



Minutes of the Clark County

Air Pollution Control Hearing Board Meeting

October 9, 2013

I. CALL TO ORDER

Chair Daniel Sanders called the meeting of the Air Pollution Control Hearing Board to order at 1:32 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
Karen Purves, Vice-Chair
George Foster, Jr., P.E.
Herbert Inhaber
Mark Ireland
Craig Schweisinger

LEGAL COUNSEL: Deputy District Attorney Lisa Logsdon, Counsel for DAQ

DAQ STAFF: Gary Miller, Compliance and Enforcement Manager
Lewis Wallenmeyer, Director
Araceli Pruett, Administrative Secretary

OTHERS

PRESENT: Shibi Paul, DAQ; Richard Beckstead, DAQ; Scott Roswell; Katrinka Chapek, DAQ; Judy Ponto, Bill Ponto, Ponto Nursery, Inc.; Mark Collins, Evergreen Distributors, Inc.; Robert Crudup, Valley Crest Tree Company; Dennis Swarbell, Arid Plant Solutions

II. PUBLIC COMMENT

There were no public comments.

DAQ Director Lewis Wallenmeyer thanked the board members for their voluntary service and dedication. He also commended former board members Bruce Johnson and Jim Lavelle for their respective twelve and thirty years of service.

APPROVED APC HEARING BOARD

DATE: 3/13/14

BY: Araceli Pruett

Board Secretary

III. OATH OF OFFICE

George Foster, Jr., P.E. (engineer member) took the Oath of Office. His term will expire August 5, 2016.

IV. APPROVE MINUTES OF APRIL 11, 2013

Chair Sanders called for comments, changes, or corrections to the April 11, 2013 minutes. Being none, he called for a motion. Board Member Schweisinger made a motion to approve the minutes, which was seconded by Board Member Inhaber, and carried by the rest of the board members. The motion passed unanimously.

V. MATTERS REQUIRING BOARD ACTION – DISCUSSION/POSSIBLE ACTION

A. CERTIFICATES OF EXEMPTION

Chair Sanders pointed out items 1 through 4 had been public noticed and would be acted upon individually.

- 1. EVERGREEN DISTRIBUTORS, INC. – Renewal of Certificate of Exemption for distributing and marketing low-pollinating olive trees for the next three (3) years. (Expiration: December 9, 2013)**

Chair Sanders asked for public comments. Being none, DAQ proceeded. DAQ Compliance and Enforcement Manager Gary Miller reported Evergreen Distributors, Inc. (Evergreen) applied for its original exemption in August 1992 and has renewed it every three years since. The matter was publically noticed in the Las Vegas Review Journal and on the department website; no comments were received. DAQ staff has inspected nurseries in the valley and has not received any complaints regarding the Wilsonii trees. DAQ recommended the renewal be granted with the following conditions: exempt trees in inventory at retail outlets and those being delivered to landscaping projects, must include a label approved by the Control Officer showing exempt status, date of approval of Certificate until sale to consumer; 2) the applicant shall present a distribution plan to the Control Officer to assure that only exempt trees under the applicant's control will carry the label provided for in §44.3.3. Shipping invoices must show copy of Certificate; and 3) such certificates expire in three (3) years. The applicant may renew it for three (3) year increments.

Chair Sanders asked for questions by the board members. Board Member Purves inquired about the approximate number of trees involved. Mark Collins appeared and identified himself as CEO of Evergreen. Mr. Collins was unable to provide an exact amount, but estimated 100 to 2,000 were distributed each year. He explained it usually depends on the commercial market-- when they are building large projects, the amount sold is higher.

Board Member Schweisinger questioned the origin of the tree and its exemption history. Mr. Collins does not believe it was genetically altered but more likely discovered. Mr. Miller stated these exemptions have been issued since 1991, adding AQR §44 prohibits mulberry trees and olive trees unless they meet low-pollinating criteria. The Wilsonii and Swan Hill trees are the only two that have come forward and been scientifically proven to be low-pollinating. Mr.

