

Food Protection Hearing and Advisory Board Meeting Notice and Agenda

Members

Christopher Romm
Sergio Guzman
Michael Chaump
David DeMars
J.P. Pinocchio
George Heinemann
Christopher Thompson

Tuesday, July 9, 2019
1:00 p.m.

Washoe County Administration Complex, Building B
Health District South Conference Room
1001 East Ninth Street
Reno, NV

An item listed with asterisk (*) next to it is an item for which no action will be taken.
1:00 p.m.

1. *Roll Call and Determination of Quorum
2. *Pledge of Allegiance
3. *Public Comment

Any person is invited to speak on any item on or off the agenda during this period. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on an agenda as an action item.

4. Approval of Agenda – (For possible action)
July 9, 2019
5. Approval of Draft Minutes – (For possible action)
March 19, 2018

6. Public Hearing to consider the appeal of the Health District's decision to place food produced by Dorinda's Chocolates and packaged as LiveKaya on a hold order according to Section 240.045 (B) of the Regulations of the Washoe County District Board of Health Governing Food Establishments and order the owner or person-in-charge of the food which was placed under the hold order to discard the food. Case #1-19FP – (For possible action)
Staff Representative: Amber English

7. *Board Comment
Limited to announcements or issues for future agendas.

8. *Public Comment
Any person is invited to speak on any item on or off the agenda during this period. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on an agenda as an action item.

9. Adjournment – (For possible action)

Possible Changes to Agenda Order and Timing. Items on the agenda may be taken out of order, combined with other items, withdrawn from the agenda, moved to the agenda of another later meeting; moved to or from the Consent section, or they may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Items listed in the Consent section of the agenda are voted on as a block and will not be read or considered separately unless withdrawn from the Consent agenda.

Special Accommodations. The Food Protection Hearing and Advisory Board Meetings are accessible to the disabled. Disabled members of the public who require special accommodations or assistance at the meeting are requested to notify Administrative Health Services in writing at the Washoe County Health District, PO Box 1130, Reno, NV 89520-0027, or by calling 775.328.2416, 24 hours prior to the meeting.

Public Comment. During the “Public Comment” items, anyone may speak pertaining to any matter either on or off the agenda, to include items to be heard on consent. For the remainder of the agenda, public comment will only be heard during items that are not marked with an asterisk (*). Any public comment for hearing items will be heard before action is taken on the item and must be about the specific item being considered by the Board. In order to speak during any public comment, each speaker must fill out a “Request to Speak” form and/or submit comments for the record to the Recording Secretary. Public comment for individual agenda items is limited as follows: three minutes for individual speakers.

Response to Public Comment. The Food Protection Hearing and Advisory Board can deliberate or take action only if a matter has been listed on an agenda properly posted prior to the meeting. During the public comment period, speakers may address matters listed or not listed on the published agenda. The *Open Meeting Law* does not expressly prohibit responses to public comments by the Food Protection Hearing and Advisory Board. However, responses from the Board members to unlisted public comment topics could become deliberation on a matter without notice to the public. On the advice of legal counsel and to ensure the public has notice of all matters the Food Protection Hearing and Advisory Board will consider, Board members may choose not to respond to public comments, except to correct factual inaccuracies, ask for Health District Staff action or to ask that a matter be listed on a future agenda. The Food Protection Hearing and Advisory Board may do this either during the public comment item or during the following item: “Board Comments – Limited to Announcement or Issues for future Agendas.”

Posting of Agenda; Location of Website.

Pursuant to NRS 241.020, Notice of this meeting was posted at the following locations:

Washoe County Health District, 1001 E. 9th St., Reno, NV
Reno City Hall, 1 E. 1st St., Reno, NV
Sparks City Hall, 431 Prater Way, Sparks, NV
Washoe County Administration Building, 1001 E. 9th St, Reno, NV
Downtown Reno Library, 301 S. Center St., Reno, NV
Washoe County Health District Website www.washoecounty.us/health
State of Nevada Website: <https://notice.nv.gov>

How to Get Copies of Agenda and Support Materials. Supporting materials are available to the public at the Washoe County Health District located at 1001 E. 9th Street, in Reno, Nevada. Ms. Laura Rogers, Administrative Secretary to the District Board of Health is the person designated by the Washoe County District Board of Health to respond to requests for supporting materials. Ms. Rogers is located at the Washoe County Health District and may be reached by telephone at (775) 328-2415 or by email at lrogers@washoecounty.us. Supporting materials are also available at the Washoe County Health District Website www.washoecounty.us/health pursuant to the requirements of NRS 241.020.

