

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

**IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
A REVIEW OF A PROBATIONARY AGENCY DESIGNATION
AND CERTAIN AGENCY APPLICATIONS**

September 24, 2024

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MPL

1. In response to the Commission's Interim Decision dated September 17, 2024, the Commission received a letter from MPL's counsel dated September 20, 2024, together with an unreacted copy of page 185 of MPL's Book of Documents for distribution to stakeholders. A copy of that letter, together with the unredacted copy of page 185 of MPL's Book of Documents is available [here](#).
2. With the unredacted version of page 185 now available to stakeholders, the Commission is satisfied that MPL has provided materials for stakeholder review that bear redactions that are justifiable as being necessary to protect highly sensitive or proprietary information, and that are not so broad as to remove all context, such that industry participants will be afforded an opportunity to comment meaningfully on their substance.

Red Sun

3. In response to the Commission's Interim Decision dated September 17, 2024, the Commission received materials from Red Sun including: a letter dated September 20, 2024; (b) a redaction summary dated September 20, 2024; (c) a redacted version of its agency application; (d) copies of the embedded files in the agency application bearing various redactions; and (e) a redacted copy of its document entitled "7/25/2024 Follow-up Questions & Response." Copies of these materials are available [here](#).
4. The Commission is satisfied that Red Sun has now provided:
 - (a) The support letters embedded on page 21 of the agency application, bearing only such redactions as are necessary to protect the identity of the customers.
 - (b) The embedded files referenced on pages 42 and 43 of the agency application, bearing only such redactions as are necessary to protect highly sensitive or proprietary information.
 - (c) The embedded files referenced on pages 44 and 45 of the agency application without redactions.
 - (d) The embedded file referenced on page 46 of the agency application without redactions.

- (e) The embedded files referenced on pages 47, 48, 49 and 50 of Red Sun’s agency application, bearing only such redactions as are necessary to protect highly sensitive or proprietary information.
5. In its Interim Decision dated September 17, 2024, the Commission stated that “The first redaction at the top of page 23 of Red Sun’s May 31, 2024 application is not justified.” Unfortunately, the Commission’s reference to “page 23” was a typographical error, and the Commission’s intention was to refer to “page 25.” Through no fault of Red Sun, the redacted Agency Application continues to include that first redaction on page 25. Red Sun is therefore directed to forthwith provide a copy of page 25 of its application without the first redaction at the top of the page.
6. However, in other respects, Red Sun did not comply with the Commission’s directions issued on September 17, 2024, as follows:
- (a) The Commission directed that “[t]he redactions on page 8 of Red Sun’s May 31, 2024 application are not justified, except with respect to the specified percentages.” Nevertheless, Red Sun continues to redact the identity of the owners of Red Sun Farms¹.
- (b) The Commission determined that the redactions on page 23 of Red Sun’s May 31, 2024 application are not justified, and directed that the support letters embedded on page 23 of Red Sun’s May 31, 2024 application be provided for distribution to industry stakeholders without redactions. Nevertheless, Red Sun continues to redact the identity of supporting growers on page 23 of its application, and it has provided copies of the support letters bearing redactions.
- (c) The Commission determined that “[n]one of the redactions made to Red Sun’s July 25, 2024 response to the Commission are justifiable”, and it directed Red Sun to provide an unredacted copy of its July 25, 2024 response for distribution to industry stakeholders. On further reflection, the Commission is now satisfied that the redactions made to pages 2 and 3 of that document are appropriate, notwithstanding its earlier directions. However, the redactions on page 1 remain, and it is still the Commission’s view that these redactions are not justified.

¹ If a licensing body does not look behind the corporate veil, it may act contrary to its statutory mandate and commit a reviewable error: *Wight v. Canadian Egg Marketing Agency*, [1978] 2 F.C. 260; (1977), 19 N.R. 529 (Federal Court of Appeal); *Syntex Pharmaceuticals International Ltd. v. Medichem Inc.* 1990 CarswellNat 636, [1990] 2 F.C. 499 (Federal Court of Appeal); and *Villetard’s Eggs Ltd. v. Canada*, 1995 CarswellNat 669, [1995] 2 FC 581, 181 N.R. 374 (Federal Court of Appeal)

7. Consequently, there are still certain redactions (noted above) made to Red Sun’s materials that, in the Commission’s view, are not appropriate. This is cause for concern, as the withholding of this information could impair the ability of industry stakeholders to provide a full response to the application. The Commission’s ability to make an informed decision on the application depends, at least in part, on its ability to receive meaningful feedback from industry stakeholders.

Directions

8. The Commission will circulate a copy of page 25 of Red Sun’s application, without the first redaction at the top of the page, as soon as that is received from Red Sun. In accordance with the Commission’s Interim Decision dated September 17, 2024:
 - (a) On or before October 7, 2024, Red Sun and participating industry stakeholders must file any written submissions responsive to MPL’s Written Submission² with the Commission. The Commission will circulate all such responding submissions among MPL, Red Sun, and industry stakeholders.
 - (b) On or before October 7, 2024, MPL and participating industry stakeholders must file any written submissions responsive to Red Sun’s application³ with the Commission. The Commission will circulate all such responding submissions among MPL, Red Sun, and industry stakeholders.
 - (c) MPL and Red Sun will have until October 22, 2024, to file any written reply submissions.
9. For clarity and greater certainty, in addition to submissions addressing the substance of Red Sun’s application, MPL, Red Sun and participating industry stakeholders may also address the following issues that will form part of the panel’s consideration of Red Sun’s application:
 - (a) The procedural fairness implications, if any, arising from Red Sun’s failure or refusal to comply with the Commission’s directions concerning redactions,

² Copies of: (a) MPL’s counsel’s letter dated September 13, 2024; (b) the redacted version of MPL’s written submissions; (c) the redacted version of MPL’s Book of Documents; and (d) MPL’s counsel dated September 20, 2024, together with an unreacted copy of page 185 of MPL’s Book of Documents, are available [here](#).

³ Copies of: (a) Red Sun’s letter dated September 20, 2024; (b) Red Sun’s redaction summary dated September 20, 2024; (c) a redacted version of Red Sun’s agency application; (d) copies of the embedded files in Red Sun’s agency application bearing various redactions; (e) a redacted version of Red Sun’s Appendix “A”; and (f) a redacted copy of Red Sun’s document entitled “7/25/2024 Follow-up Questions & Response”, are available [here](#).

and whether that impacted their ability to consider and comment on Red Sun's application ; and

- (b) The extent to which, if any, Red Sun's failure or refusal to comply with the Commission's directions concerning redactions bears on its suitability as a prospective Agency.

Comment on Next Steps

- 10. The Commission will consider Red Sun's approach and inappropriate redaction of information (contrary to the Commission's direction), and industry's response, in determining next steps in this process (e.g.: whether there is any need to adjust timelines) and in its decision-making.



Derek Sturko, Chair