



## Minutes

### Regular Meeting of the Clark County Air Pollution Control Hearing Board

February 9, 2017

Clark County Building Services  
Presentation Room  
4701 West Russell Road  
Las Vegas, NV

**APPROVED APC HEARING BOARD**  
**DATE:** December 14, 2017  
**BY:** Famela R. Thompson  
**Board Secretary**

#### I. CALL TO ORDER

Chair Daniel Sanders called the meeting of the Air Pollution Control Hearing Board to order at 1:35 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  
Ryan L. Dennett  
Tom Foster, P.E.  
William Kremer  
Karen Purves

ABSENT: Craig Schweisinger

LEGAL COUNSEL: Leslie A. Nielsen, Esq.

DAQ STAFF: Ralph McCullers, Compliance and Enforcement Manager  
Patricia Ringgenberg, Air Quality Specialist  
Ryan Breitweiser, Administrative Secretary

OTHERS PRESENT:  
Marcie Henson, DAQ; Lea Kain, DAQ; Jeffrey Robb, DAQ; Whitney Francis, DAQ;  
Robert L. Crudup, BrightView Tree Company; Jack Paripovich, Complete Demo Services

## II. PUBLIC COMMENT

There were no public comments.

## III. APPROVE MINUTES OF DECEMBER 8, 2016

Chair Sanders called for comments, changes, or corrections to the December 8, 2016 minutes. Board Member Purves stated she was concerned about being perceived as pretentious at the beginning of the meeting, but she has two comments about the minutes. She added she studies linguistics, and knows the word “why” can be perceived as defensive, and therefore she does not use the word “why”. She commented she uses “how come” or “what is the reason” instead. Board Member Purves then referenced pages 5 and 6 of the minutes, and mentioned she understands someone efficiently typing minutes could substitute “how come” or “what is the reason” with “why”; however she works hard to use communication that does not increase defensiveness. Board Member Purves also referenced the bottom of page 7 of the minutes, and commented that in the section the Board spoke about how they discuss issues and what each board member brings to the table. The minutes state “Board Member Purves discussed the factors she uses while making decisions on the Board, which include her environmental experience, the social, economic and health needs of the area, and the specific factors of the violation.”, and Board Member Purves stated in that section of the minutes, she was reading from the Air Quality Regulations (AQR) mission, and she feels the role of the Board is to keep those competing interests in mind with every person, issue, and request. She stated she believes each member should use that statement as a baseline, and then add personal experience and professional expertise. She commented it is important it be clarified she was making a point of what she uses to make a decision, but she was suggesting, intimating, hoping or wishing the Board would all use that decision making and adjudicating criteria. Board Member Purves restated she did not want to be difficult, but the two issues were important enough to mention.

Chair Sanders asked if there are specific changes she would like made to the minutes. Board Member Purves requested on page 5 and 6 “how come” or “what is the reason” be used, and on page 7 “Board Member Purves discussed the factors she hope all members will use” or “discussed the factors she uses and hopes other board members will consider” or something similar be substituted. Chair Sanders stated if her comments are misrepresented in the minutes, they should be clarified. Board Member Purves explained the minutes are accurate when stating she uses those factors, but the greater picture is she has felt strongly sometimes it not the case, and it is her understanding the AQR mission is the baseline for decision making. Vice-Chair Wishengrad suggested to use the wording “Board Member Purves discussed the factors she believes are appropriate in making decisions.” Board Member Purves agreed. For the record, Chair Sanders requested confirmation the meetings are recorded and anyone needing more detail can listen to the audio of the meeting. Department of Air Quality (DAQ) staff confirmed he is correct. Chair Sanders requested a motion to approve the minutes with the changes requested.

Vice-Chair Wishengrad motioned to approve the minutes conditioned on the several changes discussed. The motion was seconded by Board Member Dennett. Chair Sanders called for a vote on the motion, and asked those in favor to signify by saying aye. It was met by a chorus of ayes. There was no opposition. The motion passed.

#### IV. PUBLIC HEARINGS

##### A. REQUEST FOR CERTIFICATE OF EXEMPTION

2. **BRIGHTVIEW TREE COMPANY** (Swan Hill olive tree) - formerly Valley Crest Tree Company – Conduct a public hearing and approve a request for renewal of a Certificate of Exemption for distributing and marketing of low pollinating olive trees for the next three (3) years. The current Certificate expires on February 10, 2017.

