meetings. Vice-Chair Wishengrad described the Lone Mountain business card, stating they listed the name of the council on front and listed all of the council members on the back. Vice-Chair Wishengrad further explained that the cards are not personalized, and all council members use the same business cards. Board Member Schweisinger asked Ms. Nielsen if board members are prohibited from having business cards. Ms. Nielsen stated there is not legal prohibition against board members receiving business cards. Mr. McCullers added he will bring the board members opinions regarding personal identifiers to the Director of DAQ and have a definitive answer at the next board meeting.

2. Transfer of Certificate of Exemption – *[Taken up during agenda item VI]* Mr. McCullers stated that DAQ has received a request to transfer a Certificate of Exemption from a company holding an existing Certificate of Exemption to the parent company who purchased the company and its inventory. He mentioned that there is not regulation to govern this type of transfer, and it is the first time this type of request has been seen by DAQ. Chair Sanders stated if the transfer can be completed administratively the board would not have an issue. Board Member Schweisinger added that if material changes to operations and distribution occur during the transfer, it would need to appear before the board.
3. Programmatic Update – *[Continued from earlier in agenda item V]* Mr. McCullers commented on the August 1, 2016 move to paperless Dust Control Permit applications, and added that applicants without computer access have the ability to complete applications for dust permits on 2 workstations at the DAQ offices near the front counter. He added that July was used as a transition month to inform applicants of the upcoming change to paperless applications, and the paper option has now been removed. Board Member Purves asked Mr. McCullers how DAQ would proceed if an applicant turned in a paper application, and how the change has been received by the public. Mr. McCullers responded by saying that applicants who come to the office in person are instructed to use the workstations to enter their information and paper applications received by mail are informed via email and phone of the change in process, and asked to complete the form online. He also mentioned that the paperless system has been well received without any complaints to date.

Board Member Schweisinger requested an updated organizational chart, and Chair Sanders asked for DAQ staff to email the charts to the Board Members.

VI. IDENTIFY EMERGING ISSUES TO BE DISCUSSED BY BOARD AT FUTURE MEETINGS

Vice-Chair Wishengrad mentioned he recently received a copy of the open meeting manual, and requested further clarification be given at the next meeting regarding public notification processes for APC Hearing Board meetings. Board Member Schweisinger commented on the distinction between a public meeting and a public hearing. Ms. Nielsen stated the meeting has been noticed properly, however public hearing items on the agenda should be opened to public comment, and referenced Clark County Board of County Commissioner meeting procedures. Vice-Chair Wishengrad reiterated that with additional attention being given to public comment and notice across the County, he would like the notification process to be revisited at the next Hearing Board meeting. Chair Sanders requested public hearing items be noted in the agenda so the Chair has prompts to open and close public hearing items. Board Member Schweisinger confirmed this would be a good practice.

[Item V-2 was taken up at this time]

VII. PUBLIC COMMENT

There were no public comments.

VIII. ADJOURNMENT

Being no further business, Chair Sanders adjourned the meeting at 2:13 p.m.

Submitted for approval,



Ralph McCullers, Compliance & Enforcement Manager
Department of Air Quality

Date

11/23/2016