Food Protection Hearing and Advisory Board Meeting Minutes

Members

Christopher Romm
Sergio Guzman
Michael Chaump
David DeMars
J.P. Pinocchio
George Heinemann
Christopher Thompson

**Monday, March 19, 2018
1:00 p.m.**

**Washoe County Administration Complex, Building B
Health District South Conference Room
1001 East Ninth Street
Reno, NV**

1. *Roll Call and Determination of Quorum

Recording Secretary Ms. Rogers called the meeting to order at 1:00 p.m. per Chair Chaump's request.

The following members and staff were present:

Members present: Michael Chaump, Chair
Christopher Romm
George Heinemann
Christopher Thompson
Sergio Guzman

Members absent: J.P. Pinocchio
David DeMars

Ms. Rogers verified a quorum was present

Staff present: Chad Westom, Environmental Health Division Director
Tony Macaluso, Environmental Health Specialist Supervisor
Dave McNinch, Environmental Health Specialist Supervisor
Amber English, Senior Environmental Health Specialist
Kim Franchi, Environmental Health Specialist

2. *Pledge of Allegiance

Those present pledged allegiance to the flag.

3. *Public Comment

As there was no one wishing to speak, Chair Chaump closed the public comment period.

4. Approval of Agenda

March 19, 2018

Mr. Romm moved to approve the agenda for the March 19, 2018, Food Protection Hearing and Advisory Board meeting. Mr. Thompson seconded the motion which was approved five in favor and none against.

5. Approval of Draft Minutes

December 20, 2017

Chair Chaump stated for the record that he had recused himself from the December 20, 2017 meeting and would recuse himself from the vote on this item.

Mr. Heinemann moved to approve the minutes for the December 20, 2017, Food Protection Hearing and Advisory Board meeting. Mr. Romm seconded the motion which was approved four in favor and none against.

6. Appeal to staff decision to place food on hold order according to Section 240.045 (B) of the Regulations of the Washoe County District Board of Health Governing Food Establishments. Case #1-18FP

Staff Representative: Tony Macaluso

Mr. Macaluso stated that Delitaly LLC was opened and permitted by the Washoe County Health District in October 2017. A routine inspection was completed in February 2018 by the Environmental Health Services (EHS) Division wherein five critical items were found and a number of non-critical items. He informed that the primary issue was that Mr. Carrano was processing foods in a manner that would require a HACCP and/or a waiver to be approved prior to doing these processes, such as the use of nitrates and vacuum packaging.

Mr. Macaluso informed that EHS staff had discussed with Mr. Carrano that prior approval was required to process foods with nitrates or to vacuum package product and attempted to have him volunteer to discard the product in question. Mr. Carrano then requested to have his case heard before the Food Protection Hearing and Advisory Board (FPHAB).

Chair Chaump inquired if there was any other information the Board should be apprised of.

During the opening inspection, Mr. Macaluso stated that Mr. Carrano was required to hire a Certified Food Protection Manager or take the course himself by the February inspection and that requirement had not been met. He informed that he believed Mr. Carrano had completed that course at the time of this meeting.

Chair Chaump inquired if the applicant was present, and Mr. Macaluso confirmed that he was.

Mr. Romm inquired if EHS had obtained a HACCP plan from Mr. Carrano. Mr. Macaluso informed that they had not.

Mr. Heinemann asked for clarification that Delitaly had been allowed to open without a Certified Food Protection Manager. Mr. Macaluso stated that an applicant is allowed sixty days to fill that requirement and is checked again at ninety days for compliance.

Mr. Romm inquired how long the food involved in this case has been on hold. Mr. Macaluso informed that it has been since the date of inspection, February 20, 2018. He explained the length of time in that there are ten days for the applicant to appeal the decision and then the time it takes to set a meeting with the FPHAB to hear the appeal.

Mr. Guzman inquired if the product placed on hold had expiration dates, and Mr.

Macaluso informed that there were none as set by EHS.

Mr. Heinemann inquired how the product placed on hold was being stored. Mr. Macaluso stated that this product was being stored in a deli case, and in a subsequent inspection on February 23rd had found the product at 43 degrees.

Mr. Guzman inquired if EHS had reinspected to check the temperature of the case after February 23rd and Mr. Macaluso indicated that they had not.

Mr. Thompson inquired if the product in the deli case was cryovaced and if the seals were intact. Mr. Macaluso confirmed that was correct, and that the only food product in the deli case that had not been previously was jerky.

Mr. Romm inquired what waiver is being sought by the applicant, as there are multiple issues concerning reduced oxygen packaging, the HACCP plan, etc. Mr. Macaluso informed that there was no waiver being sought, but that Mr. Carrano is appealing the EHS decision to place the food items on hold. He stated that staff is recommending the product be destroyed, and that part of the Board's decision would be whether or not the applicant could keep his product.

Mr. Thompson inquired if there had been any mention that the applicant would cryovac product. Mr. Macaluso stated that, to the best of his knowledge, that there was no indication that Mr. Carrano would be making products preserved by nitrates or by cryovacing.