Chair Sanders asked if representatives from BrightView Tree Company (BrightView) would approach the testimony table. Robert Crudup from BrightView, located at 3200 West Telegraph Road Fillmore, CA, 93015, was sworn-in. Patricia Ringgenberg, Air Quality Specialist II with DAQ was also sworn-in. Chair Sanders asked Ms. Ringgenberg if DAQ has any objection to the renewal of BrightView's certificate of exemption. Ms. Ringgenberg stated there is no objection and DAQ staff recommends the approval of the renewal.

Deputy District Attorney Leslie Nielsen suggested the Board allow Mr. Crudup to provide clarification of the relationship between the current certificate holder, Valley Crest Tree Company (Valley Crest) and BrightView. Mr. Crudup explained in June of 2014 a merger was created between Valley Crest Companies and Brickman Companies (Brickman), and the legal entities remained intact, but an underlying dba (doing business as) BrightView Landscape Services was created which includes BrightView Tree Company. Mr. Crudup stated pending today's approval, olive tree tags will change to reflect the new company name. Vice-Chair Wishengrad requested verification BrightView is a dba of the legal entity Valley Crest who merged with Brickman. Mr. Crudup confirmed the corporation Valley Crest Companies merged its five operating companies, including Valley Crest Tree Company with an East coast landscape company, Brickman.

Chair Sanders referenced a letter Board Member Kremer provided to the Board and public, and asked if Board Member Kremer would like to speak to it. Board Member Kremer stated he spoke to Dr. Polito, a retired agronomy professor at University of California, Davis, and asked if any other studies were performed to support the contention that olive trees have been tested and the trees are low pollinating. Mr. Kremer provided the Board a copy of the response letter, which stated Dr. Polito had a reasonable level of confidence low pollinating olive trees studied in 2004 were low pollinating as described at that time. Board Member Kremer then asked Mr. Crudup where and how he propagates his seedlings or liners. Mr. Crudup commented Dr. Polito performed his studies on Swan Hill olive trees, and the original genomes for Swan Hill olive trees came from University of California, Davis. Mr. Crudup then explained Swan Hill olives are grafted from oblonga root stock, which imparts vigor and disease resistance to the tree, and scion wood from a fruitless Swan Hill olive. The Swan Hill scion wood is taken from Valley Crest's original stock of Swan Hills at the nursery. He added BrightView tracks the olive trees from start to finish, and cautioned the Board against companies who produce fruitless olive trees without providing certification of where the wood is coming from. Mr. Crudup pointed out BrightView tracks their current Swan Hill root stock to the original trees which were developed.

Board Member Kremer requested explanation of how seedlings or liners are produced. Mr. Crudup explained approximately 12" cuttings are taken from the oblonga olive tree and grafted with Swan Hill scion cuttings. After the graft is healed, the tree is ready to begin a production cycle. Board Member Kremer asked how many parent trees BrightView uses, and where they are located. Mr. Crudup informed the Boards they are propagated in Waddell, Arizona, and the cuttings are taken from the original trees or the offspring of the original trees. Grafting keeps the trees true to their genetic function, and after grafting there is no variation and the process is asexual.

Chair Sanders opened the hearing to the public and asked if anyone from the public would like to speak to this matter. Seeing no comments, Chair Sanders closed the public hearing, and asked if any other Board Members had questions or comments. Board Member Kremer asked what the reason is a home owner would choose these olive trees over other options. Mr. Crudup responded that olives are great, disease and drought resistant ornamental trees. Additionally, Swan Hill olives are chosen because they do not produce fruit, which can be messy, and because they do not make fruit or pollen. This low pollen content is beneficial to people with bronchial or breathing disorders and general air quality. Seeing no further questions from the Board, Chair Sanders requested a motion.

Vice-Chair Wishengrad motioned to approve the request for a Certificate of Exemption for the next three years. The motion was seconded by Board Member Foster. Chair Sanders called for a vote on the motion, and asked those in favor to signify by saying aye. The motion was affirmed by Chair Sanders, Vice-Chair Wishengrad, Board Member Dennett, Board Member Foster, and Board Member Purves; and was opposed by Board Member Kremer. The motion carried on a majority vote.