Schweisinger suggested the expediency of removing them from the exclusion list. Mr. Miller explained that would require major regulatory changes and the key issue was pollen. The board has expressed past interest in having it come before them. Chair Sanders referred to a past board matter involving numerous olive trees planted in the City of Las Vegas (CLV) and Clark County School District (CCSD) that were supposed to be low-pollinating, but ended up having to be removed and replaced after DNA testing proved otherwise.

Chair Sanders asked for further questions from the board members. Being none, he closed the hearing and asked for a motion. Board Member Inhaber motioned to approve the renewal for three years. Chair Sanders reiterated the motion was to extend the Certificate of Exemption for another three years and asked for a second. Board Member Ireland seconded the motion. Chair Sanders called for a vote asking those in favor of the renewal to signify by saying aye. It was met by a chorus of ayes. There were no oppositions. The motion passed unanimously.

2. **ORANGEWOOD NURSERY, LLC dba EASY PACE TREE FARM** – Renewal of Certificate of Exemption for distributing and marketing low-pollinating olive trees for the next three (3) years. (Expiration: December 9, 2013)

Mr. Miller reported Orangewood Nursery, LLC dba Easy Pace Tree Farm (Easy Pace) applied for its original exemption in 1991 and has subsequently renewed it every three years. The matter was publically noticed in the Las Vegas Review Journal and on the department website; no comments were received. DAQ recommended the renewal be granted with the following conditions: exempt trees in inventory at retail outlets and those being delivered to landscaping projects, must include a label approved by the Control Officer showing exempt status, date of approval of Certificate until sale to consumer; 2) the applicant shall present a distribution plan to the Control Officer to assure that only exempt trees under the applicant's control will carry the label provided for in §44.3.3. Shipping invoices must show copy of Certificate; and 3) such certificates expire in three (3) years. The applicant may renew it for three (3) year increments.

Chair Sanders asked if there was a representative from Easy Pace in attendance. Being none, he proceeded to questions by the board members.

Board Member Purves inquired about the number of trees involved. Mr. Miller thought it might be similar to that of Evergreen. Mr. Collins stated he had assisted Easy Pace in the past and estimated it would be closer to 100. A large portion of their property has been taken over by the local zoo, diminishing the amount of plant space and they will most likely be selling fewer trees.

There was discussion about the probability that most citizens would not be able to identify these trees or know whether they are prohibited or exempt. Mr. Wallenmeyer reported the likelihood of olive trees planted prior to 1991 being high-pollinating. He pointed out pollen from olive trees is the highest offender in the valley, followed by the mulberry tree. Ms. Purves added pets also suffer allergies from mulberry and olive pollen that many owners may not be aware of.

Board Member Schweisinger expressed concern over fees being associated with exempt items and it being construed as the department trying to collect fees. Mr. Wallenmeyer offered to examine the exemption process and corresponding regulation. This is a means of preventing the planting of high-pollinating olive trees and situations similar to what the CLV and CCSD encountered a several years ago. There was mention of the possibility of discontinuing the

program. Mr. Wallenmeyer stated local allergists and others would not appreciate elimination of the certification program, but that he would take it into consideration. Chair Sanders commended the great strides been made over the past 20 years in reducing allergens with this program.

Chair Sanders asked if there was a motion to approve the renewal. Board Member Inhaber made a motion to approve, which was seconded by Board Member Schweisinger. Board Member Ireland clarified the motion included staff's recommendations. Chair Sanders concurred, and reiterated the motion was to extend the Certificate of Exemption of Easy Pace for distributing and marketing low-pollinating olive trees for the next three years; expiration December 9, 2016. Chair Sanders called for a vote asking those in favor of the renewal to signify by saying aye. It was met by a chorus of ayes. There were no oppositions. The motion passed unanimously.

