

FINAL MINUTES

Board of Agriculture and Consumer Services
Hilton Garden Inn Suffolk & Suffolk Conference Center
Speight Conference Room
Suffolk, Virginia
August 19, 2008

CALL TO ORDER

President Holland called to order the meeting of the Board of Agriculture and Consumer Services at 1:00 p.m. on Tuesday, August 19, 2008, in the Speight Conference Room at the Hilton Garden Inn Suffolk and Suffolk Conference Center in Suffolk, Virginia. Mr. Holland requested a moment of silence.

WELCOME FROM REPRESENTATIVE OF SUFFOLK

President Holland recognized Ms. Hunt, a representative of the City of Suffolk, who welcomed the Board to the city on behalf of the Mayor and members of City Council. She also briefed the Board on Suffolk's history and development.

WELCOME AND ACKNOWLEDGEMENTS

Mr. Holland welcomed former board members, Joe Barlow and Jack Hardesty, who participated in the meeting and tours. He thanked Mr. Rogers and his family for hosting the meeting and tours. He recognized the very successful Ag Expo that Mr. Bain hosted on his farm the week before. He mentioned the passing of Mr. Bain's grandson and asked the board and staff to keep Mr. Bain and his family in their prayers.

ROLL CALL

Mr. Seward reported that Mr. Galligan resigned from the Board after his military unit was called to active duty. He then called the roll:

PRESENT

Stephen Ellis
L. Bruce Holland
Paul W. Rogers, Jr.
William B. Bain
Traci R. Talley
Edward S. Fleming
Charles C. Clark, Jr.
John D. Hardesty, Jr.
Melvin Murphy
Eddie N. Moore, Jr.
Dr. Sharron Quisenberry

DISTRICT

1st
2nd
3rd
4th
5th
7th
9th
10th
11th
President of Virginia State University
Representing, President of Virginia Tech

ABSENT

Andrea Lohr
Gregory J. Galligan

6th
8th

STAFF PRESENT

Todd P. Haymore, Commissioner

Donald G. Blankenship, Deputy Commissioner

Roy E. Seward, Board Secretary

APPROVAL OF MINUTES

Mr. Rogers moved that the minutes of the meeting of May 15, 2008, be accepted as distributed. His motion was seconded by Mr. Murphy and carried by unanimous vote.

REPORT FROM BOARD MEMBERS

Dr. Quisenberry, Dean of the College of Agriculture and Life Sciences at Virginia Tech, reported that her college will have an enrollment of more than three thousand students this fall. She noted that a number of very critical extension agent positions have been filled and that this has been important in moving extension programs forward. Dr. Quisenberry reported that research has increased significantly and the main goal of the college is to meet the needs of the people of Virginia and ensure that production agriculture stays in the forefront of what they are doing to keep people in business.

Ms. Talley reported that earlier spring rains did provide some relief but that it is now very hot and dry in her area. She noted that the corn and soybean crops desperately need precipitation. She added that the tobacco crop is now being harvested and has been affected significantly by heat and drought.

Mr. Hardesty congratulated Mr. Bain on an excellent Ag Expo. He reported that the barley crop averaged about 80 bushels per acre in his district. He told the Board that his area has had a good season for apples, corn, hay, peaches, and wheat. He added that pastures are dry and that soybeans need some rain. Concerning consumer prices, he added that farmers are being hit hard by the high cost of fuel.

Mr. Clark reported that rainfall for his district is five inches below normal so far this year and that the area has not recuperated from last year's drought. He noted that his area had spotty rains in July, but that subsoils are very dry and that wells are going dry. He expressed concern for the economic problems caused by the fallout in the housing industry and the impact it is having on financial institutions, including banks that provide credit to farmers and other local business people.

Mr. Rogers thanked Mr. Bain for the great job he did on the recent Ag Expo and expressed his condolences to him for the loss of a family member. He reported that his district is dry but that there are some areas that have received spotty rainfall. He noted that the area around Suffolk is probably one of the better areas for rain. He added that his area, overall, had an excellent wheat crop.

