



## Minutes of the Clark County

### Air Pollution Control Hearing Board Meeting

December 8, 2016

**APPROVED APC HEARING BOARD**

**DATE:** FEBRUARY 9, 2017

**BY:** RYAN BREITWEISER

**Board Secretary**

#### I. CALL TO ORDER

Chair Daniel Sanders called the meeting of the Air Pollution Control Hearing Board to order at 1:34 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  
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: Marci Henson, DAQ; Shibi Paul, DAQ; Lea Kain, DAQ; Jeffrey Robb, DAQ;  
PRESENT: Anna Sutowska, DAQ; Forrest Wald, Desert Forrest Nursery; Judy Ponto, Ponto Nursery

## **II. PUBLIC COMMENT**

There were no public comments.

## **III. OATH OF OFFICE**

Anna Sutowska administered the Oath of Office to Tom Foster for the position of Engineer Member of the Air Pollution Control Hearing Board. Mr. Foster was sworn-in. His term will expire on October 3, 2019.

## **IV. APPROVE MINUTES OF AUGUST 11, 2016**

Chair Sanders called for comments, changes, or corrections to the August 11, 2016 minutes. Vice-Chair Wishengrad commented Board Member Foster was not listed on the minutes. Ryan Breitweiser, Administrative Secretary, stated Department of Air Quality (DAQ) was evaluating candidates when the meeting occurred, and Board Member Foster was reappointed on October 4, 2016. 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 August 11, 2016 to signify by saying aye. It was met by a chorus of ayes. There was no opposition. The motion passed.

## **V. PUBLIC HEARINGS**

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

**DESERT FORREST NURSERY LLC** formerly Orangewood Nursery, Inc. dba Easy Pace Tree Farm – 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 December 9, 2016.

Chair Sanders asked if representatives from Desert Forrest Nursery, LLC (Desert Forrest) would approach the testimony table. Forrest Wald from Desert Forrest, located at 16835 West Olive Ave., Waddell, Arizona 83515, 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 Desert Forrest's certificate of exemption. Ms. Ringgenberg stated there is no objection and the nurseries she contacts have not received any complaints about olive trees coming from Desert Forrest or Easy Pace Tree Farm (Easy Pace). She added Desert Forrest has been operating as Easy Pace for a few years. Mr. Wald stated he purchased Easy Pace and their inventory 3 years ago.

Board Member Kremer asked if any studies have been completed to evaluate if low pollinating olive trees maintain their low pollination standards over long periods of time. He stated living matter is opportunistic and may change over time. Ms. Ringgenberg responded she is unfamiliar with any studies of that type. She added Clark County Air Quality Regulations (AQR) state olive trees must only maintain their 15% standard for three years after they are mature. Chair

Sanders asked Mr. Wald if he is aware of Wilsonii olive trees pollinating more over time. Mr. Wald stated in his experience, Wilsonii trees may pollinate slightly, but the pollen production for Wilsonii is much lower than a standard olive tree. Chair Sanders asked how many years the olive tree exemption program has been in effect, and if Ms. Ringgenberg is aware of any issues with olive trees. Ms. Ringgenberg stated the program started in 1991, and she is not aware of any issues during that time. She commented that a number of years ago trees planted at various locations were tested because they appeared to be pollinating more than AQR allows. The testing was done by Dr. Polito at University of California, Davis, and they maintain a data base of low pollinating olive trees. She continued to say the only way to thoroughly verify a tree is an approved low pollinating olive tree is through DNA testing by a qualified lab. Board Member Kremer talked about his background in horticultural bio chemistry, and spoke on the process of altering plants by making certain genes recessive. New technology has been developed to splice out part of a gene. The older technology of hybridizing makes genes recessive, but does not remove them. Board Member Kremer then requested a copy of the study done by University of California, Davis.