Chair Chaump inquired if the main concern was the lack of approval and/or quality control for Mr. Carrano's processes. Mr. Macaluso confirmed that was so, and explained that a pre-approved HACCP plan must be in place in order to cryovac product or make products using nitrates. Chair Chaump wished to confirm that there had been no HACCP plan in place when the product was put on hold and if EHS staff recommends the product to be destroyed. Mr. Macaluso confirmed him to be correct on both counts, and noted that the HACCP plan had still not been received.

If issues such as a food product being out of temperature are found during an inspection, Mr. Macaluso informed that EHS staff will try to have the applicant voluntarily discard it. If they prefer not to, then the item(s) are put on hold.

Mr. Heinemann stated that he did not see mention of the vacuum packaging equipment in the Inspection Reports, and inquired if that equipment had been inspected. Ms. Franchi stated that she did not see the vacuum packaging equipment at the facility at the time of inspection.

Mr. Felice Carrano, owner of Delitaly LLC, addressed the Board and expressed that his ignorance of the laws was not justification to break the law.

He informed that he had started making the type of products that were put on hold just after opening the business. He stated that these products have been made in his family his whole life, but not for commercial use. He described his process for making the products containing nitrates and informed of the sources he uses to obtain goods to make them.

Mr. Carrano stated that his customers praise his product and, to his knowledge, no one has ever become ill from eating the product. He stressed that he is very careful with the processes he uses.

Mr. Carrano stated he made the mistake of not taking the Food Safety Course when instructed to, but that he has since done so and passed with 91%. He informed that he learned a good deal in the process of preparing for the test.

Chair Chaump inquired if Mr. Carrano understood what the Health District has asked him to do. Mr. Carrano stated that he had been waiting for this moment.

Mr. Romm asked Mr. Carrano to explain the process he used to make the sausage, and Mr. Carrano obliged, detailing the process and recipe.

Mr. Thompson inquired the quantity prepared at one time, citing the concern for the

product to fall out of a safe temperature range. Mr. Carrano stated he did not process more than 15-20 pounds at a time.

Mr. Guzman inquired if Mr. Carrano had begun the process for the HACCP plan. Mr. Carrano stated he is working with Mr. Alan Cook to develop that plan for his restaurant.

Mr. Guzman stated that it was not the Board's intent to question the flavors of Mr. Carrano's product, but to follow procedures as outlined by the law. He stated that the proper procedure would have been for Mr. Carrano to approach the Health District and inform them that he wanted to begin producing these foods to obtain their guidance and proper authorization. Mr. Carrano expressed that he understood.

Mr. Guzman opined, now that Mr. Carrano has this information, he can begin his business again and produce foods as he becomes authorized to do so.

Mr. Romm inquired if Mr. Carrano had professional training to be use nitrates in food production and how the nitrates are measured. Mr. Carrano informed that he is a chef and had worked in twenty-seven countries and has diplomas from some of those, and that the nitrates are measured by weight at two grams per ten pounds of meat.

Mr. Romm inquired if Mr. Carrano's recipes that include nitrates had been reviewed for approval, explaining that some of the companies that produce nitrates will review recipes to certify they are safe. Mr. Carrano stated that he had not submitted any recipes for review.

Chair Chaump reminded the Board that the case before them is an appeal of the hold order placed product at Delitaly, and whether to uphold staff's recommendation that the product be disposed of. He stated that, while it seems that Mr. Carrano has extensive experience in preparing a good product, without a HACCP plan in place at the time the product was produced, the Health District cannot verify this product is safe for consumption.

Chair Chaump explained that the product that is on hold would be a liability to both Mr. Carrano and the Board should it cause illness. He stated that Mr. Carrano still needs to put the HACCP plan in place, and inquired when he expected it to be done. Mr. Carrano replied that he was not sure how long it would take because of the scope of work.

Chair Chaump inquired how much product is on hold, and Mr. Carrano replied that it was approximately worth \$3,000 in sales, but wasn't sure of the cost to produce the product. Mr. Carrano explained that it would be a financial hardship for him to have to dispose of the product because of monies he has invested to support the business.

Mr. Thompson stated that he believed Mr. Carrano produces a good product and opined that the other Board Members who are all in the food industry believe him. He stated that his main concerns were the potential for liability and, that if Mr. Carrano were allowed to keep the product on hold, it would set a precedent others could cite in order to keep product that may not have been prepared with the care of Mr. Carrano. Therefore, Mr. Thompson stated that he believed that the Board should follow the recommendation of the Environmental Health Services Division.

Mr. Thompson moved that the Food Protection Hearing and Advisory Board follow the Health District's directive to destroy the food placed on hold at Delitaly with the intent that Mr. Carrano will obtain the HACCP plan prior him producing foods containing nitrates, and there will be a Food Protection Manager on site. Mr. Romm seconded the motion which carried five in favor and none against.

