

**FINAL MINUTES**  
**Board of Agriculture and Consumer Services**  
**General Francis Marion Hotel, 107 E. Main St., Marion, Virginia**  
**August 16, 2007**

The meeting convened at 1:00 p.m. on Thursday, August 16, 2007 at the General Francis Marion Hotel, 107 East Main Street in Marion, Virginia. President Holland requested a moment of silence.

Mr. Holland called the meeting to order and then recognized Edwin Whitmore, County Administrator, who welcomed the Board members to Smyth County. He provided the board with a brief overview of the county.

At the request of Mr. Holland, the Board Secretary called the roll:

**PRESENT**

Stephen Ellis  
L. Bruce Holland  
Paul W. Rogers, Jr.  
William B. Bain  
Traci Rickman Talley  
Charles C. Clark, Jr.  
Dr. Wondi Mersie

James Riddell

**DISTRICT**

1<sup>st</sup>  
2<sup>nd</sup>  
3<sup>rd</sup>  
4<sup>th</sup>  
5<sup>th</sup>  
9<sup>th</sup>  
Representing President of Virginia  
State University  
Representing President of Virginia Tech

**ABSENT**

Andrea Lohr  
Edward S. Fleming  
Gregory J. Galligan  
John D. Hardesty, Jr.  
Melvin Murphy

**STAFF PRESENT**

Todd P. Haymore, Commissioner  
Donald G. Blankenship, Deputy Commissioner  
Roy E. Seward, Board Secretary

**APPROVAL OF MINUTES**

The minutes of the May 17th meeting were approved with corrections.

**REPORT FROM BOARD MEMBERS**

Mr. Clark in his report about drought conditions in his area noted that farmers have been fortunate that livestock prices are still good. He indicated that he was glad to have the Board and VDACS staff visiting Marion and Saltville and noted that the town and country dinner the Board and staff will attend in the evening is sponsored by the Smyth County

## **Board of Agriculture & Consumer Services - Final Minutes**

**August 16, 2007**

**Page 2**

Farm Bureau. He added that on tomorrow's tour the Board will visit the Saltville area of the county.

Mr. Rogers reported that his area is as dry as southeast Virginia. He added that the wheat crop was good but that the corn crop is nearly a disaster. He indicated that the soybean crop in his area will also be a disaster without rain. He reported that the cotton crop is going to be very poor and that there is a chance for a fair peanut crop if rain comes.

Dr. Wondi Mersie, who represented Virginia State University's President Moore, reported that his University will be having the annual Agriculture Field Day on August 22, 2007. He added that this year's event will focus on agri-tourism.

Mr. Riddell, who represented Virginia Tech's President Steger, reported that there are 5,000 students in Tech's freshman class. He noted that the University will be dedicating a student and faculty memorial on August 19, 2007. He added that new security measures are in place on the campus. He indicated that next year's Ag Expo will be on Mr. Bain's farm. He reported that the Virginia Department of Agriculture and Consumer Services, the Virginia Farm Bureau Federation, and Cooperative Extension will sponsor a Virginia exhibit at the 2007 Sunbelt Agricultural Exposition during October 16-18 in Moultrie, Georgia. He added that the Secretary of Agriculture and Forestry and Commissioner Haymore will be attending.

Mr. Riddell reported plans to hire new Extension specialists in organic horticulture, forage and grassland, and value-added livestock. He also briefed the Board about fall livestock marketing sales planned in cooperation with VDACS. He also reviewed the status of federal drought disaster designations for Virginia localities.

Ms. Talley, who was recently appointed by Governor Kaine to fill Wanda McDowell's unexpired term as Board member from the Fifth Congressional District, reported that her area is very dry and that farmers in most of her area have had to put their cattle on supplemental feeding for 45 days. She added that it is fortunate that cattle prices have been good. She advised that the corn crop in her district is gone and that there is little hope for the soybean crop, which was planted late. She noted that the tobacco crop is holding its own but that rain is desperately needed. She explained that available water sources were utilized early for irrigation. She reported that the Halifax County Board of Supervisors has requested a federal drought disaster designation in response to the dry conditions.

Mr. Bain, who was recently appointed by the Governor to the Board as a member from the Fourth Congressional District, reported that his area has received less than an inch of rain in ten weeks. He noted that the 1980 drought is the benchmark for what a drought is. He added that this year's drought is putting a tremendous strain on farmers in terms of high input costs and production losses. He noted that he grows peanuts, corn, soybeans, wheat, and beef cattle. He added that the potential yields for most of his crops have been severely reduced and that it looks like wheat is going to be his best crop. He stated that he looked forward to working with the Board and hoped to be an asset to the group.