Board Member Schweisinger asked how many trees in the Las Vegas Valley existed prior to 1991. Ms. Ringgenberg answered, stating she is unaware of the exact number, but guessed there are thousands of olives planted before the regulation, and those trees are grandfathered in. Board Member Purves asked if any follow-up research has been done since the original tests of Wilsonii olive trees was completed 23 years ago. Ms. Ringgenberg commented that DAQ only has studies on the Wilsonii and Swan Hill olive trees, but further testing on those trees has not been done. Ms. Ringgenberg then stated studies on older Wilsonii trees could help to keep pollen counts low. Chair Sanders asked Ms. Ringgenberg if she felt the regulations are mitigating pollen counts in Clark County, and how DAQ checks if trees at retailers are properly tagged. Ms. Ringgenberg stated she occasionally receives complaints about olive trees, but most often the trees are grandfathered in from before the AQR was created. She also stated without DNA testing, DAQ is unable to determine if the tree is low pollinating. Chair Sanders asked if the majority of olive trees for sale in Clark County are tagged. Ms. Ringgenberg stated they were. Mr. Wald interjected that all of the trees shipped to Clark County by Desert Forrest Nursery are tagged before they leave the yard. He stated if trees are for sale in Clark County without tags, he would like DAQ to investigate because only authorized vendors are allowed to sell the trees.

Vice-Chair Wishengrad requested verification olive trees must remain at 15% of the pollen count of a European olive tree for only the first three years of maturity. Ms. Ringgenberg quoted AQR 44.3.2, "To be approved by the Air Pollution Control Hearing Board, the applicant must demonstrate to the Board that the low pollinating cultivar releases to the atmosphere less than 15% of the pollen released by a sexually mature traditional European Olive tree and that this low pollinating capacity is retained by the sexually mature cultivar for at least three years." Vice-Chair Wishengrad then asked what constitutes a sexually mature cultivar. Mr. Wald estimated a mature olive tree would be approximately at least 3 inch caliper and able to produce fruit. He continued to say fruit production can be seen from a 24 inch box tree and younger, or about 3 years from origin. Vice-Chair Wishengrad then commented that Clark County and the Hearing Board only has control over the olive tree for approximately the first 3 years from the tree's inception. Chair Sanders mentioned the board hears renewals of olive tree exemptions every three years, and if issues arise from an olive trees' pollen count, the matter can be addressed at that time. Ms. Ringgenberg asserted that she has spoken with nurseries, and they have not

mentioned complaints from customers. Mr. Wald offered the idea to talk to personnel in Parks and Recreation, and ask them to notify the board if any of the olive trees they maintain begin to bear fruit.

Board Member Schweisinger motioned to approve the request as outlined in the agenda. Vice-Chair Wishengrad seconded the motion. 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.

## **VI. BUSINESS ITEMS**

### **B. REQUEST FOR CERTIFICATE OF EXEMPTION**

**PONTO NURSERY, INC** – 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 December 9, 2016.

(Public hearing held on and continued from August 11, 2016 meeting)

(For possible action)

Chair Sanders asked if representatives from Ponto Nursery, Inc. (Ponto Nursery) would approach the testimony table. Judy Ponto from Ponto Nursery, located at 2545 Ramona Dr., Vista, California 92084, was sworn-in. Chair Sanders asked Mrs. Ponto if she had any information she would like to present to the Board. Mrs. Ponto stated last meeting questions were raised about attaching labels to plants before selling. She explained her business does not sell to retailers. She sells to wholesalers. She added she has not been attaching the labels to the liners because when they are received by the wholesaler, the plant is replanted in a larger container, and the liners are very small. She stated that she is open to suggestions, such as loosely tying the label to the plant or putting the label temporarily into the soil. Mrs. Ponto asked the Board and DAQ if they have any suggestions on how to improve the process. Ms. Ringgenberg stated chain of custody requires the label goes with the tree. Ms. Ringgenberg suggested Ponto Nursery could attach the label to the plastic container holding the liner, but the wholesale nurseries who receive the trees must know the tag must stay with the tree until purchased by the consumer. She added that the size of the label could be larger to increase visibility at nurseries. Mrs. Ponto commented that labels have recently been increased in size and the color has been changed to canary yellow. Ms. Ringgenberg agreed the changes would increase visibility, but requested the labels contain the date of approval by the Hearing Board. Chair Sanders asked Mrs. Ponto if she has any questions or concerns with the recommended changes. Mrs. Ponto did not.

