

FINAL MINUTES

Board of Agriculture and Consumer Services
Senate Room 3, State Capitol, Richmond, Virginia
Thursday, March 28, 2013

The meeting convened at 9:00 a.m. on Thursday, March 28, 2013, in Senate Room 3, State Capitol, Richmond, Virginia. President Rogers called the meeting to order. At the President's request, Mr. Mills gave the invocation.

The Board Secretary called the roll:

PRESENT

Stephen Ellis
Steve Sturgis
Paul W. Rogers, Jr.
William B. Bain
Robert J. Mills, Jr.
Rosalea Riley
Edward S. Fleming
Patrick A. Toulme
Charles C. Clark, Jr.
John D. Hardesty, Jr.
Kirk Wiles
Elizabeth L. White
Kevin J. Kordek
Dr. Wondi Mersie

Lonnie Johnson

DISTRICT

1st
2nd
3rd
4th
5th
6th
7th
8th
9th
10th
11th

Pesticides – Commercial Agricultural
Pesticides – Commercial Structural
Representing Dr. Keith T. Miller, President,
Virginia State University
Representing Dr. Charles W. Steger, President,
Virginia Tech

STAFF PRESENT

Matthew J. Lohr, Commissioner
Sandra J. Adams, Deputy Commissioner
Roy E. Seward, Board Secretary

APPROVAL OF MINUTES

Mr. Mills made a motion that the minutes of the meeting held on December 6, 2012, be approved as distributed. Mr. Fleming seconded the motion and it was passed by the Board with a unanimous vote.

REPORT FROM BOARD MEMBERS

Mr. Fleming reported that in his area the ground was still dry; that farmers had started preparing their fields for corn. He noted that some of the wheat crop in the fields is excellent while some of the crop is poor. He reported that fertilizer costs did go down for a while but that prices are now moving up. He reported that farmers have increased their corn acreage this year from 25 to 50 percent over last year.

Mr. Sturgis reported that the Eastern Shore is very wet after all the rain it has received. He noted that farmers have not finished top dressing their wheat crop. He also noted that his district has been experiencing a prolonged cold period this season and that a potato farmer told

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him last week that the soil temperature is low and that this condition is going to affect his crop. He also reported on the 70+ arson fires in Accomack County that appear to target vacant buildings in the area.

Ms. White reviewed with the Board the report of the work of the Division of Consumer Protection's Office of Pesticide Services. A copy of this report was included in the Board meeting folders.

Mr. Wiles reported that the weather in his district which included heavy snow has been unpredictable. He noted that those producers growing grapes have been busy pruning vines. He explained that producers are mindful of the potential dangers from frost that can damage their crops during this time of the year.

Mr. Kordek reported on subterranean termites and post construction termite treatments. A copy of his full report was provided to the Board members and will be attached to the final minutes of this meeting kept on file by the Board Secretary.

Ms. Potter reported that her district has experienced a lot of snow and rain and that the ground is pretty wet. She noted that, because of an earlier dry period, there is uncertainty about how well crops planted in the fall will fare. She reported on her participation in Governor McDonnell's reception for agricultural leaders at the Governor's Mansion during Virginia Agriculture Week. She added that during Ag Literacy Week she read to students at a local elementary school in Lexington. She reported that she is preparing to host the Board's visit to the Lexington area for this summer's Board meeting on July 29 and for the Board tour on July 30.

Mr. Clark reported that his district has been cold and wet and that most of the precipitation has come from rain rather than snow. He stated that a lot of hay was baled last summer and that a significant number of bales were consumed by his cattle in the past two months. He reported that the national cattle market seems to be holding but that the local market has received a hit. He added that the weather and the cost of the feed for cattle may have some impact on the market situation.

Mr. Toulme briefed the Board on the work of the Urban Agriculture Task Force which the Arlington County Board created last year. He noted that the task force members include representatives from many sectors, including non-profits, health care providers, restaurants, churches, county commissions, schools, and local residents. He explained that Urban Agriculture includes things such as rooftop gardens, land exchanges, window gardening, and backyard hens. He noted that some of the Urban Agriculture issues include food security, health and fitness benefits and that the goal of this program is to bring healthy, nutritious food to local folks and to make Arlington County more self-sustained from an agriculture standpoint. He promised to update the Board over time concerning the projects and issues associated with Urban Agriculture.