Chair Chaump clarified the recommendation is for the Board to advise the District Health Officer to deny the appeal and order the owner or person in charge of the food which was placed under hold order to denature or destroy such food.

7. *Board Comment

There was no Board Comment.

7. *Public Comment

As there was no one wishing to speak, Chair Chaump closed the Public Comment period.

8. Adjournment

Chair Chaump moved to adjourn the meeting at 1:31 p.m. Mr. Romm seconded the motion which was approved five in favor and none against.

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Staff Report
Board Meeting Date: July 9, 2019

TO: Food Safety Hearing and Advisory Board

FROM: Amber English, Senior Environmental Health Specialist
775-328-2629, aeenglish@washoecounty.us

SUBJECT: Public Hearing to consider the appeal of the Health District's decision to place food produced by Dorinda's Chocolates and packaged as LiveKaya on a hold order according to Section 240.045 (B) of the Regulations of the Washoe County District Board of Health Governing Food Establishments and order the owner or person-in-charge of the food which was placed under the hold order to discard the food. Case #1-19FP

Authority to hold hearing on variance requests:

Pursuant to Section 240.105 (A) of the regulations of the Washoe County District Board of Health Governing Food Establishments, the Food Protection Hearing and Advisory Board (Hearing Board) shall hold hearings to consider appeals to staff decisions which adversely affect said person in any manner.

District Health Strategic Objective supported by this item: Healthy Environment – Create a healthier environment that allows people to safely enjoy everything Washoe County has to offer.

APPLICABLE REGULATIONS:

1010.015 “Adulterated food” defined. “Adulterated food” has the meaning ascribed in Nevada Revised Statutes (NRS) 585.300 through 585.310. A food shall be deemed adulterated if:

- A. It bears or contains any poisonous or deleterious substance which may render it injurious to health unless the substance is not an added substance and the quantity of the substance does not ordinarily render it injurious to health;
- B. It consists in whole or in part of a diseased, contaminated, filthy or decomposed substance, or if it is otherwise unfit for food;
- C. It has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth or rendered diseased, unwholesome or injurious to health;

- D. It is the product of an animal which is diseased, died otherwise than by slaughter or was fed upon the uncooked offal from a slaughterhouse;
- E. Its container is composed, in whole or in part, of any poisonous or deleterious substance, which may render the contents injurious to health;
- F. It bears or contains any color additive, which is unsafe within the meaning of the Federal Act;
- G. Any valuable constituent has been in whole or in part omitted or abstracted there from;
- H. Any substance has been substituted wholly or in part therefore;
- I. Damage or inferiority has been concealed in any manner; or
- J. Any substance has been added thereto or mixed or packed therewith so as to increase bulk or weight or reduce its quality or strength, or make it appear better or of greater value than it is.

050.050 Additives

Food may not contain unapproved food additives or additives that exceed amounts specified in law. Food ingredients and sources of radiation, or pesticide residues shall not exceed provisions specified in law.

050.370 Discarding or reconditioning unsafe, adulterated, or contaminated food

- A. A food that is unsafe, adulterated, or not honestly presented must be discarded or reconditioned according to an approved procedure.
- B. Food that is not from an approved source must be discarded.
- C. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded must be discarded.
- D. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means must be discarded.

240.045 Examination and condemnation of food, hold orders

- A. Food may be examined or sampled by the Health Authority as often as necessary to determine freedom from adulteration or misbranding.
- B. The Health Authority, may, upon written notice to the owner, operator or person-in-charge, place a hold order on any food which he determines is or has probable cause to believe to be unwholesome or otherwise adulterated or misbranded.
- C. Under a hold order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on the food by the Health Authority. Neither such food nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of or destroyed

without permission from the Health Authority, except by order of a court of competent jurisdiction.

- D. After the owner, operator or person-in-charge has had a hearing as provided in NRS 446.895, and on the basis of evidence produced at such hearing or on the basis of his examination in the event a written request for a hearing is not received within ten (10) days, the Health Authority may vacate the hold order, or may, by written order direct the owner or person-in-charge of the food which was placed under the hold order to denature or destroy such food or to bring it into compliance with the provisions of NRS 446. Such order of the Health Authority to denature or destroy such food or bring it into compliance with the provisions of NRS 446 shall be stayed if the order is appealed to a court of competent jurisdiction within three (3) days.