Vice-Chair Wishengrad asked Mrs. Ponto to expound upon the reasons why the tag cannot be attached to the plant. Mrs. Ponto explained that when a grower receives the plant, it is awkward to replant the tree with a pre-attached label. Board Member Kremer added it is possible to damage a liner when attempting to transplant it with a label attached, and because of their small size, liners are more susceptible to damage. Board Member Schweisinger asked for verification that wholesalers who bring olive trees into Nevada know the trees must be accompanied by an approval tag. Mrs. Ponto assured the Board she informs her clients of their responsibilities tagging the trees. Vice-Chair Wishengrad stated he is concerned if the labels are not attached to the plant, then there is a greater chance wholesalers and retailers may put the tag on a different

plant. Mrs. Ponto responded, stating any tag affixed to a plant is removable, and replanting requires the wholesaler to remove the tag. She continued, stating deals with 6 large wholesalers who do not want to jeopardize their ability to do business in Clark County. Board Member Schweisinger asked if California required the Wilsonii olive trees to be tagged. Mrs. Ponto replied no, and stated she does not charge more for exempt trees. The exemption only allows wholesalers the ability to sell in Nevada.

Board Member Purves asked how the label would be affixed to the pot. Ms. Ringgenberg stated if a hole was punched in the pot, a wire could be used to attach the tag through the grommet. Board Member Purves then asked what the reason is label purchases double in the month of June. Mrs. Ponto responded, stating demand is higher in summer months. Chair Sanders stated he feels attaching the tag to the pot is agreeable if it is the easiest method. Board Member Purves commented that she appreciates Mrs. Ponto and Mr. Wald making the trip to Clark County and their desire to abide by the rules of the County.

Board Member Schweisinger motioned to approve the request as outlined in the agenda. Vice-Chair Wishengrad seconded the motion. 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.

## **VII. REPORT BY DAQ STAFF**

Settlement of Notice of Violation issued to Tronox, LLC. – Ralph McCullers, Compliance and Enforcement Manager, stated that with help from the gallery, he would like to update the Board on the settlement with Tronox, LLC (Tronox). He explained that Tronox is an organic chemical processing facility in Henderson, Nevada, and DAQ Compliance and Enforcement has been working with Tronox for a number of years. Mr. McCullers provided highlights of the settlement agreement:

On December 7, 2016, Tronox was delivered the signed Hearing Officer's Order, which enforces the settlement agreement. Tronox will be changing their operation over time with an anticipated documentable reduction in emission of 50%. Additionally, Tronox settled for \$585,000, of which \$80,000 will be placed into abeyance and is contingent upon the company meeting specified performance factors. DAQ is cautiously optimistic Tronox will meet the performance benchmarks, but Tronox will be presenting a check to DAQ for \$505,000 in the next 30 days. This took a tremendous amount of work by DAQ and Tronox.

He gave credit to Shibi Paul, Air Quality Supervisor and Leslie Nielsen, Deputy District Attorney for their hard work on the Settlement Agreement. Chair Sanders asked how long Tronox has been active. DAQ staff estimated the facility has been active since the 1940's; however, it was previously working under the name Kerr McGee. Board Member Purves expressed her excitement to have heard about the settlement agreement, and then asked if DAQ anticipates any compliance deadlines before 2018. Mr. McCullers responded, stating some benchmarks in the settlement agreement are deliverable before the end of 2016; however, Tronox is in control of whether future compliance action is necessary. He stated the settlement agreement stands alone and DAQ will be tracking compliance moving forward. DAQ staff will conduct routine compliance inspections of the facility outside of the settlement. Board Member