## **Board of Agriculture & Consumer Services - Final Minutes**

**August 16, 2007**

**Page 3**

Mr. Ellis, who was recently appointed to the Board as a member from the First Congressional District, reported that his family's farm is located in Essex County. He added that he looked forward to working with the Board. He noted that, because of the dry weather, corn yields in his area are expected to be 20 to 30 bushels per acre and that soybeans are expected to yield less than 10 bushels per acre. He mentioned the Easter freeze that killed wheat and barley and stunted a lot of what was left. In his report he mentioned the status of the crab and fishing industries in his district. He made the observation that perhaps farm land may not be the sole cause of pollution in the Chesapeake Bay given that we are still having problems with the Bay in a year when there has not been enough rain to wash nutrients from farm land. He commented that crop prices are expected to be high for the next two or three years.

Mr. Holland noted that the area of the Eastern Shore where he farms has had better growing conditions this year than some other areas. He reported that the corn crop in his area is going to be off by no more than 25 percent from the normal crop. He noted that the soybean crop has suffered a greater reduction. He mentioned that bio-diesel production has pushed up soybean prices. During his report he introduced the Board to Todd P. Haymore, the new Commissioner of Agriculture and Consumer Services.

Although he was unable to attend the meeting, Mr. Hardesty sent the Board a written report which Mr. Seward read. In that report Mr. Hardesty advised that his spring wheat and barley crops were yielding an average of 80 to 90 bushels per acre. He reported that his hay crop is off by 40 to 50 percent from last year because of reduced rainfall. He noted that the first half of the corn and soybean growing season was normal, but that in the dry second half he expected only 50 to 60 percent of a normal crop. He reported this year his area has had a large apple crop but dry conditions have reduced the size of apples produced. He added that his area has a good peach crop and that prices have doubled from a year ago because the rest of the production areas in the east had a very small crop due to extremely dry weather.

### **COMMISSIONER'S REPORT**

Commissioner Haymore thanked Mr. Clark for hosting the summer board meeting. He also commented on his recent appointment and shared with the Board information about his background and his experience with government and agriculture. He then called on Deputy Commissioner Blankenship who briefed the Board on agency operations. A copy of a more detailed report was included in the Board's meeting folders. Commissioner Haymore also publicly commended and thanked Deputy Commissioner Blankenship and the entire VDACS staff for their leadership and hard work in the absence of a Commissioner during the last nine months.

### **PROPOSED REVISION OF POUNDS/SHELTERS CIVIL PENALTY MATRIX**

President Holland called on Dr. Richard Wilkes, State Veterinarian and Director of the Division of Animal and Food Industry Services, who reviewed with the Board a

## **Board of Agriculture & Consumer Services - Final Minutes**

**August 16, 2007**

**Page 4**

proposed revision of the pounds/shelters civil penalty assessment matrix. A copy of the proposed revision of the matrix was included in the Board meeting folders.

Following questions and comments from the Board, Mr. Clark moved that the Board of Agriculture and Consumer Services adopt the revised matrix presented by Dr. Wilkes and direct staff to file this revised matrix with the Virginia Registrar of Regulations.

Mr. Rogers seconded the motion and it was carried by a unanimous vote of the Board.

### **DRAFT NOTICE OF INTENDED REGULATORY ACTION FOR 2 VAC 5-200**

President Holland called on Dr. Wilkes who reviewed the need to initiate regulatory action to begin the process for amending 2 VAC 5-200, Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry. Dr. Wilkes summarized the need for this regulatory action and recommended that the Board adopt the draft notice of intended regulatory action for 2 VAC 5-200 included in the meeting folders.

Following Dr. Wilkes' presentation, Mr. Ellis moved that the Board of Agriculture and Consumer Services adopt the draft notice of intended regulatory action to amend 2 VAC 5-200, Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry, and direct staff to take any and all steps needed to give effect to this notice of intended regulatory action.

Mr. Clark seconded the motion and the Board voted unanimously to pass the motion.

### **DRAFT NOTICE OF INTENDED REGULATORY ACTION FOR 2 VAC 5-70**

President Holland called on Dr. Wilkes to brief the Board on the need to begin the regulatory process for amending 2 VAC 5-70, Health Requirements Governing the Control of Equine Infectious Anemia in Virginia. Dr. Wilkes talked about the need to amend the current regulation and recommended that the Board adopt the draft notice of intended regulatory action for 2 VAC 5-70 included in the meeting folders.