1. **BRIGHTVIEW TREE COMPANY (Wilsonii olive tree)** - formerly Valley Crest Tree Company – Conduct a public hearing and approve a request for renewal of a Certificate of Exemption for distributing and marketing of low pollinating olive trees for the next three (3) years. The current Certificate expires on February 10, 2017.

(Taken out of order)

Chair Sanders stated Mr. Crudup remains under oath. Chair Sanders pointed out for the record item number 2 was taken out of order, and the Board will now hear item number 1 concerning Wilsonii olive trees. Mr. Crudup explained Wilsonii olive trees are another fruitless olive tree and Wilsonii's differ from Swan Hill's because Swan Hill olive trees are dense, upright and bold, while Wilsonii olive trees are free flowing and willowy, giving the consumer two types of olives. He stated the fruitless, reduced pollen characteristics are the same, and the olive trees are propagated in the same manner. Vice-Chair Wishengrad asked if the trees originated from different sources. Mr. Crudup answered the Swan Hill olive tree originally came from Swan Hill Nurseries through University of California, Davis, and Valley Crest purchase Swan Hill Nurseries 2 years ago. The Wilsonii olive was developed by Ponto Nursery and BrightView is one of the licensed growers of Wilsonii olive trees. Board Member Purves referenced the board book and stated she did not notice purchase of Wilsonii olives or tags, and asked if BrightView is actively selling Wilsonii trees. Mr. Crudup confirmed BrightView has been growing Wilsonii trees for 25 years.

Vice-Chair Wishengrad asked Board Member Kremer if he would like to explain the reasoning behind his opposition of the previous motion. Board Member Kremer noted the socioeconomic value of the trees is negligible, except for a handful of retailers. He explained if a mistake or mutation happens, it will propagate through the generations and trees of unknown value will be placed throughout the Las Vegas Valley. Board Member Kremer stated he knows and is approached by people with allergies, and he is not personally comfortable a mistake or mutation can be avoided over time. He added biological science is not like arithmetic and outcomes can vary. Board Member Kremer felt the letter from Dr. Polito left an element of uncertainty which guided his vote. Chair Sanders mentioned he appreciates Board Member Kremer's perspective. Chair Sanders noted personally, he has noticed a reduction in his allergies over the years. Vice-Chair Wishengrad also appreciated Board Member Kremer's perspective, and commented 100% certainty is uncommon for any situation. He believed current studies should be trusted because relying on possible uncertainty would stall all progress. Seeing no further questions from the Board, Chair Sanders requested a motion.

Vice-Chair Wishengrad motioned to approve the item listed A.1. BrightView Tree Company for the Wilsonii olive tree for a Certificate of Exemption for the next three years. The motion was seconded by Board Member Foster. Chair Sanders called for a vote on the motion, and asked those in favor to signify by saying aye. The motion was affirmed by Chair Sanders, Vice-Chair Wishengrad, Board Member Dennett, Board Member Foster, and Board Member Purves; and was opposed by Board Member Kremer. The motion carried on a majority vote.

Chair Sanders thanked Mr. Crudup.

## V. BUSINESS ITEMS

### A. APPEALS OF HEARING OFFICER DECISIONS

#### 1. COMPLETE DEMO SERVICES (Project Number: 152005; DCP #45056)

**NOV #8736** – On April 21, 2016, the Hearing Board heard the appeal of the Hearing Officer's decision, stayed its decision for a period of 9 months to determine whether Complete Demo Services would commit other violations of the Air Quality Regulations during that period, and levied a \$1,000 penalty. The Hearing Board's order entered on May 12, 2016, provides that the Hearing Officer's Order would be removed from the record if Complete Demo Services committed no violations during the nine-month period. Complete Demo Services paid the \$1,000 penalty timely on May 27, 2016.

**Background:** On January 20, 2016, the Hearing Officer found Complete Demo Services in violation of 40CFR61, Subpart M, Part 61.145(b)(3)(i) (adopted by reference in Section 13.1 of the Air Quality Regulations) for failing to timely notify Air Quality of the demolition of all structures prior to conducting renovation and demolition activities, as identified during a routine site inspection on July 29, 2015, located at 405 North 6<sup>th</sup> Street, in Clark County, Nevada. The Hearing Officer reduced the \$2,000 penalty recommended by the Control Officer and levied a penalty of \$1,000.00.