Mr. Hardesty reported that his district experienced a wet and cold winter. He stated that small grain crops in his district look good. He added that farmers are waiting for the weather to warm up so they can start planting.

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Mr. Ellis reported on weather conditions in his district which are similar to what others reported. He told the Board about an article in a New York publication concerning a dead zone in the Mississippi River and the questionable statements made in the article that are the exact opposite of accepted science regarding Best Management Practices and what Virginia's Chesapeake Bay Watershed Plan has proposed and has been implemented to clean up the Bay. He added that it struck him that we have a long way to go in educating Americans about agriculture and conservation and we have someone out there telling people the opposite of what we know to be true about cover crops and the use of no-till practices.

Mr. Mills reported that it is encouraging to see that irrigation ponds are finally full for the first time in five years. In his assessment of crops in his area, he expressed concern for small grain crops, which he expects will have much lower yields than last year. He noted that tobacco is providing one bright spot for those still producing this commodity. He added that before the tobacco buyout there were 30,000 acres of tobacco in his area and that acreage last year was down to about 17,000 acres. He reported that this year it is expected that total acreage will be back up to about 23,000 acres. He added that this means that tobacco business has picked up in Southside. He explained that tobacco has a global economy and market, and that is what has increased the amount of acreage in the area. He pointed out the number of tobacco buying stations went from three to seven last year and that he has seen new companies locating in Southside Virginia. He concluded that it has been a real bright spot for growers who are able to diversify their operations by including tobacco. He also reported that he participated in Ag Literacy Week by reading to students in his area.

Mr. Johnson of Virginia Tech reported that Virginia Cooperative Extension is very close to filling all of its vacant positions. He added that when this work is completed, Extension should have approximately 240 extension agents. He noted that Extension has benefited from support from local government and the state legislature. He pointed out that the challenge is that about a third of Extension staff is relatively new. He estimated that the total number of Extension personnel will include 100 agriculture and natural resources agents, 100 employee development agents and 40 family and consumer science agents.

Dr. Mersie of Virginia State University reported that everything at VSU is going well. He told the Board about partnership between the University's School of Agriculture and the food company Sabra located in Chesterfield County. He explained that VSU scientists are working with a Sabra agronomist to help Virginia farmers grow crops of chick peas used by the company to produce the food product called hummus. VSU will identify varieties of chick pea that can be grown here. He reported that Sabra scientists are working with VSU's food science faculty to improve packing and shelf-life for hummus. He also reported that the General Assembly awarded VSU \$125,000 for development of a Predatory Wildlife Specialist position in partnership with Virginia Tech, the Department of Game and Inland Fisheries, USDA, and Virginia Farm Bureau Federation. He added that the specialist position will be based at VSU and will help landowners protect their crops and livestock from predatory wildlife.

Mr. Bain reported that farmers in his district are not that concerned about the weather, but they do want to get back into the field with their equipment. He mentioned the negative article in the Richmond *Times-Dispatch* concerning the legislation passed during the 2013 session of the General Assembly regarding the assessment charged to growers of peanuts in Virginia. He explained that the article was totally off base and the writer missed the point that the assessment paid by growers is self-imposed. He noted that President Rogers and Del Cotton,

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Executive Secretary of the Virginia Peanut Growers Association, wrote letters to the editor of the *Times-Dispatch* in response to the article. He reported that peanut contracts are out and the rate is set at \$540 per ton---quite a bit lower than last year's amount of \$700 per ton. He added that growers are signing with hopes that they will have an overall better profit and can survive with lower contract prices. He noted that Virginia's total peanut acreage is expected to be down this year. He reminded the Board of his concerns expressed at the December meeting about the Governor requested that the ethanol standards be lower because of the impact on the livestock and poultry industry. He noted that industry profits were up for the last quarter despite the grain prices.

Mr. Rogers reported that his district has experienced a cool and wet spring. He noted that the wheat crop looks good. He acknowledged Mr. Toulme's article about VDACS in the *Cooperative Living* magazine. He noted that several Board members participated in Ag in the Classroom program. He mentioned that both Mr. Bain and he wrote letters to the editor of the Richmond *Times-Dispatch* to set the record straight after that newspaper carried an article that presented untrue statements about the self-assessment paid by farmers in Virginia who grow peanuts being paid by consumers in an increased price for peanuts. He also mentioned that Mr. Fleming's granddaughter appeared on the cover of the Virginia Travel Guide. He thanked Ms. White and Mr. Kordek for their pesticide-related reports.