After discussion, Mr. Rogers moved that the Board of Agriculture and Consumer Services adopt the draft notice of intended regulatory action to amend 2 VAC 5-70, Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry, and direct staff to take any and all steps needed to give effect to this notice of intended regulatory action.

Mr. Bain seconded the motion and the Board voted unanimously to pass the motion.

### **LIVESTOCK MARKETING REPORT**

President Holland called on Frank Graves, Director of Livestock Marketing Services (LMS) and the current Acting Director of Marketing, who introduced John Beahm of his staff who opened an audio-video presentation on the programs Livestock Marketing Services (LMS) is providing to serve livestock producers. He was followed by C. W. Pratt, also a member of the LMS staff, who concluded the presentation.

## **Board of Agriculture & Consumer Services - Final Minutes**

**August 16, 2007**

**Page 5**

In response to his question about funding of the LMS programs and services, Mr. Bain was informed that farmers do pay for the cost of services received.

President Holland recognized Deputy Commissioner Blankenship who advised the Board that VDACS will soon hold interviews for the vacant Director of Marketing position. Mr. Blankenship expressed appreciation for Mr. Graves and Kent Lewis (Director of Domestic Marketing) alternating as Acting Director of Marketing over the past several months.

### **BOARD RESPONSE TO RIGGS APPEAL TO CIVIL PENALTY ASSESSMENTS**

President Holland noted that the Board meeting folders include a copy of the agency record regarding the appeal of the civil penalty assessments totaling \$15,000 made by the Virginia Department of Agriculture and Consumer Services (VDACS) against Riggs Oil Company.

Mr. Holland noted that a copy of the agency record was sent to the Board members and to Arnold Riggs, President, Riggs Oil Company, prior to the August 16<sup>th</sup> meeting.

Mr. Holland advised the Board that it will consider and act on the report and recommendations of the court-appointed hearing officer who heard Mr. Riggs present his appeal at a formal hearing in April of 2007.

Mr. Holland added that the Board needs to decide whether it wishes to adopt and approve the report of the court-appointed hearing officer who has recommended that the assessments against Riggs Oil Company be sustained.

Mr. Holland noted that the Board will hear comments from VDACS staff and from Mr. Riggs who asked for 20 minutes to respond to the agency record of the appeal and clarify evidence in the record and refute the report of the hearing officer, pursuant to the Administrative Process Act, Section 2.2-4021(A) of the Code of Virginia. He advised that the Board may ask questions of the Department staff and Mr. Riggs.

Mr. Holland stressed that the objective of the Board, Mr. Riggs and VDACS staff is to stay focused on the agency record of the appeal. He noted that both staff and Mr. Riggs are to speak about the record of the appeal presented and not attempt to present information not already in the record.

Mr. Holland called on Andy Alvarez, Director of the Division of Consumer Protection, who introduced Bob Bailey, Program Manager, Office of Product and Industry Standards. Mr. Bailey briefed the Board concerning the agency record.

Mr. Holland called on Mr. Riggs, President of Riggs Oil Company, to present his 20 minutes of comments to clarify or refute the agency record of the appeal.

## Board of Agriculture & Consumer Services - Final Minutes

August 16, 2007

Page 6

Mr. Riggs in his comments challenged the evidence provided by VDACS staff and encouraged the Board to “do the math”.

Following Mr. Riggs’ comments, Mr. Rogers suggested that the Board go into a closed meeting to consult with Eric Gregory, Assistant Attorney General. In response to Mr. Rogers, the Board Secretary read the following motion:

Mr. President, pursuant to Sections 2.2-3711 and 2.2-3712 of the Code of Virginia, Paul Rogers hereby moves that the Board of Agriculture and Consumer Services convene a closed meeting. The subject matter of the closed meeting is agenda item number 11, Board Response to Report on Appeal of Civil Penalty Assessments. The purpose of the closed meeting is to consult (pursuant to Section 2.2.3711 (A) (7) of the Code) with legal counsel, Mr. Eric A. Gregory, to seek his legal advice regarding litigation. Because their presence is necessary or will reasonably aid the Board in its consideration of this topic, the following staff of the agency (pursuant to authority contained in Section 2.2-3712 (F) of the Code of Virginia) should also participate in the closed meeting: Commissioner Todd P. Haymore, Deputy Commissioner Don Blankenship, Andy Alvarez, Bob Bailey, and Roy Seward.