Chair Sanders asked if representatives from Complete Demo Services (Complete) would approach the testimony table. Jack Paripovich from Complete, located at 5720 North Campbell Road, Las Vegas, Nevada, was sworn-in. Chair Sanders gave a brief history of the case, and then asked Ralph McCullers, Compliance and Enforcement Manager with DAQ if Complete has been in violation of any Air Quality Regulations (AQR) since the issuance of the Order staying the appeal. Mr. McCullers stated Complete has not been found in violation of any AQR.

Mr. Paripovich commented the mistake leading to the violation was a minor, clerical mistake, and he has been in the demolition business for 20 years, including the demolition of over 300 buildings. Since his last appearance before the Board, 9 months ago, he has demolished 25 buildings and the Notice of Violation he received was his first. He added that he appreciates the Board granting him 9 months to show he can be compliant with Air Quality Regulations. Vice-Chair Wishengrad stated his understanding is the Board is not reconsidering the case, but this hearing is a follow-up to find if any additional violations occurred, and if not, the prior decision would stand and the Hearing Officer's Order would be removed. Chair Sanders concurred.

Board Member Purves stated she spoke with Ms. Nielsen before the hearing about what was being considered in this case and referenced bates stamp CD003. Board Member Purves then quoted the current Hearing Board Order which states "If Complete commits no violation of the Air Quality regulations during such nine month period, then the Board may, during its next regularly-scheduled meeting after expiration of such period, remove the Hearing Officer's Order from the record." She summarized what she believes the Board is voting on is if the Order should be removed from Complete's record. Chair Sanders stated if Complete complied with the stipulations from the last Order, even though he did not agree with the past decision, he will vote to approve the new Order to remove the Hearing Officer's decision from the record. Board Member Purves commented she disapproved originally, and may disapprove again. Vice-Chair Wishengrad referenced paragraph 5 of the Order on Appeal and questioned if the content is consistent with the Board's decision in his recollection. He stated that he believed the Board enforced the fine and if Complete did not commit additional violations for a nine month period then the Hearing Officer's Order would be removed. He commented that he believed the word "may" in paragraph 5 was not indicative of the intent of the Board at the previous appeal hearing. Ms. Nielsen commented she was involved with DAQ staff in creating the Order and said staff was very cautious creating the Order and listened carefully to the recording of the meeting when trying to incorporate the motion into the Order of Appeal. She also pointed out the difficulty of removing an Order from the record of a company because the meetings which assigned the \$1,000 penalty and Orders are public record. Vice-Chair Wishengrad recalled the intent of removing the Order from Complete's record was to not impede the company's ability to obtain any future government contracts. Ms. Nielsen understood and suggested the possibility someone seeking demolition contractors could research and find Complete paid a \$1,000 penalty for this violation. Vice-Chair Wishengrad reiterated his understanding of the intent of the Order on Appeal and desire to give Mr. Paripovich the ability to truthfully state he has not been in violation of AQR.

Chair Sanders asked DAQ staff how often an entity will call DAQ to ask how many violations a contractor has in the past. Mr. McCullers responded stating it is not at all common, and since he started with DAQ on June 6, 2016, he not received a request for such information. Chair Sanders stated he has created thousands of proposals and cannot recall ever being asked if he has received Air Quality violations. He only recalled questions about safety violations such as OSHA or

MSHA. Chair Sanders stated he opposed removing the violation from Complete's record at the previous hearing because working with AQR is part of doing business in the construction industry, and most, if not all excavation contractors have received numerous Air Quality violations without impact to their standing in the community; however, Chair Sanders stated the Board agreed to remove the violation if Mr. Paripovich completed 9 months without violation.

Board Member Dennett asked if fine amounts increase in magnitude with the frequency of violations. Mr. McCullers answered AQR allows for DAQ to increase if the same entity is committing the same violation up to the statutory maximum of \$10,000 per violation per day. Board Member Dennett suggested the cumulative nature of the ongoing fines could be waived, and sealing the complete record of the violation would require a court order. Mr. Paripovich interjected his recollection of the last meeting was if he operated without committing a violation, then the Hearing Officer's Order would be removed. He mentioned doing work at the Nevada test site, and the background checks that are needed, and he reiterated his record has been clean for the last nine months. Mr. Paripovich then reasserted his desire to complete applications for demolition work without a violation on his record. Board Member Foster asked for clarification if it is possible to remove the violation from the record, but not from the minutes of the meeting. Ms. Nielsen stated the Order of Appeal stayed the decision on the appeal for nine months. The Board has the options to grant the appeal and reverse the Hearing Officer's decision, but the Order of Appeal which was created during the April Board meeting required payment of a \$1,000 penalty.

