



APPROVED APC HEARING BOARD
DATE: Aug 12, 2020
BY: [Signature]
Board Secretary

Minutes

Regular Meeting of the Clark County Air Pollution Control Hearing Board

December 11, 2019

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

1. OATH OF OFFICE

- A. George T. Foster, P.E. (Professional Engineer Member)
Term of Office: 10/2/19 through 10/1/22

FINAL ACTION: Air Quality Supervisor Sutowska administered the oath of office to George T. Foster.

2. CALL TO ORDER

Chair Sanders called the meeting of the Air Pollution Control Hearing Board to order at the hour of 1:33 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, Esq.
Tom Foster, P.E.
William Kremer
Lauren Rosenblatt

ABSENT: Elspeth Cordua

LEGAL COUNSEL: Jason Patchett, Deputy District Attorney

DAQ STAFF: Marci Henson, Director
 Shibi Paul, Compliance and Enforcement Manager
 Anna Sutowska, Air Quality Supervisor
 Sherrie Rogge, Administrative Secretary

3. PUBLIC COMMENT

Chair Sanders asked if there were any persons present in the audience wishing to be heard. There being no one, Chair Sanders closed the public comments.

4. APPROVAL OF MINUTES OF THE AUGUST 14, 2019 MEETING (For possible action)

Chair Sanders called for comments, changes, or corrections to the August 14, 2019 minutes. Being none, he called for a motion.

FINAL ACTION: It was moved by Board Member Dennett, seconded by Board Member Kremer that the subject minutes be approved.

Motion carried by the following vote:

Voting Aye: Ryan Dennett, Tom Foster, William Kremer, Lauren Rosenblatt, Daniel Sanders
Voting Nay: None
Abstaining: Evan Wishengrad
Absent: Elspeth Cordua

5. REPORT BY DEPARTMENT OF AIR QUALITY STAFF

A. General update

DISCUSSION: Following introduction of the item, Director Marci Henson shared an update on the activities of the Department of Air Quality (Air Quality) for the period August 2019 through November 2019. During the update, Vice-Chair Wishengrad inquired about the number of Notices of Violation (NOVs) that are contested. Compliance and Enforcement Manager Shibi Paul reported that based on the November Hearing Officer docket, approximately 80% of the cases were not contested and of the 20% that were contested only 2% of the cases contested the penalty portion of the NOV. Vice-Chair Wishengrad inquired as to where the gas station suppliers fall into the regulations in terms of permitting, if the trucks are permitted separately, and how they are enforced. Mr. Paul reported there are three terminals in Las Vegas where the trucks get their fuel. Those terminals are permitted separately from the gas stations. Each time a delivery is made the station is required to perform a full inspection of the vapor recovery system. It is these records that Air Quality staff inspects for compliance.

B. Presentation by UNLV – Pollen Monitoring Program

DISCUSSION: Following introduction of the item, Professor Mark Buttner and Lab Supervisor Asma Tahir gave a presentation on UNLV's Pollen Monitoring Program. The program itself is a collaboration between the Clark County School District (CCSD) and Air Quality which started in 2014 and has been operating annually since then. The goal of the program is to monitor pollen and mold in the Las Vegas valley on a daily basis in addition to providing educational opportunities for CCSD students. UNLV provides the daily pollen and mold counts to the National Allergy Bureau (NAB), CCSD, and to three meteorologists at weather.com who also serve as the source of information for the local media when they are inquiring about pollen and mold counts.

Ms. Tahir reviewed how pollen and mold samples are gathered and counted. There are six collection sites in Clark County; however, the UNLV location is the only certified site by NAB. Ms. Tahir presented UNLV's website (www.unlv.edu/publichealth/pollen) for the pollen monitoring program and how the public can access the annual summarized reports. These reports list the four (4) CCSD collection sites and show what the pollen level was for each day of the year. The website is updated every 7 days. Ms. Tahir also showed the Board where to locate media interviews and presentations on UNLV's website.

