

**BEFORE THE FLORIDA CITRUS COMMISSION
AS AGENCY HEAD FOR
THE FLORIDA DEPARTMENT OF CITRUS**

Re: Application for License As Citrus Fruit Dealer
for the 2011-2012 season of
Sun & Earth Citrus, LLC

To: Sun & Earth Citrus, LLC
c/o Paulino Vazquez-Plasencia
9732 Southwest 133rd Place
Miami, Florida 33186
Email: sunearthcitrus@gmail.com

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DIVISION OF
ADMINISTRATIVE
HEARINGS

**FINAL ORDER OF AGENCY ACTION OF THE
FLORIDA DEPARTMENT OF CITRUS DISAPPROVING
APPLICATION FOR LICENSE AS CITRUS FRUIT DEALER**

The Florida Department of Citrus (“Department”) disapproves the Application of License as Citrus Fruit Dealer submitted by SUN & EARTH CITRUS, LLC (“Sun & Earth”), and the Florida Citrus Commission (“Commission”), as agency head of the Department, makes the following findings of fact and conclusions of law.

I. PROCEDURAL BACKGROUND

1. On March 6, 2012, Sun & Earth filed an Application for License as Citrus Fruit Dealer (“Application”) with the Department pursuant to § 601.57, Fla. Stat.¹ Sun & Earth’s Application seeks authority to operate as a licensed citrus

¹ Section 601.57, Fla. Stat., governs the process for approving or disapproving Applications for Licenses for Citrus Fruit Dealers. The Department’s rulemaking authority in § 601.57 is limited to authorization to establish rules to govern the “. . . procedure and guidelines for granting interim conditional staff approval for issuance of a conditional citrus fruit dealer’s license” Section 601.57(7), Fla. Stat. Hence, the Department does not have the specific statutory authority to adopt, via rule, a scheme more specific than the procedures prescribed by § 601.57. However, in acting upon applications for licenses, the Department follows the licensing procedures established in § 120.60, Fla. Stat., which is a part of Florida’s Administrative Procedures Act. *See, fn. 3, infra.*

fruit dealer during the citrus season which began on August 1, 2011 and ended on July 31, 2012.²

2. The Department requested additional information from Sun & Earth as contemplated in § 120.60(1), Fla. Stat., and, thereafter, Sun & Earth became uncooperative with Department staff and outside counsel Joseph Mawhinney was retained by the Department to handle all communications with the applicant.

3. After a final review of all information provided by the applicant, a letter was sent on May 3, 2012 from the Department's executive director notifying the applicant of the intent of Department staff to recommend denial of the Sun & Earth license application on the grounds of misrepresentation pursuant to section 601.57(4), Florida Statutes. The letter also notified Sun & Earth of its rights to an administrative hearing regarding staff's recommended action of denial.

4. Sun & Earth requested a formal hearing with a Division of Administrative Hearings ("DOAH") administrative law judge.

5. The hearing took place on July 26, 2012 in Bartow, Florida before the Honorable R. Bruce McKibben, Administrative Law Judge.

6. A recommended final order was filed with the clerk of Division of Administrative Hearings on August 30, 2012, recommending that a final order be entered by the Department of Citrus/Florida Citrus Commission, denying Sun & Earth's Citrus Fruit Dealer License Application for the 2011-2012 citrus season.

² Pursuant to § 601.55(2) (b), Fla. Stat., citrus seasons begin on August 1st of a year and end on July 31st of the following year. *See, also*, § 601.15(3) (d), Fla. Stat.

7. Pursuant to § 120.60(1), Fla. Stat., the Department has ninety days after receipt of a completed application to take action on the application.

However, because Sun & Earth initiated a proceeding under 120.569 and 120.57 the 90 day time period was tolled.

8. On September 25, 2012, Department staff by and through its Executive Director adopted the Division of Administrative Hearings recommended order as entered by R. Bruce McKibben and filed with the Clerk of the Division of Administrative Hearings on August 30, 2012, recommending that a final order be entered by the Department of Citrus/Florida Citrus Commission, denying Sun & Earth's Citrus Fruit Dealer License Application for the 2011-2012 citrus season.

9. On September 26, 2012 a copy of the recommended order, as well as the Department's adoption of the recommended order, was sent to Sun & Earth c/o Paulino Vazquez-Plasencia, the president of Sun & Earth. Sun & Earth was notified that a final hearing on this matter would be held by the Florida Citrus Commission at its regularly scheduled October 24, 2012 meeting in Bartow, Florida.