Board Member Foster asked if the Board grants the appeal, what would DAQ's response be if someone called to inquire about Complete's violation history. Ms. Nielsen replied the response would be to supply a copy of the Order that is entered today after a decision is made. It is possible to grant the appeal at today's meeting, and the Order could include a statement to remove the Hearing Officer's Order from the record. Board Member Kremer asked how the \$1,000 penalty associated with the last Order of Appeal would be handled. Board Member Dennett stated no final decision on the appeal has been made because the decision has been stayed. The final Order could include language which would clarify and overrule the interim Order of Appeal, become controlling law on the matter, and address the appellants concerns and the \$1,000 penalty. Vice-Chair Wishengrad voiced his concern a final Order could open the case for a potential reversal when that was not the intent of the Board in April. Board Member Foster asked if Mr. Paripovich would be able to truthfully say "no" when asked if he has been cited for any violations by the Department of Air Quality if the appeal is granted. Board Member Dennett answered the legal way a contractor or government could ask the question is by asking "Have you been convicted of?" and to that question he could answer no. Chair Sanders requested a motion on the appeal.

Board Member Dennett motioned that based upon Complete Demo Service's appeal, which was previously heard and stayed on April 21, 2016, a final Order be issued granting the appeal and closing the matter with finality, which would also contemplate the forfeiture of the fine of \$1,000 related to the Order staying the appeal, but unrelated to the final Order on the appeal. The motion was seconded by Vice-Chair Wishengrad. Chair Sanders called for a vote on the motion and asked those in favor to signify by saying aye. The motion was affirmed by Chair Sanders, Vice-Chair Wishengrad, Board Member Dennett, Board Member Kremer, and Board Member Foster; and was opposed by Board Member Purves.



Board Member Foster referenced the interim Order, bates stamp CD002, which mentions a document carousel that reportedly did not contain all of the necessary documents. Board Member Foster asked if DAQ verified if documents were missing from the carousel, and if so, were the missing documents replaced. Mr. McCullers confirmed the problem was corrected and the forms are available online and hard copies are available at the front desk.

## **VII. IDENTIFY EMERGING ISSUES TO BE DISCUSSED BY BOARD AT FUTURE MEETINGS**

(Taken out of order)

Chair Sanders announced agenda item VII - Identify Emerging Issues To Be Discussed By Board At Future Meetings will be taken ahead of agenda item VI – Report by DAQ Staff. Board Member Purves requested “Board meeting preparation” be added to the agenda for discussion at a future meeting. Chair Sanders asked if Board Member Purves had any specific topics she would like discussed during the agenda item. Board Member Purves stated she would like the item discussion to include what preparation is expected by Board Members for Board meetings, and preparation, or lack thereof, affecting Board meeting efficiency such as duplicative questions.

## **VI. REPORT BY DAQ STAFF**

Mr. McCullers referenced the Tronox settlement agreement, mentioned at the last Board meeting, and commented deadlines are being met and things are going smoothly. Mr. McCullers stated due to retirements there has been some staff turnover in DAQ, and the Department is actively recruiting for those openings. He mentioned the January Hearing Officer docket and stated it was completely full, and he does not expect any cases to be appealed to the Board. He stated the March Hearing Officer docket is expected to be full as well.

Mr. McCullers added medical and recreational marijuana has been an emerging issue for DAQ and Clark County. DAQ has received 12 or 13 odor complaints referencing marijuana. He stated DAQ Director Marci Henson organized a meeting with Commissioner Sisolak and marijuana stakeholders. During the meeting Commissioner Sisolak decided to create a committee to provide policy and rule recommendations to the County.

## **VIII. PUBLIC COMMENT**

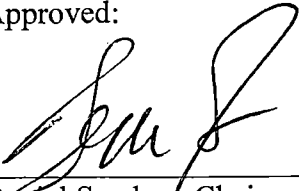
There were no public comments.



**IX. ADJOURNMENT**

Being no further business, Chair Sanders adjourned the meeting at 2:41 p.m.

Approved:



\_\_\_\_\_  
Daniel Sanders, Chair

*Dec. 14, 2017*

\_\_\_\_\_  
Date