



MEMORANDUM

To: Members of the Authority

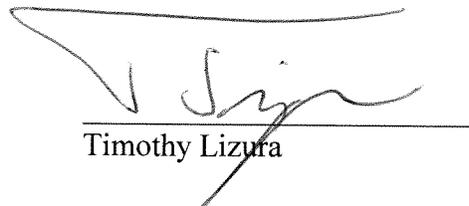
From: Timothy Lizura
President and Chief Operating Officer

Date: December 5, 2013

Subject: Technology Business Tax Certificate Transfer Program (the "Program")
Appeals – Conolog Corporation and Absecon Mills, Inc.

At the November 15, 2013 Board Meeting, the Board heard the Hearing Officer recommendation that EDA's Board uphold the declinations for both Conolog Corporation and Absecon Mills, Inc. under the Program. During the public comment portion of that meeting, both companies asked for a reconsideration of the decisions. Chairman Al Koepp directed the Hearing Officer to meet with both companies following the EDA Board meeting to discuss their concerns.

I have reviewed the attached Hearing Officer's report regarding the appeals by Conolog Corporation and Absecon Mills, Inc. I concur with the recommendation to reverse the declination of the NOL Program application for Conolog Corporation, and to uphold the declination of NOL Program application for Absecon Mills, Inc.



Timothy Lizura



MEMORANDUM

TO: Michele Brown, Chief Executive Officer
Members of the Authority

FROM: Heather M. O'Connell
Hearing Officer

DATE: December 5, 2013

SUBJECT: Technology Business Tax Certificate Transfer Program (the "NOL Program")
Appeal – Conolog Corporation and Absecon Mills, Inc.

Request:

The members are asked to approve the Hearing Officer's recommendation to reverse the declination of the NOL Program application for Conolog Corporation, and to uphold the declination of NOL Program application for Absecon Mills, Inc.

Background:

Pursuant to the enabling legislation, NJEDA administers the NOL Program including the review of each application to insure applicants meet the statutory requirements of the NOL Program. Staff recommendations are then presented to the Members for consideration. Applicants disapproved under the NOL Program may appeal the disapprovals and are permitted to submit clarifying (but not new) information to support those appeals. A Hearing Officer is assigned by the CEO to provide an independent review of the appeals. I am fulfilling the role of Hearing Officer to review the appeals, and have completed that review with legal guidance from the Attorney General's Office.

At the September 12, 2013 Board Meeting, the Members considered 62 requests from companies to participate in the NOL Program. A total of 51 (82%) requests were recommended for approval and 11 (18%) requests were disapproved. Following the September Board meeting, the 11 companies that were disapproved were sent written notice of the Board's action along with the reasons for the disapproval. In that letter, applicants were notified of the decision and were provided 20 days to appeal. Of the 11 disapproved, 7 filed appeals by the deadline of October 2, 2013.

On November 15, 2013, the Hearing Officer recommended that EDA's Board uphold the declinations for both Conolog Corporation and Absecon Mills, Inc. During the public comment portion of that meeting, both companies asked for a reconsideration of the decisions. Chairman Al Koepp directed the Hearing Officer to meet with both companies following the EDA Board

meeting to discuss their concerns. Also in attendance was Gary A. Kotler, Deputy Attorney General. During those meetings, the Hearing Officer asked each company for information and/or documentation to rebut the conclusions in support of the declination of the recommendation letter no later than the close of business on Tuesday, November 19, 2013.

Conolog Corporation

Conolog Corporation (“Conolog”) was declined because it failed to demonstrate that it is operating as a technology business as required by N.J.S.A. 34:1B-7.42(b), and had not demonstrated that it had protected proprietary intellectual property (“PIIP”) as the applicant’s primary business as required by N.J.A.C. 19:31-12.2.

Based on the initial appeal review it was determined that there was not sufficient information presented to overturn the declinations previously issued and conclude that the copyright submitted with its NOL Program application is Conolog’s primary business (based on the 2012 sales break down provided by the company) as a teleprotection utilities and communication service provider. .