PREVIOUS ACTION

The FDA has concluded that under the federal Food Drug and Cosmetic Act (FD&C), it is illegal to add any product containing THC or CBD in food. The Washoe County Food Regulations incorporate federal law regarding food additives, dietary use products and food labeling. Therefore, the use of industrial hemp as the source of CBD to be added to food products is prohibited. Until the FDA rules that industrial hemp-derived CBD oil and CBD products can be used in food, or the State of Nevada makes a determination that they are safe to use for human consumption, CBD products are not an approved food, food ingredient, food additive, or dietary supplement. More information on the regulation of products containing cannabis and cannabis derived compounds can be found on the FDA website: <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottliebmd-signing-agriculture-improvement-act-and-agencys>

Additionally, the FDA has recently voiced perspectives of FDA leadership and experts regarding the FDA's recent public hearing on May 31, 2019 and the use of products containing CBD. More information on FDA's science-based policy on CBD can be found here: <https://www.fda.gov/news-events/fda-voices-perspectives-fda-leadership-and-experts/fda-committed-sound-science-based-policy-cbd>

The use of industrial hemp as the source of cannabidiol (CBD) to be added to food is prohibited in all food establishments regulated by the Washoe County Health District. Over the last year, the WCHD has received an increase in questions from food establishment operators who are interested in adding industrial hemp-derived CBD products in food. The WCHD continues to inform these establishments that CBD is not approved for use in human food.

On January 3, 2019, WCHD staff participated in a state-wide conference call regarding the increase in questions from food establishment operators interested in adding industrial hemp-derived CBD products in food. In addition to WCHD staff, conference call participants included staff from Nevada Division of Public and Behavioral Health, Southern Nevada Health District, Carson City Health District, and the Nevada Department of Agriculture. The purpose of this call was to ensure health jurisdictions within the State are consistently addressing CBD in food

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products. During this call, all parties agreed that pursuant to the U.S Food and Drug Administration's (FDA) determination that CBD products are not approved additives in food, CBD will continue to be considered an unapproved food additive in the State of Nevada as well. All parties agreed that food establishments in their respective jurisdictions found to be selling or manufacturing food with CBD as an ingredient in food will be issued a cease and desist order. Additionally, all parties agreed that these establishments would be addressed on a complaint basis.

Additional information on CBD in food products including Frequently Asked Questions can be found on the WCHD website: <https://www.washoecounty.us/health/>

BACKGROUND

On May 30, 2019, WCHD staff conducted an inspection at a local coffee shop and observed CBD oil being added to food products. The establishment voluntarily discontinued adding CBD to food products and on June 3, 2019, WCHD staff issued an official cease and desists for adding any CBD products as an ingredient in food. The establishment mentioned the names of several other local food establishments that are also adding CBD oil to food products. Complaints were generated and investigated for each of the mentioned establishments including Dorinda's Chocolates.

On June 11, 2019, WCHD staff conducted a compliant investigation at Dorinda's Chocolates located at 300 S. Wells Ave, Suite #14, Reno, Nevada, WCHD permit# H18-1029FOOD. WCHD staff met with Dorinda Vance, owner of Dorinda's Chocolates and LiveKaya, as well as employees Dillion Vance and Dustin Vance. WCHD staff explained that a complaint had been received stating the facility is adding CBD oil to chocolate. Dorinda's Chocolates and LiveKaya staff stated that hemp oil is only added to LiveKaya brand chocolates; however, no hemp oil was onsite to determine if the ingredients contained CBD and the LiveKaya chocolate bars only list "hemp oil" as an ingredient. During the meeting, Dustin Vance emailed the hemp oil supplier (CBD Hemp Experts) information to WCHD for review. Dorinda Vance also provided the WCHD with an official cannalysis report from GreenLeaf Lab- see attached GreenLeaf Lab report. When asked if Dorinda's Chocolates/LiveKaya representatives consulted with the WCHD regarding the use of CBD in food products prior to manufacturing the LiveKaya chocolate, Dorinda Vance confirmed that the WCHD was not consulted prior to production and sale of the product. WCHD staff advised Dorinda's Chocolates/LiveKaya employees that CBD products are considered an unapproved food additive and any food found to contain CBD would be considered adulterated per NRS 585.310. WCHD staff agreed to conduct traceback activities on the hemp oil ingredients and inform Dorinda's Chocolates/LiveKaya of the findings. See attached inspection report documenting the June 11, 2019 investigation.

On June 12, 2019, WCHD staff conducted a review of CBD Hemp Expert's website and the laboratory analysis from GreenLeaf Lab. Both the hemp products listed on the supplier's website and the laboratory analysis indicate the hemp oil contains high amount of CBD. WCHD staff sent an email to Dustin Vance informing him the hemp oil in the LiveKaya chocolates appears to contain CBD which is an unapproved food additive. In the email, WCHD staff stated that all LiveKaya chocolates containing CBD are considered adulterated and would need to be

discarded. The WCHD requested a meeting time between 1pm and 3pm on June 13, 2019 to inventory the adulterated product and witness destruction. No response from Dustin Vance or representatives of Dorinda's Chocolates was received. See attached email correspondence dated June 12, 2019.