COMMISSIONER'S REPORT

Commissioner Lohr briefed the Board on personnel changes, recent and future events and other matters relating to the Virginia Department of Agriculture and Consumer Services. A copy of a written report, on which his presentation was based, was included in the Board meeting folders.

LEGISLATIVE UPDATE

Commissioner Lohr briefed the Board on legislative proposals before the General Assembly during the 2013 session. He referred to the agency tracking record included in the Board's meeting folders. Concerning House Bill 2048 concerning the transfer of water quality programs of the Department of Conservation and Recreation (DCR) to the Department of Environmental Quality (DEQ), the Commissioner noted that the programs associated with Soil and Water Conservation Districts were not transferred. He added that during the year DCR and DEQ will be considering input from interested parties concerning the future location of these programs and that VDACS will be at the table during the discussions.

MEETING RECESS FOR PUBLIC HEARING

At approximately 9:50 a.m., President Rogers called for a recess to allow the Board and staff to get ready for a public hearing on the proposed Regulation of the Harvest of Ginseng, 2 VAC 5-321.

SUMMARY OF PUBLIC HEARING – PROPOSED REGULATION OF THE HARVEST OF GINSENG (2 VAC 5-321)

At 10:00 a.m., President Rogers opened the public hearing on the proposed Regulation of the Harvest of Ginseng (2 VAC 5-321). A court reporter was present to make a record of the hearing which will be included with the minutes of the meeting.

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President Rogers called on Andy Alvarez, Director of the Division of Consumer Protection (DCP), who introduced Ms. Williams of his staff to brief the Board concerning the proposed Regulation of the Harvest of Ginseng (2 VAC 5-321).

Following Ms. Williams' presentation, President Rogers called on the Board Secretary who advised him that no one had signed up to speak at the public hearing. After no one came forward following his invitation to speak, Mr. Rogers asked the Board members if they had any questions regarding the proposed quarantine.

At the conclusion of the questions and responses, the President advised the Board that following the end of the public comment period, staff will review oral and written comments received with the Board and present recommendations concerning the proposed regulations at a future Board meeting.

In response to questions from the Board, Keith Tignor of DCP stated that most of the harvest of ginseng occurs in Southwest Virginia and in the Shenandoah Valley area.

The President adjourned the public hearing and then called the Board into session to complete the meeting agenda.

AGENCY BUDGET UPDATE

President Rogers called on Deputy Commissioner Adams who briefed the Board regarding available information on the federal budget sequestration and its possible impact on federal grants received by VDACS. She noted that the Department annually receives approximately \$8 million in federal grants which accounts for 14 percent of VDACS' budget. She told the Board of reports that Congress has acted to prevent cuts to the U. S. Department of Agriculture's Meat and Poultry Program but that at this point VDACS does not know how the sequestration will impact the grants it receives. She introduced Kendra Shifflett of the Office of Administrative and Financial Services who briefed the Board on the VDACS budget that passed during the recent General Assembly. Ms. Shifflett noted in her report that the appropriations bill passed by the state legislature requires a report on pesticide funds by October of each year.

PROPOSED NOTICE OF INTENDED REGULATORY ACTION (NOIRA) – 2 VAC 5-60, RULES AND REGULATIONS GOVERNING THE OPERATION OF LIVESTOCK MARKETS

President Rogers called on Dr. Richard Wilkes, State Veterinarian and Director of the Division of Animal and Food Industry Services, who introduced Dr. Charles Broaddus, Program Manager, Office of Veterinary Services, who briefed the Board on the need to authorize the filing of a NOIRA concerning 2 VAC 5-60, Rules and Regulations Governing the Operation of Livestock Markets, to initiate the regulatory process and inviting the public to comment on the need to amend 2 VAC 5-60. Dr. Broaddus indicated that staff expects that amendments will be needed to address current conditions. It was explained that this regulation was adopted to support brucellosis eradication efforts primarily and other disease programs more generally. Since that time Virginia has achieved brucellosis-free status and USDA has enacted the new Animal Disease Traceability (ADT) program. In summary, the Board was advised that the current regulation needs to be re-written to support the federal ADT requirements since traceability is essential for all livestock disease responses.

Following the briefing and Board comments and questions, Mr. Clark moved that the Board

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authorize staff to take any and all actions necessary to file, on behalf of the Board, a Notice of Intended Regulatory Action concerning 2 VAC 5-60, Rules and Regulations Governing the Operation of Livestock Markets. Mr. Fleming seconded the motion and it was passed by a unanimous vote of the Board.