Purves then inquired as to what the reason is the penalty amount in the settlement agreement was \$585,000 when the initial penalty was over \$1,300,000. Mr. McCullers explained rather than the monetary penalty, DAQ was able to get real reduction in emission. He continued to explain Nevada Revised Statute and AQR allows for a \$10,000 per day maximum, but there are restrictions on violations and fineable amounts; however, the penalty as levied is large enough to have an impact on Tronox monetarily and in public perception. He reiterated the real win for DAQ and Clark County is the reduction in emissions. Department of Air Quality Director Marci Henson stated during negotiations DAQ made it clear that money was not the goal. Tronox is making considerable changes to their operations to gain the reduction in emissions required by the Settlement Agreement, which will cost the company more than they gained during the monetary penalty negotiations. Ms. Henson commented that in her opinion getting a 50% reduction in hearth emission was well worth the money negotiated out of the Settlement Agreement. She also added that DAQ does not keep money gained from penalties or settlements, all but \$17,500 per year is given to Clark County School District. Chair Sanders agreed Tronox will most likely spend more than \$800,000 to comply with the emissions regulations. Board Member Purves asked what type of pollutant is created in the production of Manganese Dioxide. Mr. McCullers responded stating Manganese ore leaves the facility as PM-10 (particulate matter less than 10 microns).

Board Member Dennett asked if Tronox's response to the emission reduction was to scale back operations completely or to retrofit their current operations to meet the new regulations. Board Member Dennett clarified asking if the regulations have scaled back a business operating in Henderson, Nevada. Mr. McCullers stated during Tronox's processes they utilize 4 open pit hearths which are used to reduce ore at high temperature. Tronox has agreed to take one hearth offline and purchase pre-reduced ore from a vendor. Then in 6 months or a year, the second hearth will be taken offline and the feed stock will be replaced with pre-reduced ore. Mr. McCullers stated discussion did not occur directly concerning downsizing operations, but it appears as though Tronox's plan to replace feed stock amounts would indicate there should not be an economic impact or job loss from the settlement. Board Member Foster stated the article presented to the Board indicated Tronox should have applied for a Title V permit in 1996; however, they did not submit an application until 2014. He then asked what changes to regulations are available when operating under Title V rather than as a Synthetic Minor source, and if Tronox plans to keep the two hearths offline permanently. Mr. McCullers responded stating Tronox will be issued a Title V permit in 2018, which will last for five years. If Tronox reduces emissions over the next 5 years, it is possible they will be able to function as a synthetic minor source or possibly a minor source. Also, Mr. McCullers stated under current operational procedures, Tronox will have to keep the hearths offline to abide by their permit and the Settlement Agreement. Board Member Foster referenced the article and stated emissions are well below the levels EPA and the Clean Air Act state could cause health problems. Mr. McCullers explained Manganese is a heavy metal that is regulated by the EPA as a hazardous air pollutant. Most heavy metals such as mercury, aluminum, and manganese have a neurological effect on humans. The concentration of Manganese in the air created by Tronox is nowhere near hazardous levels to the best of DAQ's knowledge.

Board Member Schweisinger asked if this case has already been settled. Mr. McCullers stated the Settlement Agreement has been agreed to by both parties and accepted by the Hearing Officer in November. The Hearing Board does not need to take action on the settlement.