On June 13, 2019, WCHD staff conducted a site visit at Dorinda's Chocolates and met with Dorinda Vance and Dillon Vance. Dorinda Vance confirmed LiveKaya chocolates are manufactured in Dorinda's Chocolates kitchen located at 300 S. Wells Ave, Suite #14, Reno, Nevada where CBD Hemp Expert's CBD distillate 80% - 90% is added to the chocolates. The LiveKaya chocolates are then packaged at the Dorinda's Chocolates location and transported to Crystal Creek Logistics, a third party warehouse located at 9250 Red Rock Road, Reno, Nevada for further distribution. WCHD staff issued a notice of violation and informed Dorinda and Dillon Vance that per Section 050.050 of the Washoe County Food Regulations, foods may not contain unapproved food additives, are considered adulterated per NRS 585.310 (Section 010.015 of the Washoe County Food Regulations), and must be discarded. Dorinda Vance refused to discard the product. WCHD staff informed Dorinda and Dillon Vance that all LiveKaya chocolates stored at Crystal Creek Logistics will be put on hold pending a request to appeal the notice of violation. See attached notice of violation.

WCHD staff conducted a site visit at Crystal Creek Logistics and placed a hold order on 2,697 units (270 grams/unit) of Classic LiveKaya products and 500 (270 grams/unit) of Zero LiveKaya products. WCHD staff reviewed the hold order requirements with Crystal Creek Logistics representatives. See attached hold order and photographs of product placed on hold.

FINDINGS OF FACT:

The Hearing Board may recommend approval of the appeal only if, after a hearing on due and proper notice, it determines by a preponderance of evidence the following:

- 1. The food that is currently on hold can be released without endangering the health and safety of the persons living in the Washoe County Health District.**

RECOMMENDATION

Based on information presented, staff recommends the Hearing Board deny the appeal of the Health District's decision to place food produced by Dorinda's Chocolates and packaged as LiveKaya on a hold order according to Section 240.045 (B) of the Regulations of the Washoe County District Board of Health Governing Food Establishments and order the owner or person-in-charge of the food which was placed under the hold order to discard the food.

ALTERNATIVES

1. The Hearing Board members could recommend that the District Health Officer approve staff's recommendation with amended or additional conditions.

Or

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2. The Hearing Board members could recommend to the District Health Officer to approve Dorinda Vance's appeal to staff's decision and allow her to keep the product which has been placed on hold.

POSSIBLE MOTION

Should the Hearing Board agree with staff's recommendation, a possible motion would be "move to deny the appeal of the Health District's decision to place food produced by Dorinda's Chocolate's and packaged as LiveKaya on a hold order according to Section 240.045 (B) of the Regulations of the Washoe County District Board of Health Governing Food Establishments and order the owner or person-in-charge of the food which was placed under the hold order to discard the food."

WASHOE COUNTY
HEALTH DISTRICT
ENHANCING QUALITY OF LIFE

WASHOE COUNTY HEALTH DISTRICT
ENVIRONMENTAL HEALTH SERVICES DIVISION
1001 East Ninth Street • PO Box 11130 • Reno, Nevada 89520
Telephone (775) 328-2434 • Fax (775) 328-6176
www.washoecounty.us/health
health@washoecounty.us

No. of Critical Risk
Factor/Intervention Violations:
N/A

Facility Status:

- Pass N/A
 Conditional Pass
 Closed

FOOD ESTABLISHMENT OFFICIAL
INSPECTION REPORT NOTES

DBA/Name: Risk Category Type: Dorinda's Chocolates	Date: 6/11/19	
Address: 300 S. Wells Ave #14	City/Zip: Reno, NV 89502	Permit #: H18-1029FOOD
Person In Charge: Dorinda Vance		

Observations and Corrective Actions Continued:

Met with Owner, Dorinda Vance regarding LiveKaya chocolate products containing hemp oil. Facility will send hemp oil label and manufacturer information to verify hemp oil is a product that FDA has determined to be generally recognized as safe (GRAS). WCHD will conduct traceback of ingredients to verify the product is GRAS.

Please be advised that CBD products are considered unapproved food additives and are not permitted for use in human food. If ingredient traceback indicates hemp oil in use is a CBD product, the product will be considered adulterated per NRS 595.310 and would need to be discarded.

The WCHD will perform traceback procedures to verify source and approval of price complete, issue either approval, or cease & desist for current LiveKaya chocolates.