3. **PONTO NURSERY, INC.** – Renewal of Certificate of Exemption for distributing and marketing low-pollinating olive trees for the next three (3) years. (Expiration: December 9, 2013)

Mr. Miller stated Ponto Nursery, Inc. (Ponto) applied for its original exemption in August 1996 (*transcriber's correction: Ponto applied for its original exemption in September 2004 after receiving mother plants from Easy Pace Tree Farm in August 1996*) and renewed it every three years thereafter. The matter was publically noticed in the Las Vegas Review Journal and on the department website; no comments were received. He pointed out that staff has visited various nurseries in the valley and has not received any complaints regarding the Wilsonii trees, although a recommendation was made that Ponto increase the size of its labels to improve visibility. DAQ recommended the renewal be granted with the following conditions: exempt trees in inventory at retail outlets and those being delivered to landscaping projects, must include a label approved by the Control Officer showing exempt status, date of approval of Certificate until sale to consumer; 2) the applicant shall present a distribution plan to the Control Officer to assure that only exempt trees under the applicant's control will carry the label provided for in §44.3.3. Shipping invoices must show copy of Certificate; and 3) such certificates expire in three (3) years. The applicant may renew it for three (3) year increments.

Judy Ponto appeared on behalf of Ponto. Ms. Ponto agreed to enlarge her labels and make them more visible.

Chair Sanders asked for comments from the public. Being none, he asked for any questions from the board.

Board Member Purves questioned the number of trees involved. Ms. Ponto explained Ponto does not distribute trees directly, instead it provides starter plants to other nurseries who grow and distribute them. Their customers are large growers who have 500 to 1,500 trees. Each tree is assigned a number and corresponding label. She is confident this system has worked well over the years and is not aware of any problems.

Board Member Foster inquired about enforcement. Mr. Miller explained staff visits nurseries throughout the year to ensure only Wilsonii or Swan Hill olive trees are available. DAQ also works with the State Department of Agriculture on monitoring what comes into the valley. The department also investigates citizen inquiries concerning questionable trees. Mr. Miller pointed out olive-producing trees could be found in older areas in town, but newer areas (built after

1991) should only have Wilsonii or Swan Hills olive trees. Mr. Wallenmeyer identified the older areas in the valley that have a higher concentration of olive-producing trees. DAQ has made one exception for planting a non-exempt olive tree, which was for a WW2 memorial on East Sahara.

Chair Sanders asked for any other comments. Being none, he closed the hearing and asked for a motion. Board Member Inhaber moved to approve the request. Chair Sanders reiterated the motion was to renew Ponto's Certificate of Exemption for another three years with staff's recommendations, and asked for a second. Board Member Schweisinger seconded the motion. Chair Sanders called for a vote asking those in favor of the renewal to signify by saying aye. It was met by a chorus of ayes. There were no oppositions. The motion passed unanimously.

[Board Member Purves inquired about items returned as "unable to confirm delivery" by United States Postal Service (USPS) and DAQ's efforts to ensure important documents are delivered only to receive this notification. Mr. Miller responded the statute requires various documents be sent via a certified mailing system and DAQ uses the USPS electronic certified mailing system in lieu of return receipt cards. There are occasions where the department is unable to retrieve the electronic signature offline so staff will follow up using email or other resources to confirm delivery. On occasion it has used Federal Express. DAQ Administrative Secretary Araceli Pruet pointed out the board saw a greater than normal amount of these situations last spring when revocations were brought for action. Many of those companies were out of business and did not pick up or receive the item. Mr. Miller elaborated, stating the department was aware many of these companies were out of business as staff had confirmed such during site visits, but was required by statute to send the revocation documents by certified mail. Ms. Purves acknowledged Mr. Miller and Ms. Pruet's statements, but referred to another issue that came before the board where the party claimed not to have received the document after the department mailed it.]

4. VALLEY CREST TREE COMPANY – Renewal of Certificate of Exemption for distributing and marketing low-pollinating olive trees for the next three (3) years. (Expiration: February 10, 2014)

Mr. Miller stated Valley Crest Tree Company (Valley Crest) applied for its original exemption in December 2004 and has subsequently renewed it every three years. Valley Crest markets both Wilsonii and Swan Hill trees. The matter was publically noticed in the Las Vegas Review Journal and on the department website; no comments were received. Staff has visited nurseries in the valley and has received no complaints regarding these trees. DAQ recommended the renewal be granted with the following conditions: exempt trees in inventory at retail outlets and those being delivered to landscaping projects, must include a label approved by the Control Officer showing exempt status, date of approval of Certificate until sale to consumer; 2) the applicant shall present a distribution plan to the Control Officer to assure that only exempt trees under the applicant's control will carry the label provided for in §44.3.3. Shipping invoices must show copy of Certificate; and 3) such certificates expire in three (3) years. The applicant may renew it for three (3) year increments.