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

Chair Sanders asked Board Member Kremer if he would like to speak to the Board Members. Board Member Kremer referenced the Complete Demo Services appeal, heard during the Board meeting in April, and stated after the meeting he felt there might have been tension in the room. He stated even though the case was resolved, there was not resolution between Board Members. He continued to say Supreme Court Justices give reasons for judgement at the conclusion of a hearing, and the reason Board Member Kremer voted as he did is because he believes Mr. Paripovich thought the representative from the contractor had the authority to express the will of the city. Board Member Kremer stated he understands the case can be interpreted in different ways, but he felt there was not a chance for Board Members as a board or jury to address their difference in opinions regarding the case. Chair Sanders agreed he thought about the case after the Hearing was over, but he asserted the board contains seven members for varying backgrounds so decisions are made from different points of views. He stated cases do not have to be decided by a unanimous vote, only a majority is necessary, and then Chair Sanders indicated he does not hold personal feelings against Board Members who do not agree with him. He spoke to the Complete Demo Services case and said his disagreement was because the violation will not go on the Responsible Officials record, which can set a bad precedent; however, compromise is important and rulings like this is why the board is created in the manner it is. Board Member Schweisinger agreed with Chair Sanders and stated diversity on the Board is important. He continued, stating that during this discussion portion of Board meetings, members have the opportunity the talk about why they voted how they did, and to have it put in writing.

Board Member Purves asked Board Member Kremer if he was looking to make a statement or asking for feedback. Board Member Kremer stated he was looking for a little of each, and said his experience on the board and with the adjudication process are limited. He stated he is looking for feedback, but is unable to have the conversation outside of the meeting when a quorum is present. Chair Sanders stated the discussion portion of a Business Item is when opinions are heard, and although there will be disagreements, the Board Members understand that disagreements are part of the decision making process of the Board. Vice-Chair Wishengrad agreed with Chair Sanders, and stated the discussion between Board Members is an important opportunity to potentially sway opinions by Board Members. He gave the example of labeling plants during this meeting, and stated Board Members changed his point of view. Chair Sanders then affirmed his desire to allow all Board Members the ability to have their opinions heard on agenda items.

Board Member Purves asked if, in the opinion of the other Board Members, a citizen member of the Board should consciously approach cases from different perspective than engineer members, contactor members, or legal members. Chair Sanders stated he is the contractor member of the Board, but his decisions are made on the status of the violation using his perspective and the merits of the case, not based on his role on the Board. Board Member Purves discussed the factors she believes are appropriate 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. Board Member Purves also stated she would encourage more discussions about the framework for decision-making by Board Members at future meetings. Chair Sanders stated all board members are mandated with the same responsibilities of following

board members are mandated with the same responsibilities of following regulations, but the different member's perspectives will drive them to different decisions on the Board.

Board Member Kremer spoke about the inability of DNA analysis to predict the growth and appearance of a plant when mature. He stated genetic technology uses genotype and phenotypes. Genotype is the genetic makeup including chromosomes and the order of the DNA. It is how genetic makeup is passed down through generations of an organism. Phenotype decides how an organism looks and manifests. In most cases, phenotype cannot be seen by viewing the genotype of an organism. The number of phenotypical traits viewable by humans is diminutively small when compared to the number of organisms. Evaluating phenotypes is a new technology that needs decades of more research. He added assessing what a plant will look like or produce without the ability to evaluate the phenotype is near impossible. He continued, stating equating a certain gene in a chromosome to a certain trait in a living organism is nearly impossible because we do not know enough about phenotypes. Board Member Schweisinger stated the Board is attempting to mitigate the pollen the best conceivable way since removing existing trees is not a possibility. Board Member Kremer agreed, and stated he would be interested to see an evaluation of a low pollinating olive tree which was planted when the certificate process began. Board Member Kremer stated he would like to look into the UC Davis study and he will do more research on low pollinating olive trees to be presented to the Board. Chair Sanders then stated it is an honor to serve with the other Board Members, and even though perspectives are different the goal of each Board Member is to make Clark County a better living environment.

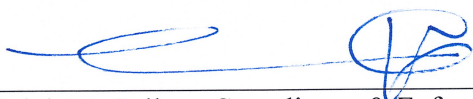
**IX. PUBLIC COMMENT**

There were no public comments.

**X. ADJOURNMENT**

Being no further business, Chair Sanders adjourned the meeting at 2:46 p.m.

Submitted for approval,



Ralph McCullers, Compliance & Enforcement Manager  
Department of Air Quality

Date

1/30/2017