Failure to abate violation required in this notice may result in immediate suspension of the Permit to Operate. An opportunity for an appeal will be provided if a written request for a hearing is filed with the Health Authority within the period of time established in this notice for the correction of violations. (Reference: NRS 446.895)

Re-Inspection Date (on or after): N/A	Received By: [Signature]
Environmental Health Specialist: [Signature] #731	

From: English, Amber E.
To: dustinwilliamvance@gmail.com
Cc: Lupan, Michael; Macaluso, Tony; McNinch, Dave
Subject: RE: LiveKAYA & Dorinda's Chocolates
Date: Wednesday, June 12, 2019 4:18:00 PM

Good Afternoon Dustin and Dorinda,

We have completed our research on the source of the hemp oil used in the LiveKaya chocolate products. Unfortunately, it appears that the oils advertised on the website you provided (<https://cbdhempexperts.com>) contain high amounts of CBD which is not approved as an additive in food. Based on the test results you provided (CBD at 86.94%), it looks like you're using the CBD Distillate, but please confirm:



CBD DISTILLATE 80% – 90% (NON-DETECTABLE THC)

Distillate refers to the finished product achieved after distillation and post processing of our crude oil. CBD Distillate is a much purer product than crude. The majority of waxes, lipids and plant material are removed during the distillation processes resulting in an amber colored viscous oil prized by formulators for it's ease of use. Our Distillate typically ranges in CBD potency from 80% to 90%. During the extraction process we strive to maintain rich levels of **CBC, CBN, CBG and CBDV. 80% – 90% cannabidiol (CBD) in oil form.**

- Hemp-derived
- Sourced from Federal Farm Bill compliant hemp grown without chemical fertilizers or pesticides
- Appearance – Light Amber Oil
- Smell/Taste – Sweet, Hemp/Nutty

Our bulk CBD Distillate is 80% to 90% potency so one gram of CBD crude will contain 800 to 900 milligrams of CBD. In other words, for each milligram of distillate, you have approximately .8 to .9 milligrams of CBD.

I realize the hemp in this product may be sourced from a facility that is compliant with the 2018 Farm Bill; however, your food manufacturing facility must still comply with other applicable laws including the Federal Food, Drug and Cosmetic Act (FD&C Act), Nevada Revised Statute, and the Regulations of the Washoe County District Board of Health Governing Food Establishments. **As we discussed during our meeting on 6/11/19, products containing CBD cannot be added to food or dietary supplements and any food or dietary supplement found to contain CBD will be considered adulterated per NRS 585.310 and must be discarded. Mike and I would like to come by the Wells Ave location tomorrow to document and inventory any CBD containing products and witness destruction. Please let me know if you can be available anytime between 1pm and 3pm or propose an alternate time.**

Ingredients that are derived from parts of the cannabis plant that do not contain CBD, such as hemp seed derived products (hulled hemp seed, hemp seed protein powder, and hemp seed oil) may be allowed as ingredients in food if they meet the FDA Generally Recognized as Safe (GRAS) conditions for use.

As requested, I contacted the Nevada Department of Agriculture to enquire about facilities that have been issued approval to produce hemp seed derived products and received confirmation that Nevada does not have any facilities registered for hemp seed oil. I did not receive information about any out of state facilities with approval. However, it appears this product can be found at many grocery stores and has been in use as a food ingredient for many years. We can discuss these options in more detail tomorrow.

Please let me know your available at the time specified above.

Thank you,

Amber English, REHS

Senior Environmental Health Specialist | Environmental Health Services Division | Washoe County Health District
aeenglish@washoecounty.us | (775) 328-2629 | 1001 E. Ninth St., Bldg. B, Reno, NV 89512



WashoeEats.com

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From: Lupan, Michael
Sent: Tuesday, June 11, 2019 12:04 PM
To: English, Amber E.
Subject: FW: LiveKAYA & Dorinda's Chocolates

Michael D. Lupan, REHS, BSPH

Public Health Environmentalist | Environmental Health Services | Washoe County Health District
mlupan@washoecounty.us | (775) 328-2639 | 1001 E. Ninth St., Bldg. B, Reno, NV 89512



WashoeEats.com

From: Dustin Vance [<mailto:dustinwilliamvance@gmail.com>]
Sent: Tuesday, June 11, 2019 11:10 AM
To: Lupan, Michael
Subject: LiveKAYA & Dorinda's Chocolates

[NOTICE: This message originated outside of Washoe County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Hey Mike,

Here is where we order the oil from.

<https://cbdhempeexperts.com/>

My contact there is Gregg Sturz

Email: Gregg@CBDHempExperts.com

Office: 904-900-4747 Ext. 9004

Website: CBDHempExperts.com

Our website is

<https://livekaya.com/>

Let me know if you have any questions

Dustin Vance

COO

Dorinda's Chocolates

300 S Wells, Suite 14, Nv 89502

Office: 775-432-2024

Cell: 775-737-3472

dustin@dorindaschocolates.com

FOOD ESTABLISHMENT OFFICIAL INSPECTION REPORT NOTES

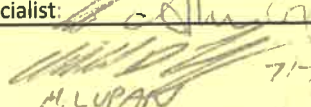

DBA/Name: Risk Category Type:	Dorinda's Chocolates		Date:	6/13/19
Address:	300 S. Wells Ave #14	City/Zip:	Reno, NV 89502	Permit #: H18-1029 Food
Person In Charge:	Dillon Vance			