During his report Mr. Murphy expressed his condolences to Mr. Bain. He mentioned the local excitement created by an earthquake. He noted that his local farmers market has increased its sale of tomatoes following the national scare regarding the safety of fresh

tomatoes and the later confirmation that Virginia grown tomatoes are safe for consumption.

Mr. Ellis reported that his district has had plenty of rain since spring but currently there are just pockets of rainfall in some areas. He noted that the grain industry has seen the cost of fertilizer and seed go up over fifty percent and added that this situation ties back to whether the bank will loan you enough money to plant your crops next year. He explained that farmers with bumper crops will not have those issues, but those with average yields will have to worry about whether they can afford to start over again next spring. He reported that his district had a wonderful wheat harvest but that barley yields were down, and corn has been planted and replanted. He added that soybean growers need two more good showers to make their crop.

Mr. Bain reported that his area now is critically dry and has been dry since early June. He told the Board the wheat crop in his district was very good. He noted that the rising cost of inputs such as fertilizer will discourage farmers in his district from planting wheat this fall. He thanked everyone who participated in this year's Ag Expo held on his farm in Dinwiddie County.

Mr. Fleming reported on the very dry conditions in his area noting that the pastures are dry and that the hay crop has been very poor this year. He added that farmers have been feeding their livestock for over a month. He advised the Board that the wheat crop was good, that early beans look good, and that corn, which is being harvested, is not looking good. He emphasized that input costs are still rising. He noted that, thanks to the dry weather, very little produce has been going to the farmers markets.

Mr. Holland reported that this year he had the best wheat crop ever. He stated that the corn crop varies depending on when it was planted and that it does not look good in some areas. He noted that snap beans have turned out to be good and that the Eastern Shore had an extremely good potato crop and that prices paid for the crop were fantastic. He reported the staked tomatoes started out slow but are turning out to be good. He cautioned that the soybean crop needs rain but added that crops in his area are in better shape than in most other areas of Virginia.

During his report to the Board, Mr. Moore, President of Virginia State University, presented the Board with a brochure that provides information about several agricultural events scheduled for the remainder of 2008.

COMMISSIONER'S REPORT

Commissioner Haymore briefed the Board on personnel changes, recent and future events and other matters relating to the Department, agriculture, and consumer protection. A copy of a written report on which his presentation was based was included in the Board's meeting folders. During his report the Commissioner noted that Governor Kaine had approved the filing of the final scrapie eradication regulation and

the fast-track repeal of the the regulation concerning qualification of humane investigators.

He advised the Board that he had responded to a letter from the County Administrator of Dinwiddie County acknowledging that locality's request for federal disaster designation. During his comments, he thanked Mr. Bain for hosting the Ag Expo. He also mentioned that former Commissioner Carlton Courter is now Assistant Vice President at First Bank and Trust and that Mr. Courter sends his regard to everyone.

The Commissioner reported that an economic impact study covering Virginia's agriculture and forestry will be released for distribution the last week of September. He added that the data will show that agriculture continues to be state's number one industry. He also mentioned his participation in a series of meetings organized by the Virginia Agribusiness Council that are being held around the Commonwealth. He noted that these meetings provide him an opportunity to meet and interact with members of Virginia's agriculture industry. He closed with an expression of thanks to the Board and staff for their support, cooperation and friendship during his first year as Commissioner.

VIRGINIA GYPSY MOTH QUARANTINE (2 VAC 5-330)

Commissioner Haymore called on Andy Alvarez, Director of the Division of Consumer Protection, who briefed the Board on the Commissioner's regulatory action to expand the boundaries of the existing Virginia Gypsy Moth Quarantine to add Floyd and Franklin counties. Mr. Alvarez advised the Board that state law requires that within 90 days of the Commissioner's action the Board be advised of the change in boundaries of the quarantine. He also briefed the Board on actions being taking to make the expanded quarantine a final regulation.

PUBLIC HEARING – EMERALD ASH BORER QUARANTINE (2VAC 5-335)

President Holland recessed the Board meeting at 1:55 p.m. He then convened the Board for a public hearing at 2:00 p.m. to discuss the proposed Emerald Ash Borer Quarantine - 2 VAC 5-335, to receive comments from the staff and the public on the proposed quarantine that would replace the temporary quarantine the Commissioner put in place in July 2008.

