

**August 26, 2024**

RE: Agency Application and Review of a Probationary Agency Designation

**RED SUN FARMS E-MAIL REGARDING PROCESS**

On August 23, 2024, the Commission received the attached email from Red Sun.

The Commission does not intend to revisit its “Further Interim Decision” dated August 21, 2024. In addition, while Red Sun asserts in its email dated August 23, 2024 that its application is being considered contemporaneously with MPL probationary agency review only for the “convenience for the review panel”, this is not so. All stakeholders are encouraged to review the Commission’s rationale as set out in paragraphs 21 through 25 of its Interim Decision dated August 14, 2024:

21. The panel does not agree with MPL’s submission that its review should proceed separately from, and in priority to, consideration of the Red Sun application.

22. The provisions of the Agency Order expressly contemplate that applications for designated agency status should be considered in context. Subsection 9(6) provides as follows:

The Commission may have regard to the circumstances in which the application is brought (including the capacity of existing Agencies or other prospective Agencies to market Regulated Product), or any other factor. (emphasis added)

23. Similarly, when an agency is reviewed pursuant to section 23, the review is to be considered in context. Subsection 23(3) of the Agency Order states:

The Commission may have regard to the circumstances in existence at the time of the review (including the capacity of existing Agencies or other prospective Agencies to market Regulated Product), or any other fact (sic). [footnote omitted]

24. This contextual analysis is entirely in line with the polycentric nature of the decision. As noted in the Commission’s June 24, 2024 Notice of Proceedings: “the decision to grant or refuse agency status is a matter of fundamental marketing policy.” The Commission must be able to exercise its discretion in order to ensure that there are not too many, or too few, agencies. In addition, the Commission must be able to exercise its discretion to ensure that the entities that are best able to maximize producer returns are designated as agencies. These determinations are not static. It is possible that a justification for the designation of an agency can be overcome by the superior performance of another agency, or by the presence of a new applicant who may be better able to maximize producer returns. Therefore, MPL and Red Sun must each be able to advance their positions in context. This includes consideration of “the capacity of existing Agencies or other prospective Agencies to market Regulated Product.” Therefore, it is sensible that the Red Sun and MPL matters proceed contemporaneously.

25. In the panel’s view, proceeding in this manner does not “result in preferential treatment being afforded to the remaining agencies”, as argued by MPL. Any existing agency that is subject to a periodic agency review will be required to address the considerations set out in paragraphs 23(1)(a) to (j), and they will also be required to do so in context, which necessarily includes

consideration of “the capacity of existing Agencies or other prospective Agencies to market Regulated Product.”

For clarity, the necessity to consider these matters in context does not give rise to “an assumption of the MPL and Red Sun agency licenses as an either/or to the industry”, as stated in Red Sun’s email. Both, neither, or either may achieve agency status as a result of this process.

Finally, while the Commission has clearly stated that it “empathizes with Red Sun’s concern about further delay”, stakeholders are reminded that agency decisions are matters of fundamental policy and these decisions cannot be rushed to accommodate the convenience of a prospective agency. In its January 20, 2021 summary dismissal decision made in *MPL v. BCVMC* (N2006), the BCFIRB made the following comments:

... While it is regrettable that these processes took as long as they did, and they did not occur within a timeline that suited MPL, that is the reality of operating within a regulated industry. As part of that regulation, the Commission must consider whether it accords with sound marketing policy to issue MPL an agency licence and if so, on what terms and conditions. If MPL is aggrieved by that decision, it can file an appeal.

MPL is not yet a designated agency. The General Orders, coupled with the recent supervisory review decision, contemplate a process by which agency licences may be granted. This is not a purely administrative function where a party asks the Commission for a licence and a licence issues in a matter of days. Rather, the Commission strikes a panel to consider the merits of an application against established criteria, many of which relate to an assessment of the intended market and the impact a new agency may have on the market. The application is reviewed, further information may be sought, and there is a public hearing where interested parties can make their positions on the application known. It is an involved and extensive process.

The Commission intends to proceed expeditiously. However, it is not prepared to proceed in a manner that might compromise the ability of stakeholders to have meaningful participatory rights, or in a manner that might impair the Commission’s ability to thoroughly analyze the important policy issues before it.