Observations and Corrective Actions Continued: Notice of Violation:
On-site at Dorinda's Chocolates to discuss LiveKaya chocolates. Per Dorinda Vance (owner), LiveKaya products are manufactured in Dorinda's Chocolat kitchen at 300 S Wells where, crockpot Extracts CBD distillate 8970-9090 is added to chocolates. Chocolates are then packaged at 300 S Wells Ave #14 in the LiveKaya packaging. Product is then transported to warehouse facility located at 9250 Red Rock Road Crystal Creek Logistics. Per Dillon Vance, VP of LiveKaya approx. 1500 units of LiveKaya product is stored at Crystal Creek Logistics & no product is currently stored at Dorinda's Chocolates locations.

Per the US. FDA, CBD products are considered unapproved food additives and are not permitted for use in human food or beverages. Per section 050.050 of the Regulations of the Washoe County District Board of Health Governing Food Establishments, food may not contain unapproved food additives or additives that exceed amounts specified in law. Therefore, all food products containing CBD are considered adulterated per NRS 585.310 (010.015 WCHD regulations) and must be discarded. Operators, Dillon Vance, and Dorinda Vance, refuse to discard product, wchd staff will place hold order on LiveKaya products at Crystal Creek Logistics facility.

An opportunity to appeal this notice of violation will be provided if a written request for a hearing is filed with the Health Authority within the time period noted in Section 240.105 of the WCHD regulations and NRS 446.095.

Failure to abate violation required in this notice may result in immediate suspension of the Permit to Operate. An opportunity for an appeal will be provided if a written request for a hearing is filed with the Health Authority within the period of time established in this notice for the correction of violations. (Reference: NRS 446.895)

Re-Inspection Date (on or after):	submit appeal request per above.		
Environmental Health Specialist:		Received By:	

FOOD ESTABLISHMENT OFFICIAL INSPECTION REPORT NOTES

DBA/Name: Risk Category Type: Address: Person In Charge:	Crystal Creek Logistics 9250 Red Rock Rd suite C Mike Contos	City/Zip: Reno, NV 89506	Date: 6/13/19 Permit #: H18-0969/FOOD
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Observations and Corrective Actions Continued:

Hold ORDER FOR LIVEKAYA products.

The WCHD has determined that all LiveKaya products contain an unapproved food additive. Manufacturer of product - Darinda's Chocolate & VP of LiveKaya refuse to discard product. Therefore, the WCHD has placed a hold order on the following products stored at Crystal Creek Logistics: 2,697 units of Classic Live Kaya (270 grams/unit) and 500 units (270 grams/unit). Per Section 210.045 of the Regulations of the Washoe County District Board of Health Governing Food Establishments, it is unlawful for any person to remove or alter a hold order, notice, or tag placed on the food by the Health Authority. The food, the food containers shall be relabeled, repackaged, repressed, altered, disposed of, or destroyed without permission from the Health Authority, except by order of a court of competent jurisdiction. After the owner, operator or person-in-charge has had a hearing as provided in NRS 446.095, and on the basis of evidence provided at such hearings or on the basis of his examination in the event a written request for a hearing is not received within 10 days, the Health Authority may vacate the hold order, or may, ~~without~~ with by written order direct the owner or person-in-charge of the food which was placed under the hold order to depart or destroy such food or bring it into compliance with the provisions of NRS 446. Such order of the Health Authority, to depart or destroy such food or bring it into compliance with the provisions of NRS 446, shall be stayed if the order is appealed to a court of competent jurisdiction within ^{three} (3) days.

Food containing unapproved additives are considered adulterated. Facility must cease accepting ~~and~~ storing foods containing unapproved additives.

Failure to abate violation required in this notice may result in immediate suspension of the Permit to Operate. An opportunity for an appeal will be provided if a written request for a hearing is filed with the Health Authority within the period of time established in this notice for the correction of violations. (Reference: NRS 446.895)

Re-Inspection Date (on or after):	<u>N/A - Until further notice by WCHD.</u>
Environmental Health Specialist:	<u>[Signature]</u> Received By: <u>[Signature]</u>



To: Washoe County Health Department (WCHD)
Reference: Permit #H18-1029 FOOD
Today's Date: 17 June 2019

Dorinda's Chocolates is formally appealing the decision referenced above made on 13 June 2019 by Environmental Health Specialist Amber English #781. This appeal is regarding WCHD claiming unapproved additives being found in Dorinda's Chocolates (for wholesale to LiveKAYA LLC). This decision made by WCHD is considered by Dorinda's Chocolates to be both arbitrary and capricious.

A handwritten signature in black ink, appearing to read "Dorinda Vance", with a long horizontal flourish extending to the right.

Dorinda Vance
CEO, Dorinda's Chocolates
17 June 2019