The Board discussed and inquired of UNLV if they look at the Wilsonii and Swan Hill trees to determine if they really are non-pollinating trees or if UNLV mainly focuses on the pollen counts valley wide; if there is any documentation that shows what the trees are doing 7 years down the road in regards to whether they are producing pollen or not, and in what quantities; if there could be additional studies performed by UNLV to monitor the olive trees that are being planted now so that in 10-15 years there would be data to show if the pollen in the valley had decreased or simply stabilized; where in the valley are pollen counts the highest; if Air Quality Regulations (AQRs) should be amended to ban all pollinating trees and only permit non-pollinating trees; and the possibility of having additional studies funded.

Dr. Buttner and Ms. Tahir responded to the Board questions and comments stating that UNLV only monitors the pollen and mold in the air, not whether a tree is low- or non-pollinating, which is why their allergists stand by their recommendation that only non-pollinating olive species be permitted in the valley. Ms. Tahir explained that pollen counts are higher in older neighborhoods. Pollinating trees are banned from being planted, but existing trees were not required to be removed and can cause higher pollen counts as they grow. UNLV's primary purpose is to collect the historical data on pollen and mold counts. Additional studies to monitor planted trees would be helpful, but at this time the funding they receive is only to monitor pollen and mold counts in the air.

Director Henson explained that funding for this program comes from the penalty funds collected by Air Quality. Air Quality transfers those funds to CCSD on an annual basis. Since the school district has a partnership with UNLV, a portion of those designated funds go to UNLV. There are specific requirements for the funding under the Nevada Revised Statutes, but staff will look into whether the funds can be used for additional studies as proposed by the Board.

C. Informational session from Air Quality on the process and procedures for investigating and enforcing the rules associated with Certificates of Exemption for low or no-pollinating Fruitless

Mulberry or European Olive trees, chain of custody from growers and distributors to nurseries, and local nurseries obligations. (Requested by Chair Sanders and Board Member Rosenblatt)

DISCUSSION: Following introduction of the item, Air Quality Specialist Patricia Ringgenberg gave a PowerPoint presentation on Air Quality's inspection and enforcement procedures associated with Certificates of Exemption (COEs) in relation to AQR Section 44. The Clean Air Act does not contain provisions to regulate pollen or trees; in 1991 the Health District adopted Section 44 of the AQRs to prohibit the planting or selling of fruitless mulberry and traditional European olive trees; no COEs exist for Fruitless Mulberry trees as there are no known low pollinating Fruitless Mulberry trees; cultivars of low pollinating European Olive may be deemed exempt if a COE is granted; periodic and random inspections of commercial nurseries and home improvement stores are performed by Air Quality staff; inspections are also performed if the department receives a complaint. In regards to enforcement, if trees are found without tags and are on the selling floor, the nursery is instructed to remove the plant/tree if it comes from a nursery that does not have a COE; inspectors may request to see invoices or other documentation for the trees to check for tag numbers. If a tree is from a nursery without a COE, the nursery manager is informed the tree can't be sold, is given information about Section 44, and informed that enforcement action in the form of a NOV will be recommended.

Compliance and Enforcement Manager Shibi Paul outlined for the Board possible enforcement activities for the Board to consider in the future: 1) require recent DNA tree testing on nurseries with COEs at time of application/renewal and once during the exemption period to ensure the cultivar is true to type. These requirements would be included in the Hearing Board Orders; and 2) expand the inspection program to include plant staging areas at developments nearing final completion and at various landscaping projects.

There are some administrative challenges with this program since it is a carry-over from the Health District and pollen is not a regulated pollutant. Since the program is on the books, Air Quality fully intends to inspect and enforce as much as our priorities and resources will allow us to do. AQR Section 7 has a variance provision which is what staff has been using to present these COEs to the Board. This includes advertising the public hearing notice in the local newspaper, requesting comments, and then preparing the report for the Board. The process has become very burdensome for staff due to the fact the current holders of COEs do not submit the required information and ultimately when it is submitted it is still missing parts which requires staff to follow-up with the nurseries to get that information. Mr. Paul reported that staff has submitted to the Board of County Commissioners, for their approval, an amendment to AQR Section 7 that will streamline the variance process which includes removing the public hearing requirement.

