

**IN THE SUPREME COURT OF WESTERN AUSTRALIA  
COMMERCIAL AND MANAGED CASES LIST**

**No. CIV 1561 of 2012**

B E T W E E N

**STEPHEN WILLIAM MARSH**

First Plaintiff

**SUSAN GENEVIEVE MARSH**

Second Plaintiff

and

**MICHAEL OWEN BAXTER**

Defendant

**WITNESS STATEMENT OF DIANE GORE**

I, Diane Lynette Gore, of 224 Liebelt Road, Biggs Flat in the State of South Australia, certification officer, state:

1. I work full-time as a certification officer for NASAA Certified Organic (**NCO**), which is the organic certifying business related to National Association for Sustainable Agriculture, Australia (**NASAA**). I believe that NASAA transferred its certifying business to NCO in about 2009. Before the transfer I was employed by NASAA. I started working for NASAA in 2004, and as a certification officer since 2007. Before that I worked in mixed farming near Mount Pleasant in South Australia for 24 years as well as market gardening in the Adelaide hills for 32 years. I have been actively involved in farming my whole life.
2. I received training from NASAA on how to perform the role of a certification officer from 2004 until I became a certification officer in 2007. Since then I have also participated in regular training about for my role, including in relation to the application of the *NASAA Organic Standard* (the **NASAA Standard**) and the *National Standard for Organic and Bio-Dynamic Produce* (the **National Standard**).

**DECISIONS RELATING TO EAGLE REST**

3. I am aware that on or about 29 December 2010, NASAA/NCO made a decision to de-certify paddocks 7 to 13 of a farm operated by Steve Marsh, called Eagle Rest. I understand that the decision was made in light of the discovery of a number of genetically modified (**GM**) canola plants on Eagle Rest.

4. I was not involved in the assessment process and de-certification decision in December 2010. However, I have been involved in subsequent decisions relating to the certification status of Eagle Rest.

***Exception from crop rotation requirements***

5. On or about 30 August 2011, Mr Marsh requested a “derogation” from cl 4.1.2 of the NASAA Standard for paddock 5 of Eagle Rest for oats, wheat and barley. Clause 4.1.2 provides as follows:

No annual crop of the same species, family or similar characteristic shall be planted more than 2 years out of 5 in a given field (eg garlic/onions, hard wheat/soft wheat, carrots/parsnips, white potatoes/red potatoes).

I refer to *Correspondence from Steve Marsh to Stephanie Goldfinch* [TB 0373]; *Email from Diane Gore to Steve Marsh* [TB 0377]; *Email from Diane Gore to Steve Marsh* [not tendered].

6. On or about 21 October 2011, on behalf of NCO, I decided to grant an exception to cl 4.1.2 of the NASAA Standard as requested by Mr Marsh, with effect up to November 2012. By letter dated 21 October 2011, NASAA informed Mr Marsh of that decision. I refer to *Email from Diane Gore to Steve Marsh* [not tendered]
7. On or about 4 April 2012, on behalf of NCO, I decided to grant an exception to cl 4.1.2 of the NASAA Standard for all certified paddocks at Eagle Rest (i.e., paddocks 1 to 6). By letter dated 4 April 2012, NASAA informed Mr Marsh of the decision. I refer to *Letter from Diane Gore to Steve Marsh* [not tendered].

***Review following annual inspection in November 2011***

8. I performed the 2011 post inspection review of the NCO’s annual inspection of Eagle Rest. The post-inspection review occurs after an inspector has inspected an operation that is seeking to have its certification renewed for the upcoming year.
9. On or about 1 November 2011, I received a copy of an annual inspection report prepare by Claire Coleman. I refer to *NASAA Inspection Checklist and Report* [TB 0385-0408]; *NASAA Visit Confirmation and Exit Interview* [TB 0409].

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10. Around the same time, I arranged for the sample of canola collected by during the inspection of Eagle Rest to be sent to DTS Laboratories (**DTS**) for testing. Subsequently, on 4 November 2011, I received a report from DTS that indicated that the sample was Roundup Ready Canola. I refer to *DTS Food Laboratories Lab Report* [TB 0414-0415].
11. I formed the view that it was not appropriate to re-certify the paddocks within Eagle Rest that had been de-certified in 2010. The factors that indicated to me that it was not yet appropriate to re-certify, were:
- a. The contamination (meaning the presence of GM canola plants and seed) had occurred only about a year earlier.
  - b. The 2010 contamination, according to the reports, was extensive.
  - c. Some canola plants had germinated at the time of the 2011 inspection, and those tested were found to be GM.
  - d. It was not practically possible, to my knowledge, to test large areas of the farm for the presence of GM seed or plant material, and the 2011 inspection report indicated that it was difficult to spot germinated canola plants amongst other yellow flowered plants at the time of the inspection. Given those circumstances and the extent of the contamination in 2010 I did not think that it was reasonable to conclude that there would be no more germination of GM canola, or that the contamination had been removed. I considered that further time was needed to determine the consequences of the contamination.
  - e. There is no pre-determined test in the NASAA standards to which specifies a period for decertification in any or every circumstance. It is necessary to consider the effect of any event that affects the status of an operation on a case by case basis. Standard 3.2.8 states that where GM crops are planted on the land organic production (planting or sowing) will not take place until 5 years after harvest or removal of the GM crop. The GM canola was not deliberately planted or grown by the operator in this case.
12. As I recorded in the post-inspection review sheet, I took the view that, depending on the results of tests of any suspected GM material in the future, and future land management by Mr Marsh, certification might be regained sooner than 5 years. However my task in 2011 was simply to consider recertification for the following year (2012). I refer to *NASAA Review Sheet* [TB 0416-0421].

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**Review following annual inspection in October 2012**

13. On or about the 22 December 2012, Luke (Wenpeng) You performed an initial review of an annual inspection report prepare by Kathe Purvis. I refer to *NASAA Inspection Checklist and Report* [TB 0452-0471]; *NASAA Visit Confirmation and Exit Interview* [TB 0472].
14. On or about 15 January 2013, I was asked to do a second review of the inspection report which included an assessment of how Mr Marsh was dealing with the GMO contamination on his property and whether he may be eligible for recertification. I refer to *Post Inspection Review Sheet* [TB 0476-0479].
15. Factors that indicate to me that it may be appropriate to recertify, include:
  - a. The contamination (meaning the presence of GM canola plants and seed) had occurred three years earlier.
  - b. Only a few canola plants had germinated in 2011, and no canola plants had germinated for the past growing season.
16. I discussed my recommendations with the certification manager, Sachin Ayachit, who is responsible for making the final decision.
17. At this time I am not aware if a final decision has been made but I anticipate it will be done in the coming months.

I have read the contents of this my witness statement and the documents referred to in it and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding.

**Diane Gore**

Dated: 15 February 2013