Robert Crudup appeared on behalf of Valley Crest. Mr. Crudup testified the nursery distributes 100 to 2,000 trees annually. Valley Crest takes small plants and grows them into larger plants. Each tree is assigned a number and label, which can be traced back to the production process. A chain of custody system is used to track the trees from production to shipment and has demonstrated performance.

Chair Sanders asked for any public comments. Mr. Collins of Evergreen Distributors commended Valley Crest's process. He offered to help staff develop a spraying protocol to help reduce the amount of pollen from high-producing trees. Mr. Wallenmeyer pointed out a past attempt by UNLV that was unsuccessful due to wind conditions and complaints from those who gather the olives for consumption.

Chair Sanders asked if there were any further comments. Being none, he closed the public hearing and opened it to board discussion.

Board Member Inhaber moved to approve the request. Chair Sanders reiterated the motion was to renew Valley Crest's Certificate of Exemption for another three years with staff's recommendations, and asked for a second. Board Member Foster seconded the motion. Chair Sanders called for a vote asking those in favor of the renewal to signify by saying aye. It was met by a chorus of ayes. There were no oppositions. The motion passed unanimously

Chair Sanders thanked the nurseries for their efforts and complying with the process.

VI. REPORT BY DAQ STAFF

Permitting Update

DAQ Permitting Manager Richard Beckstead updated the board on the Lhoist North America (aka Chemical Lime Company) Title V permit appeal that was before them last year. Title V permits require a 30-day public comment period and 45-day EPA review. The permit resulting from the board's ruling in this matter went into 30-day public comment in March 2013. The EPA requested another 45-day review, which ended in July. The matter is now with EPA legal counsel while they decide whether or not to allow DAQ to issue the permit. DAQ cannot issue Title V permits without EPA authorization. Right now LNA is operating under the permit issued prior to the appeal. The changes the board made to the appealed permit cannot become effective until it is issued. Because these changes do not follow federal procedures (e.g., removing short-term limits requires a federal new source review process), EPA counsel is trying to figure out how to deal with them. If EPA does not allow the permit to be issued, LNA will be required to continue operating according to the prior permit.

Regulatory Developments

EPA requested changes to Air Quality Regulations Section 12 concerning stationary sources. DAQ has revised Section 12 to incorporate these changes and also those of stakeholders. The department anticipates going before the Clark County Board of County Commissioners in December for adoption. The revised regulations will then be forwarded to the EPA for review.

Olive Trees

Board Member Ireland commented the renewal period might be extended to five years. Mr. Wallenmeyer agreed to take it into consideration. He also reported staff has received complaints about mulberry and olive trees being sold at swap meets. DAQ has authority to remove non-exempt olive trees planted after 1991 and can use the assessor's aerial maps to determine when

they were planted. Mr. Miller stated Evergreen is currently doing scientific research on the Little Ollie, an olive shrub, and might be back this spring to seek an exemption.

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

There was discussion about upcoming meeting dates and member interest in attending a future board meeting and department briefing at the Springs Preserve.

Board Member Schweisinger welcomed Mr. Foster to the board.

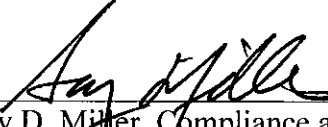
VIII. PUBLIC COMMENT

There were no public comments.

IX. ADJOURNMENT

Being no further business, Chair Sanders adjourned the meeting at 2:30 p.m.

Submitted for approval,



Gary D. Miller, Compliance and Enforcement Manager
Department of Air Quality

10/30/2013

Date