The Board discussed the item and inquired if it would be possible to make the COE process an entirely administrative process and not have the Board consider these exemptions.

Director Henson reported that at the time this program was started, the Board of County Commissioners wanted the Hearing Board to consider these types of hearings keeping both the low- and non-pollinating groups satisfied and yet still offering a venue for those who want to apply for an exemption to sell low and non-pollinating olive trees. Ms. Henson suggested the Board request an action item for the next meeting asking staff to amend AQR Section 44 with proposed changes.

FINAL ACTION: No action was taken by the Board.

6. PUBLIC HEARINGS - REQUEST FOR CERTIFICATE OF EXEMPTION

- 1. DESERT FORREST NURSERY, LLC** – Request for renewal of a Certificate of Exemption for distributing and marketing low or no-pollinating olive trees (*Wilsonii*) for the next three (3) years. The current Certificate expires on December 8, 2019. (For possible action)

Chair Sanders asked if the representative from Desert Forrest Nursery, LLC would approach the testimony table. Forrest Wald, Owner of Desert Forrest Nursery, LLC, 16835 West Olive Avenue, Waddell AZ 85355, was sworn in.

DISCUSSION: Chair Sanders inquired of Mr. Wald if he had a presentation for the Board to consider. Mr. Wald stated he did not, other than what the Board had received in their packet.

Chair Sanders opened the public hearing and asked if there were any persons present in the audience wishing to be heard on the matter.

SPEAKER(S): None

There being no persons present in the audience wishing to be heard on the matter, Chair Sanders closed the public hearing.

FINAL ACTION ITEM 6.1: It was moved by Board Member Rosenblatt, seconded by Vice-Chair Wishengrad to approve the request for a Certificate of Exemption for the next three years.

Motion carried by the following vote:

Voting Aye: Ryan Dennett, Tom Foster, Lauren Rosenblatt, Daniel Sanders, Evan Wishengrad
Voting Nay: William Kremer
Abstaining: None
Absent: Elspeth Cordua

- 2. PONTO NURSERY, INC.** – Request for renewal of a Certificate of Exemption for distributing and marketing low or no-pollinating olive trees (*Wilsonii*) for the next three (3) years. The current Certificate expires on December 8, 2019. (For possible action)

Chair Sanders asked if the representative from Ponto Nursery, Inc., would approach the testimony table. Judy Ponto, Owner/Operator of Ponto Nursery, Inc., P.O. Box 536, Vista, CA 92085, was sworn in.

DISCUSSION: Chair Sanders inquired of Ms. Ponto if she had a presentation for the Board to consider. Ms. Ponto stated she is sympathetic to the Board's concerns about pollen and the impact it has on allergies. Ponto Nursery grows over 100 different varieties of trees and their first *Wilsonii*

was purchased from Easy Pace Nursery. She went on to state they ship trees to Arizona, California, Oregon, Washington, Texas and Nevada and have never had an issue with their trees. San Diego County has implemented a “blue tag” program whereby Ponto Nursery is required to contact the Department of Agriculture whenever shipping trees to northern California. In turn, once the trees reach their destination, then the receiver must contact the Department of Agriculture letting them know the shipment was received. Ms. Ponto commented this may be something the Board would want to implement in Clark County.

Chair Sanders opened the public hearing and asked if there were any persons present in the audience wishing to be heard on the matter.

SPEAKER(S): None

There being no persons present in the audience wishing to be heard on the matter, Chair Sanders closed the public hearing.

FINAL ACTION: It was moved by Vice-Chair Wishengrad, seconded by Board Member Dennett to approve the request for a Certificate of Exemption for the next three years.