The Commissioner introduced Mr. Alvarez, who, along with Frank Fulgham of his staff, reviewed with the Board the purpose and need for a regulation establishing a quarantine to replace the temporary one the Commissioner had adopted using the authority provided by law. The Board was advised that it has the authority to hold a public hearing on this proposal and, if the Board wishes, to adopt the draft regulation after hearing staff and public comments on the measure.

After the staff comments, President Holland called on members of the public who wished to speak about the proposal. Mr. Alvarez advised that there was no one present who expressed an interest in offering comments at the public hearing.

After comments and questions from the Board, Mr. Holland closed the hearing.

EMERALD ASH BORER QUARANTINE (2 VAC 5-335)

President Holland reconvened the Board meeting and called on Mr. Alvarez who presented staff recommendations regarding the Emerald Ash Borer Quarantine and to answer questions from the Board.

Mr. Holland called for a motion, and Mr. Clark moved that the Board of Agriculture and Consumer Services adopt as a final regulation the Emerald Ash Borer Quarantine, 2 VAC 5-335, as presented by staff and that the Board direct staff to take any and all steps necessary to put this regulation into effect. Mr. Ellis seconded the motion.

In response to a question from Mr. Bain, Mr. Fulgham told the Board that citizens in the affected localities are aware of this insect problem. He also noted that the state's best stands of ash trees are in the Shenandoah Valley.

Following discussion, the Board voted unanimously to approve Mr. Clark's motion.

NOTICE OF INTENDED REGULATORY ACTION - REGULATIONS FOR THE APPLICATION OF FERTILIZER TO NONAGRICULTURAL LANDS (2 VAC 5-405)

President Holland called on Mr. Alvarez to give the staff presentation concerning the need for the Board to begin the regulatory process for promulgating a new fertilizer regulation.

Mr. Alvarez explained that during the 2008 session of the Virginia General Assembly, the state legislature passed Senate Bill 135, amending the Virginia Fertilizer Act, which requires the Board to adopt regulations prescribing certain training and application requirements for fertilizer contractor-applicators and licensees who apply regulated product on nonagricultural property.

He added that the resulting nutrient management training and certification program requirements must comport with the guidelines promulgated by the Department of Conservation and Recreation pursuant to § 10.1-104.2 of the Code of Virginia. He explained further that the Board needs to adopt regulations to establish such requirements in consultation with a technical advisory committee of stakeholders to be formed by the Board.

In response to the staff recommendation that the Board initiate the regulatory process to promulgate new regulations for the application of fertilizer to nonagricultural lands, Mr. Clark moved that the Board of Agriculture and Consumer Services adopt the staff proposal concerning the filing of a Notice of Intended Regulatory Action to promulgate the regulation 2 VAC 5-405, Regulations for the Application of Fertilizer to Nonagricultural Lands, and that the Board direct staff to take any and all steps necessary to give effect to the Notice of Intended Regulatory Action. Mr. Moore seconded Mr. Clark's motion and the motion was carried by a unanimous vote.

In response to the staff recommendation concerning what organizations and agencies should be represented on the technical advisory committee that will assist the Board in developing the regulations, Mr. Moore moved that the Board of Agriculture and Consumer Services approve the creation of a technical advisory committee of stakeholders that will include representatives designated by the following organizations and agencies:

- Virginia Agribusiness Council
- Virginia Farm Bureau Federation
- Virginia Cooperative Extension
- Virginia Crop Production Association
- Virginia Golf Course Superintendents Association
- Virginia Green Industry Council
- Virginia Nursery & Landscape Association
- Virginia Turfgrass Council
- Virginia Department of Conservation and Recreation

In response to Board member comments regarding the addition of other groups and organizations, Donna P. Johnson of the Virginia Agribusiness Council advised the Board that VAC supports the recommended lists as sufficient.

After discussion, a motion was made by Mr. Moore, seconded by Mr. Ellis, and carried by unanimous vote.