PROPOSED NOIRA – 2 VAC 5-120, RULES AND REGULATIONS GOVERNING THE RECORDKEEPING BY VIRGINIA CATTLE DEALERS FOR THE CONTROL OR ERADICATION OF BRUCELLOSIS OF CATTLE

Dr. Wilkes called on Dr. Broaddus to brief the Board on the need to authorize the filing of a NOIRA concerning 2 VAC 5-120, Rules and Regulations Governing the Recordkeeping By Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle. The Board was advised that the current regulation has been in place a number of years and is now in need of amendments to address new conditions and requirements. Dr. Broaddus explained that, like 2 VAC 5-60, this regulation was adopted primarily to support brucellosis eradication efforts and other disease programs more generally. It was noted that Virginia has attained brucellosis-free status and USDA has enacted the new ADT program. The Board was advised that through the regulatory process, the agency will seek public input on the need to amend this regulation. It was noted that, among other things, potential amendments to 2 VAC 5-120 will provide new language that recognizes the federal ADT requirements concerning disease traceability.

Following the staff presentation and an opportunity for Board questions and comments, Mr. Mills moved that the Board authorize staff to take any and all actions necessary to file, on behalf of the Board, a Notice of Intended Regulatory Action concerning 2 VAC 5-120, Rules and Regulations Governing the Recordkeeping By Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle. Mr. Hardesty seconded the motion and it was carried by a unanimous vote of the Board.

PROPOSED FAST TRACK ACTION – 2 VAC 5-410, RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE VIRGINIA AGRICULTURAL LIMING MATERIALS LAW

President Rogers called on Mr. Alvarez who introduced Ms. Williams who briefed the Board on the need to consider fast track regulatory action to amend 2 VAC 5-410, Rules and Regulations for the Enforcement of the Virginia Agricultural Liming Materials Law. The Board was advised that the proposed changes to 2 VAC 5-410 are housekeeping measures to update references to national testing methods that are now obsolete. It was explained that the name of the organization that promulgates the national testing methods, AOAC International, is also being updated. It was noted that a copy of the proposed 2 VAC 5-410 was sent to the Board before the meeting and that a copy was included in the Board meeting folders.

Following the staff presentation and an opportunity for questions and comments from the Board, Mr. Ellis moved that the Board adopt 2 VAC 5-410, Rules and Regulations for the Enforcement of the Virginia Agricultural Liming Materials Law as presented by staff today, and authorize staff to take any and all steps necessary to have these regulations become final through fast-track regulatory action. Ms. Potter seconded the motion and it was carried by a unanimous vote of the Board.

PROPOSED NOIRA – 2 VAC 5-610, RULES GOVERNING THE SOLICITATION OF CONTRIBUTIONS

President Rogers called on Mr. Alvarez who asked Ms. Williams to brief the Board on the recommendation that the Board authorize staff to initiate regulatory action concerning 2 VAC 5-

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610, Rules Governing the Solicitation of Contributions. Ms. Williams explained that this regulation was last amended in 2002 and that since then the Internal Revenue Service has made several substantive changes to its requirements that are not reflected in 2 VAC 5-610. It was also noted that all references to the former Office of Consumer Affairs need to be deleted and that the pertinent mailing address listed in the regulation needs to be updated to reflect the move of agency offices from the Washington Building to the Oliver Hill Building.

Following the staff presentation and an opportunity for questions and comments from the Board, Mr. Mills moved that the Board authorize staff to take any and all actions necessary to file, on behalf of the Board, a Notice of Intended Regulatory Action concerning 2 VAC 5-610, Rules Governing the Solicitation of Contributions. Ms. Potter seconded the motion and it was passed by a unanimous vote of the Board.

OFFICE OF PESTICIDE SERVICES – CASE DECISION – CRABBE AVIATION

The Board President advised VDACS staff and Matthew Crabbe of Crabbe Aviation that they should take no more than 15 minutes each to present their positions regarding the Pesticide Services Case No. 47056 and the presentations are not intended to provide new information but should focus on what is included in the case files that were sent to the Board before the meeting and which are included in the Board meeting folders.