Motion carried by the following vote:

Voting Aye: Ryan Dennett, Tom Foster, Lauren Rosenblatt, Daniel Sanders, Evan Wishengrad
Voting Nay: William Kremer
Abstaining: None
Absent: Elspeth Cordua

3. **VALLEY CREST TREE COMPANY dba BRIGHT VIEW TREE COMPANY** – Request for renewal of a Certificate of Exemption for distributing and marketing low or no-pollinating olive trees (Wilsonii) for the next three (3) years. The current Certificate expires on February 22, 2020. (For possible action)
4. **VALLEY CREST TREE COMPANY dba BRIGHT VIEW TREE COMPANY** – Request for renewal of a Certificate of Exemption for distributing and marketing low or no-pollinating olive trees (Swan Hill[®]) for the next three (3) years. The current Certificate expires on February 22, 2020. (For possible action)

Chair Sanders announced that Items 6.3 and 6.4 would be heard at the same time since it is the same applicant.

Chair Sanders asked if the representative from Valley Crest Tree Company would approach the testimony table. Robert Crudup, President of BrightView Tree Company, 3200 W. Telegraph Road, Fillmore CA 93015, was sworn in.

DISCUSSION: Mr. Crudup provided a brief history of the Wilsonii and Swan Hill[®] trees they produce. The Swan Hill[®] is a true non-pollinating olive tree and BrightView is the only producer of this tree and therefore the direct source for selling this tree. There has been a great deal of research

on the Swan Hill® by UC Davis in regards to its DNA and determined that it was a non-pollinating olive. The Board and Mr. Crudup discussed the importance of field testing the trees that have already been sold and distributed throughout the Las Vegas valley to determine if they still maintain their original characteristics. The studies conducted by UC Davis were discussed and how that data is still available, but just needs to be refreshed.

Chair Sanders opened the public hearing for both items and asked if there were any persons present in the audience wishing to be heard on the matter.

SPEAKER(S): None

There being no persons present in the audience wishing to be heard on the matter, Chair Sanders closed the public hearing.

FINAL ACTION 6.3: It was moved by Board Member Foster, seconded by Board Member Dennett to approve the request for a Certificate of Exemption for the next three years.

Motion carried by the following vote:

Voting Aye: Ryan Dennett, Tom Foster, Lauren Rosenblatt, Daniel Sanders, Evan Wishengrad
Voting Nay: William Kremer
Abstaining: None
Absent: Elspeth Cordua

FINAL ACTION 6.4: It was moved by Board Member Rosenblatt, seconded by Vice-Chair Wishengrad to approve the request for a Certificate of Exemption for the next three years.

Motion carried by the following vote:

Voting Aye: Ryan Dennett, Tom Foster, Lauren Rosenblatt, Daniel Sanders, Evan Wishengrad
Voting Nay: William Kremer
Abstaining: None
Absent: Elspeth Cordua

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

DISCUSSION: Vice Chair Wishengrad requested an item be placed on a future agenda to request Air Quality staff to amend AQR Section 44 with the following changes: 1) make the exemption process an administrative process instead of requiring Board approval; 2) require DNA tree testing by the nurseries with a COE at the time of application/renewal as proof the trees are low or non-pollinating; 3) require nurseries with COEs to provide one additional DNA test during the exemption period to ensure the cultivar is true to type; and, 4) require Air Quality to inspect plant staging areas at developments nearing final completion and at various landscaping projects to ensure the only type of olive trees being planted are those with a COE.

FINAL ACTION: No action was taken by the Board.

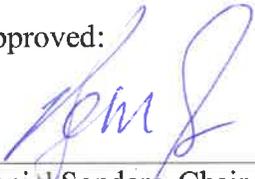
8. PUBLIC COMMENT

Chair Sanders asked if there were any persons present in the audience wishing to be heard. There being no one, Chair Sanders closed the public comments.

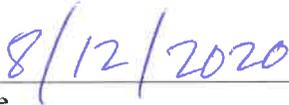
9. ADJOURNMENT

Being no further business, Chair Sanders adjourned the meeting at 3:33 p.m.

Approved:



Daniel Sanders, Chair



Date