10. On October 9, 2012, Department staff posted on the Department's FTP site a copy of the staff recommendation of denial with support information which included the recommended order issued by R. Bruce McKibben. An email was sent to the Commission on October 16, 2012 which included the meeting notice and agenda for the regular Commission meeting on October 24, 2012. An email was sent to the Commission on October 23, 2012 reminding them the information for the October 24th meeting was available on the FTP site.

11. At its regularly scheduled meeting on Wednesday, October 24, 2012, the Commission conducted a public hearing on Sun & Earth's application.

12. Prior to considering Sun & Earth's Application, the Commission's General Counsel, Edwin A. Scales, III, advised the Commission on the *quasi-judicial* nature of the proceeding. Mr. Scales also advised the Commission that, pursuant to § 601.57(2), Fla. Stat., the Commission had four options with regard to taking action on East West's Application:

- a. the Commission could approve the Application;
- b. the Commission could disapprove the Application;
- c. the Commission could approve the Application contingent upon the imposition of reasonable conditions, or
- d. The Commission could defer the vote to a subsequent date.

13. At the public hearing, the Commission considered staff's recommendation along with the recommended order entered by R. Bruce McKibben which contained findings of fact and conclusions of law supporting the staff recommendation of disapproval of Sun & Earth's Application.³

14. Sun & Earth's president, Paulino Vazquez-Plasencia was present at the hearing and provided testimony on behalf of Sun & Earth's application.

15.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

³ The documentary evidence presented by Department staff to the Commission was identical to the information e-mailed to the Commission members on October, 2012 which included the recommended order issued by R. Bruce McKibben. A true and correct copy of this information is attached.

16. Pursuant to section 120.57(1), Florida Statutes, the Florida Citrus Commission as the Agency head of the Department of Citrus adopted, as the final order of the agency, the recommended order issued by R. Bruce McKibben which contained findings of fact and conclusions of law. The Commission publicly deliberated the matter and, unanimously⁴ adopted a motion supporting the recommended order issued by R. Bruce McKibben and staff's recommendation disapproving Sun & Earth's Application. A copy of Judge McKibben's recommended order is attached hereto and incorporated herein for all purposes.

III. CONCLUSION

Based on the Findings of Fact and Conclusions of Law rendered above, Sun & Earth's Application for a License Citrus Fruit Dealer in the 2011-12 citrus season is *disapproved*. Pursuant to § 601.58(3), Fla. Stat., once an application has been finally disapproved by the Commission, the application shall remain disapproved for the remainder of the subject shipping season. Nothing herein precludes Sun & Earth from filing an Application for Citrus Fruit Dealer for the 2012-13 citrus season which began August 1, 2012.

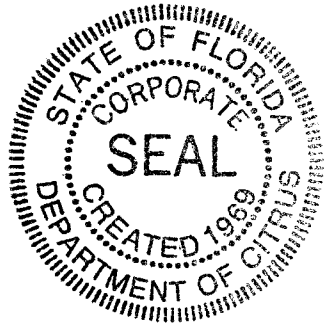
IV. APPELLATE RIGHTS

This Final Order constitutes final agency action of the Florida Department of Citrus. Pursuant to § 120.68, Fla. Stat., a party who is adversely affected by final agency action is entitled to judicial review. Judicial review shall be sought in the Second District Court of Appeal (i.e. the appellate district where the agency maintains its headquarters). Any such proceedings shall be instituted by filing a

⁴ The vote was 8-0; Commissioner James Horrisberger was absent.

Notice of Appeal or Petition for Review in accordance with the Florida Rules of Appellate Procedure, within thirty (30) days after the rendition of this Final Order.

DONE AND ORDERED this 1st day of November, 2012.



Martin J. Mckenna, Chair
Florida Citrus Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order of Agency Action of the Florida Department of Citrus Disapproving Application For License As Citrus Fruit Dealer was sent by e-mail and Certified United States Mail (Article Number 7004 0550 0000 5167 2527) to

Sun & Earth Citrus, LLC
c/o Paulino Vazquez-Plasencia
9732 Southwest 133rd Place
Miami, Florida 33186
Email: sunearthcitrus@gmail.com

Douglas A. Ackerman
Executive Director
Florida Department of Citrus
P.O. Box 9010
Bartow, Florida 33831

on this 1st day of November, 2012.

Martin J. Mckenna, Chair
Florida Citrus Commission