President Rogers then called on Mr. Alvarez who briefed the Board concerning this case which originated in the Office of Pesticide Services. Mr. Alvarez explained that the options before the Board are to (i) accept the Hearing Officer's recommendation, (ii) reject the Hearing Officer's recommendation, or (iii) amend or abate the \$400 civil penalty imposed by the Fact-Finding Conference Officer. Mr. Alvarez explained that VDACS believes that the findings of the Hearing Officer who heard the case are flawed, and, for that reason, recommends that the Hearing Officer's recommendation be rejected.

Mr. Crabbe then made his presentation concerning his efforts to comply with the law in his company's aerial treatments.

Following an opportunity for comments and questions from the Board and responses from Mr. Alvarez and Mr. Crabbe, Mr. Kordek moved that the Board reject the Hearing Officer's recommendation in Office of Pesticide Services Case Number 47056 concerning Crabbe Aviation, and that, in consideration of the facts presented to the Board, the Board dismiss the case against Crabbe Aviation altogether and not impose civil penalties. Mr. Clark then seconded the motion.

During the discussion of the motion, President Rogers called on Steven Jack, Assistant Attorney General, who explained that the Board may reject the Hearing Officer's recommendations and then, based on the information presented today, amend or abate the civil penalty imposed.

After more discussion, the Board voted unanimously to pass the motion presented.

President Rogers informed Mr. Crabbe of Crabbe Aviation that, following the March Board meeting, Crabbe Aviation will receive a letter concerning the Board's decision and that Crabbe Aviation has the right to appeal the Board's decision to the local Circuit Court.

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BRIEFING ON SOLICITATION OF CONTRIBUTIONS, OFFICE OF CHARITABLE AND REGULATORY PROGRAMS

President Rogers called on Mr. Alvarez who introduced Mike Menefee, Program Manager for the Office of Charitable and Regulatory Programs, who briefed the Board concerning the Solicitation of Contributions program.

NATIONAL AGRICULTURAL STATISTICS SERVICE UPDATE

President Rogers called on Herman Ellison, who directs the Virginia office of the National Agricultural Statistics Service (NASS), to provide an update on agricultural reports and surveys (including the Ag Census). Mr. Ellison also gave an update on USDA's plans for restructuring its national operations. He advised that the states will be served through a new regional approach. He shared a map of the new NASS regions that include one in which Virginia and other neighboring states are served by staff located in Louisville, Kentucky. Mr. Ellison advised that he and another NASS staff member will be located in Virginia.

VIRGINIA AGRIBUSINESS COUNCIL PRESENTATION

President Rogers recognized Claiborne B. Roberts of Colonial Farm Credit who serves on the Virginia Agribusiness Council's (VAC) Board of Directors and Blair Krusz, VAC's Director of Government Affairs. Mr. Roberts presented Mr. Rogers with VAC's 2013 Distinguished Service Award for his outstanding work as Board President, as a member of the Virginia Tech Board of Visitors and in his other capacities. Mr. Rogers thanked Mr. Roberts and Ms. Krusz, and expressed appreciation for receiving this special honor from the VAC.

NEW BUSINESS

Mr. Sturgis advised the Board that the Department of Game and Inland Fisheries (DGIF) would be reviewing its hunting regulations during 2013 and that DGIF will be holding meetings throughout the Commonwealth to receive public comments. He noted that the issue of the re-introduction of elk into the state would be one of the issues that will be coming up in the meetings. Staff noted that the Board wrote the Board of Game and Inland Fisheries to express concerns about the potential threats that elk re-introduction may create in the form of threats to the health of agricultural animals and increased crop and other property damage in rural areas. Mr. Bain moved that the Board send a letter to the Board of Game and Inland Fisheries restating these concerns as the BGIF considers extending current elk re-introduction efforts. Mr. Fleming seconded the motion and it was carried by a unanimous vote of the Board.

PLANS FOR FUTURE BOARD MEETINGS

President Rogers advised that the Board is scheduled to have its next meeting in 2013 in Richmond on May 23. He noted that the Board will need to elect officers at that meeting. He thanked Ms. Potter for agreeing to host the July 29th summer meeting and the July 30th Board tour in the Lexington area. He added the last meeting of 2013 is scheduled for December 5 in Richmond.

PUBLIC COMMENT PERIOD

There were no comments from the public. Mr. Rogers restated his appreciation to the Virginia Agribusiness Council for the award he received.

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ADJOURNMENT

There being no further business, the Board adjourned at approximately 12:20 p.m.

Respectfully submitted,

Paul W. Rogers, Jr.
Board President

Roy E. Seward, Jr.
Board Secretary