Mr. Clark seconded the motion and the Board votes on this motion were as follows:

AYES: 8

NAYES: 0

ABSENT DURING VOTING: All Board members attending the meeting participated in the voting.

ABSENT DURING THE MEETING: Andrea Lohr, Edward S. Fleming, Gregory J. Galligan, John D. Hardesty, Jr., and Melvin Murphy

[At this point the Board closed the meeting.]

[The Board reopened its meeting.] In the open meeting, the Board Secretary read the following “Certification of Closed Meeting”:

“Whereas, the Board of Agriculture and Consumer Services has convened a closed meeting on this date, August 16, 2007, pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

Whereas, Section 2.2-3712 (D) of the Code of Virginia requires a certification by the Board of Agriculture and Consumer Services that such closed meeting was conducted in conformity with Virginia law;

**Board of Agriculture & Consumer Services - Final Minutes**

**August 16, 2007**

**Page 7**

Now, therefore, be it resolved that the Board of Agriculture and Consumer Services hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements under the Freedom of Information Act, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were held, discussed or considered by the Board of Agriculture and Consumer Services."

Mr. Clark made the motion and it was seconded by Mr. Rogers.

The Board Secretary then conducted a roll call vote of each Board member on the question of whether he or she would certify the statement read by the Board Secretary:

The Board voted as follows on the certification statement:

AYES: 8

Dr. Mersie -	"I certify"
Mr. Ellis -	"I certify"
Mr. Bain -	"I certify"
Mr. Clark -	"I certify"
Mr. Rogers	"I certify"
Ms. Talley -	"I certify"
Mr. Holland -	"I certify"
Mr. Riddell -	"I certify"

NAYES: 0

ABSENT DURING VOTING: All members attending the meeting participated in the voting.

ABSENT DURING THE MEETING: Andrea Lohr, Edward S. Fleming, Gregory J. Galligan, John D. Hardesty, Jr., and Melvin Murphy.

Mr. Rogers moved that the Board of Agriculture and Consumer Services accept and adopt the report and the findings of Thomas P. Walk, administrative hearing officer, regarding the appeal of Arnold Riggs, President, Riggs Oil Company, and the recommendation that the agency sustain the imposition of the civil penalties of \$1,000.00 for each of the violations cited in the report.

Mr. Clark seconded the motion and the Board voted unanimously to pass the motion.

President Holland thanked Mr. Riggs and the staff for their comments on the appeal and advised Mr. Riggs that a formal statement consisting of the final case decision concerning the Board's decision will be sent to Mr. Riggs in writing along with information concerning Mr. Riggs' rights to appeal the case decision.

**PLANS FOR BOARD TOUR**

Mr. Clark briefed the Board on plans for dinner in Chilhowie and the Board tour the next day in the Saltville area.

**NEW BUSINESS**

Commissioner Haymore brought to the Board's attention an email he received from Chuck Duvall of Virginia Wine Wholesalers Association, Inc. (VWWA), concerning the resignation of Danny Tomlin from the Virginia Wine Distribution Corporation board of directors and VWWA's recommendation that Joe Gigliotti, President and General Manager of Republic National Distributing Company-Virginia, be appointed to the board of directors to fill Mr. Tomlin's unexpired term as an owner or manager of a wine wholesaler licensee.

Mr. Clark made the motion that the Board accept Mr. Tomlin's resignation and appoint Mr. Gigliotti to fill Mr. Tomlin's unexpired term on the board of directors of the corporation as an owner or manager of a wine wholesaler licensee.

Mr. Bain seconded the motion and it was carried by a unanimous vote.

**PLANS FOR FUTURE BOARD MEETINGS**

Mr. Seward reported that the next meeting of the Board will be held on December 6, 2007, in Richmond. It was agreed that the postponed public hearing on the proposed scrapie regulation be held in conjunction with the December meeting. An orientation for the three new Board members will be held in the afternoon of December 5. The first two Board meetings for 2008 are scheduled for March 20 and May 15 in Richmond.

**PUBLIC COMMENT PERIOD**

Christine Solem of Charlottesville thanked President Holland for postponing the August 23<sup>rd</sup> public hearing on the proposed scrapie regulation. She expressed concerns for requirements the proposed regulation would place on small farmers.

**ADJOURNMENT**

The Board adjourned at 4:40 p.m.

Respectfully submitted,

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L. Bruce Holland, Board President

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Roy Seward, Board Secretary