Following staff's recommendations, Mr. Murphy moved that the Board of Agriculture and Consumer Services authorize the Commissioner to add additional organizations and individuals to the technical advisory committee as he deems appropriate during the regulation making process. Mr. Moore seconded the motion, and it was carried by unanimous vote.

PUBLIC PARTICIPATION GUIDELINES REGULATION (2 VAC 5-11)

President Holland called on Deputy Commissioner Don Blankenship who briefed the Board concerning the need to adopt model public participation guidelines that would replace the existing guidelines.

The Deputy Commissioner introduced Perida F. Giles, Assistant Director of the Office of Policy, Planning and Research, who provided additional information concerning the need for the recommended action that would repeal the existing regulation 2 VAC 5-10 and replace it with the proposed regulation 2 VAC 5-11 through the exempt process for regulation making. She explained that, with the Board's approval, the exempt action would be filed so that it would become effective on or after October 1, 2008, when Title 3.2 of the Code of Virginia becomes effective.

Following Board questions and comments, Mr. Fleming moved that the Board of Agriculture and Consumer Services, through an exempt regulatory process, repeal the

current Public Participation Guidelines, 2 VAC 5-10, adopt the Public Participation Guidelines, 2 VAC 5-11—the model guidelines presented by staff—and that the Board direct staff to take any and all actions necessary to give effect to these motions. The motion was seconded by Mr. Moore, and carried by a unanimous vote.

CIVIL PENALTY MATRICES – OFFICE OF PRODUCT & INDUSTRY STANDARDS

President Holland called on Mr. Alvarez to present to the Board staff recommendations concerning the revision of the two civil penalty matrices adopted by the Board several years ago to provide direction to staff in assessment of civil penalties for persons who violate the Weights and Measures Law and the Motor Fuels and Lubricating Oils Law. Mr. Alvarez advised that, in a review of the existing matrices, staff determined that the matrices need to be updated to make them more equitable and useable in compliance efforts.

After Mr. Alvarez reviewed the proposed changes to the Civil Penalty Matrix used in assessing violations of the Weights and Measures Law, Mr. Moore moved that the Board of Agriculture and Consumer Services adopt the revised civil penalty matrix presented by staff that is used for assessing civil penalties for violations of the Weights and Measures Law and that the revised matrix be effective October 1, 2008.

Mr. Murphy seconded the motion. Following questions from Mr. Moore and other Board members regarding the purpose and objectives of the proposed changes affecting repeat violations, the Board voted 9 to 2 to adopt the revised matrix with Mr. Moore and Dr. Quisenberry opposing the motion.

After Mr. Alvarez's review of the proposed changes to the Civil Penalty Matrix used in assessing violations of the Motor Fuels and Lubricating Oils Law, Mr. Clark moved that the Board of Agriculture and Consumer Services adopt the revised civil penalty matrix presented by staff that is used for assessing civil penalties for violations of the Motor Fuels and Lubricating Oils Law and that the revised matrix be effective October 1, 2008.

Mr. Murphy seconded the motion. Following comments, the Board voted unanimously to approve the motion and adopt the revised matrix.

VIRGINIA AGRICULTURAL STATISTICS SERVICE (VASS) REPORT

Herman Ellison, Director, Virginia State Office, National Agricultural Statistics Service, USDA, briefed the Board on VASS surveys and reports including the recent report on crop production, the rotational studies, and the Agriculture Census work.

NEW BUSINESS

President Holland opened the floor for new business, but no items were presented for discussion.

PLANS FOR BOARD TOUR

Mr. Holland called on Mr. Rogers who gave a brief report on plans for the evening cookout at his farm and the Board tour the next day. Fred Garner of Birdsong

Peanuts briefed the Board and staff on his company which would be visited during the Board tour.

FUTURE BOARD MEETINGS

Mr. Holland reported that the next meeting of the Board is scheduled for December 4, 2008. He advised that tentative Board meeting dates include March 19, 2009, and May 21, 2009.

PUBLIC COMMENT PERIOD

Mr. Holland called for public comment, but no one requested an opportunity to speak.

ADJOURNMENT

The Board adjourned at approximately 4:20 p.m.

Respectfully submitted,

L. Bruce Holland, Board President

Roy E. Seward, Board Secretary