On November 19, 2013, the Hearing Officer received additional clarifying information from Conolog by e-mail and followed-up with some additional questions which were answered the next day. This additional information indicated that the copyright protection of the PTR-1500 is also used and covers the PDR-2000 logic controller as well. The company indicated that the PTR-1500 and PDR-2000 as well as the initial PTR-1000 product actually all perform the same function. Further the algorithms (step by step calculation computations) for the PTR-1500 and the PDR-2000 products are exactly the same. Finally, the company estimated that 90% of the source code (written computer instructions) was the same in both of these products. The difference in the code is primarily due to updated programming hardware, certain switches and the keypad. The company asserted that a new copyright was not needed as those parts of the process that were copyrighted for the PTR-1500 remain in use for the PDR-2000. Finally, the company provided sales figures for review showing that approximately 72% of the sales in 2012 were generated by the PDR-2000 product.

After review of the clarifying information provided by the company, as the hearing officer, I am persuaded that the PDR-2000 is an improved and updated version of the PTR-1500 and would be covered under the copyright filing entitled PTR-1500 Logic Processor Source Code, since the algorithms are identical and the source code used in both products is almost identical.

As a result, I find that that the company has demonstrated it owns or licenses PPIP and meets the regulatory requirement for PPIP per N.J.A.C. 19:31-12.2. Further, the PPIP constitutes its primary business involving teleprotection utilities and communication service and, therefore, the company meets the definition of being a new or expanding technology or biotechnology company all as required by N.J.S.A. 34:1B-7.42(b).

Accordingly, I believe that Conolog has produced sufficient evidence to overturn the declinations previously issued and I am recommending that Conolog Corporation be approved for participation in the NOL Program.

Absecon Mills, Inc.

Absecon Mills, Inc. (“Absecon Mills”) was declined because it failed to demonstrate that it is operating as a technology business as required by N.J.S.A. 34:1B-7.42(b) for its traditional textile weaving business, has not demonstrated that it has PPIP as the applicant’s primary business as required by N.J.A.C. 19:31-12.2, and failed to demonstrate that it had a net operating loss in 2011 as required by N.J. S.A. 54:10A-4(k)(6)(c) and N.J.S.A. 34:1B-7.42(a)(b)(5).

Based on the initial appeal review it was determined that (i) the provisional patent application was not in the name of the company at the NOL Program deadline; (ii) the company’s primary business at the time of NOL Program application was textile weaving and not a PPIP innovative ballistics textile development technology business in connection with weave structure and improvements in related weights and measures; and (iii) the financial statements provided with the application were not prepared according to GAAP. It was also noted that EDA had received a copy of a letter of determination from the Division of Taxation stating that the company held an S-Corporation status and therefore did not have any net operating losses.

On November 19, 2013, the Hearing Officer sent two e-mails reminding Absecon Mills that additional clarifying information and/or documentation was required by the close of business on that date. No response was received. Another e-mail was sent to the company on November 20, 2013 confirming that no additional information was ever provided by the company. On Thursday, November 21, 2013, the Hearing Officer spoke with Mr. Randolph Taylor, President and CEO asking whether he would be submitting additional information and/or documentation. At that time he informed the Hearing Officer that he was accepting the initial appeal decision to uphold the declination due to the above determination by the Division of Taxation.

In that regard, EDA received a copy of a subsequent letter from the Division of Taxation to Absecon Mills dated November 18, 2013 stating that the company continued to be a New Jersey S-Corporation resulting in any NOL’s not having a benefit value to be sold.

Since no additional information was provided regarding the company’s PPIP or financial statements I am unable to recommend that the Board overturn the declinations previously issued. Further, based on this determination by the Division of Taxation, I conclude that the company is not eligible to participate in the NOL Program which requires that net operating losses are to be utilized.

Recommendation:

As a result of careful consideration of the above appeals in consultation with the Attorney General's Office, the recommendation of the Hearing Officer is to (i) reverse the declination and approve the participation of Conolog Corporation in the NOL Program, and (ii) uphold the declination of NOL Program application for Absecon Mills, Inc.

Prepared by: Heather M. O’Connell, Hearing Officer