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## BCVMC – Andre Solymosi

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**From:** Mike Reed <mreed@redsunfarms.com>  
**Sent:** August 23, 2024 5:18 PM  
**To:** BCVMC – Andre Solymosi; BCVMC – Diana Milligan; BCVMC – Info  
**Cc:** David Bell; Rob Jackson; Jim DiMenna; Carlos Visconti; Jamie Mastronardi; Ryan Fathers  
**Subject:** BCVMC BULLETIN: Update - Agency Application and Review of a Probationary Agency Designation

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Chair Sturko, Andre Solymosi & BCVMC,

We reviewed the “Further Interim Decision” on August 21, 2024 on the same day that we provided to the BCVMC the requested on-time, redacted documents for distribution to industry stakeholders. We were dumbfounded to discover the Commission’s decision supports MPL BC’s request to delay the proceedings due to executive and legal counsel holidays vs a sense of urgency to the tight timelines of the review process and the impact to BC growers.

It is difficult to imagine an organization such as MPL, who boasts over \$1 billion in annual revenue, being unable to make business decisions without their CEO or lead counsel. It is clearly a predatory strategy, being employed to delay the proceedings beyond the October 31<sup>st</sup> Agency Transfer deadline, a critical milestone for Red Sun Farms’ agency application. The expectation of materials required by the Commission for MPL BC’s probationary license review have been well documented going back nearly a year. Thus, if MPL BC is surprised and unable to follow the Commission’s timeline and process, they are demonstrating they do not understand the General Orders and Regulatory structure as extolled in their Agency application.

While Red Sun Farms provided a clear rationale in response, this was further supported by Mr. Richard Wierks a BC grower not associated with Red Sun Farms currently or prospectively for the 2025 season.

From the BC greenhouse community, the only support MPL BC received in requesting a delay, was from the singular legal counsel for Windset Farms (BC Grower) & GGFI (BC Agency managed by Windset Farms). Windset/GGFI support of MPL BC’s request is in stark contrast to the staunch and consistent opposition they have taken towards MPL BC’s application and probationary status as an Agency in BC through March 2025.

By not allowing the Red Sun Farms agency application to continue under the original prescribed timelines, the Commission is creating an assumption of the MPL and Red Sun agency licenses as an either/or to the industry. This does not account for the two BC Growers who have already provided support for and a desire to be marketed by Red Sun Farms in the 2025 season.

We contend that there is great opportunity for BC Growers with Red Sun Farms for the 2025 season and into the future as shared by the market and industry data presented in our Agency Application. Additionally, BCVMC GM Andre Solymosi, previously shared with Red Sun Farms and representatives from Loblaw in a 2023 informational meeting, that an agency license is a privilege and not a right. With the commission having the power and intentions to hold accountable those agencies operating outside the general orders. A threat that has yet to be enforced by the BCVMC.

Reviewing the current make-up of agencies authorized to represent and market for BC Growers, there are currently 9 agencies including the probationary license held by MPL BC. Of those listed:

1. at least 3 are operating outside the general orders utilizing 3<sup>rd</sup> party distributors/wholesalers to conduct the sales and marketing function
2. 2 who are small regional agencies without the sales, marketing and operational infrastructure to take on additional growers in their limited, geographical regions.
3. 2 agencies that have shown a retraction of area marketed over the last 10 years due to facility conversions away from regulated greenhouse crops and/or BC Grower acreage transferring to another agency.

This realistically leaves BC Growers with limited options should the Commission exercise its mandate for all Agencies to comply with the guidelines of the General Orders and create a level playing field for all BC growers and Agencies.

Having reviewed the Natural Products Act, we understand our right to appeal directly to BC FIRB as well as provision 19 (3) which removes immunity protection for “Provincial board, its members and others” in relation to anything done or omitted by that person in bad faith. This litigious approach while proven effective by others is not our preferred method, believing that the BCVMC is in place and should act in the best interest of BC Growers, not just for the largest of them.

While the legal representatives for both MPL BC and GGFI/Windset have remarkably been capable of turning around responses to the Commission’s ruling on process in an expedient manner, only to claim and support MPL BC’s assertion that they couldn’t possibly be prepared to showcase the evidence that they should have been collecting all season.

Apart from convenience for the review panel, there is no reason Red Sun Farms application cannot proceed on its own merit without further delay and in fact serves the interest of BC growers. As such we respectfully ask the Commission to review the redaction request of all materials submitted by Red Sun Farms for industry stakeholder review and proceed based on the originally established and reasonable timeline as outlined on the August 14 Interim Orders.

Regards,



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