

FINAL MINUTES
PESTICIDE CONTROL BOARD MEETING
OCTOBER 14, 2004

The Pesticide Control Board meeting was held at 9:00 a.m. in the Washington Building, 1100 Bank Street, Second Floor Boardroom, Richmond, VA, Scott Mayausky, serving as Acting Chairman, being in the chair, and the Secretary being present.

Board members present: Dr. William Boshier; Dr. George Brown; Ruth Brown; Scott Mayausky; Ernest Morse; Robin Rinaca; Tom Saunders; Mark Tubbs; Joe Wilson and John Carroll, representing State Forestry. The following Board members were absent: Dr. Lorenza Lyons (represented by Dr. Asmare Atalay) and Dr. Sharron Quisenberry (represented by Dr. Michael Weaver).

Staff members present: Dr. Marvin Lawson; Daniel Schweitzer; Dr. Wayne Surlles; Liza Fleeson; J. Carlton Courter, III; Don Blankenship; Marshall Trammell; Robert Bailey; Joe Dictor; Kathy Dictor; Bobbie Lee; Don Delorme; Marion Horsley and Rhonda Bates.

Others present: Liz White, VA Horticulture Society; Jim Skillen, RISE; Donald Goff, Chesapeake Public Schools; David Boose, VA Pest Management Association; John Horsley, Terminix; Billy Walls, Consultant; Brock Herzberg, VA Farm Bureau; Jim Oliver, VA Crop Production Association and Katie Kyger, VAC.

CALL TO ORDER

Dr. Surlles called the meeting to order and stated that a new chair had not yet been appointed. Mr. Wilson moved that Mr. Mayausky be authorized to chair the meeting in the absence of an appointed chair. Mr. Saunders seconded. Motion carried unanimously.

DETERMINATION OF A QUORUM

Chairman Mayausky announced that a quorum was present.

APPROVAL OF MINUTES

Mr. Saunders moved to adopt the minutes of the July 15, 2004 Board meeting. Dr. Atalay seconded. The motion carried unanimously.

HONOR OUTGOING PCB MEMBERS

Commissioner Courter recognized outgoing Board members Lynn Gayle, Dr. John Munday, Jr., Don Fritz and Jim Garner.

PUBLIC COMMENT PERIOD

Bill Couzens, an active promoter for sound agricultural application of pesticides adjacent to schools, asked the Board to form a task force to study drift affecting public schools as well as implement his concept of *Best Practices for Pesticide Applications Adjacent to Schools*.

PUBLIC HEARING

Chairman Mayausky stated that the proposed amendments to 2 VAC 20-40, *Regulations Governing Licensing of Pesticide Businesses Operating under the Authority of the Virginia Pesticide Control Act* had been placed in the Virginia Register and available to the public for quite some time. He opened the floor for public comments. There were no comments from the public and the public hearing was closed.

DISCONTINUED AND UNREGISTERED PESTICIDES WORKGROUP REPORT

Liza Fleeson began her presentation with a brief chronology of the discontinued and unregistered pesticides situation in Virginia for the benefit of the new Board members, bringing them up-to-date on the workgroup's activity. Ms. Fleeson then directed the Board's attention to the discontinued and unregistered draft policy in their packages, which required their approval. Jim Skillen, of RISE, commented that industry is dissatisfied with the most recent draft of the proposed policy. A lengthy discussion ensued. Mr. Tubbs moved that the Board adopt the proposed policy as it relates to the previously registered pesticide products found in the channels of trade. Dr. Bosher seconded. The motion carried unanimously.

REQUEST TO FILE NOTICE OF INTENDED REGULATORY ACTION (NOIRA) TO REPEAL SECTIONS OF 2 VAC 20-20, RULES AND REGULATIONS FOR ENFORCEMENT OF THE VIRGINIA PESTICIDE LAW AND PROMULGATE A NEW PESTICIDE PRODUCT REGISTRATION REGULATION

Dr. Surles explained that 2 VAC 20-20, *Rules and Regulations for Enforcement of the Virginia Pesticide Law* are remnants of the old Virginia Pesticide Law of which portions have been repealed and superseded by new regulations promulgated under the current Pesticide Control Act, they are significantly out-of-date and do not address current needs for pesticide registration and regulations in Virginia.

Mr. Wilson moved that the Pesticide Control Board file a Notice of Intended Regulatory Action (NOIRA) to promulgate new regulations for the Registration of Pesticide Products and authorize staff to file with the Virginia Registrar of Regulations and with any other authority any and all necessary regulatory documents relating to promulgating such regulations with respect to the proposed and discussed items that have been presented and approved. Mr. Saunders seconded. The motion carried unanimously.

Mr. Wilson moved that the Pesticide Control Board file a Notice of Intended Regulatory Action (NOIRA) to repeal those sections of 2 VAC 20-20, *Rules and Regulations for Enforcement of the Virginia Pesticide Control Act* that will be incorporated in the new regulations for the registration of pesticide products or are otherwise out-of-date, and authorized staff to file with the Virginia Registrar of Regulations and with any other

authority any and all necessary regulatory documents relating to promulgating such regulations with respect to the proposed and discussed items that have been presented and approved. Mr. Saunders seconded. The motion carried unanimously.

ENHANCING TERMITICIDE PRE-TREATMENT COMPLIANCE

In response to the growing number of alleged fraudulent termiticide pre-treatments in Virginia, staff was asked to develop a specific plan that would identify the scope of this problem.

Dr. Surles directed the Board's attention to a handout of his report on termiticide pre-treatment label violations. A key factor was Pesticide Investigator Mr. Robert Christian's planned fact-finding trip to visit Arizona Pesticide Enforcement. After much discussion, he asked the Board to authorize a task force to address all aspects of pre-construction termiticide applications.

Mr. Wilson moved that the Board authorize OPS staff to establish a task force, as outlined in Dr. Surles report, to develop a comprehensive plan to identify the extent of the problem and some of the possible solutions. Dr. Boshier amended Mr. Wilson's motion to accept Dr. Surles' proposal #1. Receive and evaluate Mr. Christian's report from Arizona and #3. Authorize VDACS to organize a task force to address all aspects of pre-construction termiticide applications and to develop a comprehensive plan for solution of this problem and to authorize VDACS to develop an RFP addressing issues raised in the Arizona task force that would be appropriate for consideration by the Board. The motion was properly seconded and carried unanimously.

The Board appointed Mr. Wilson to the task force.

STATUS OF PESTICIDE APPLICATOR SAFETY TRAINING PROGRAM

Dr. Weaver and Dana Beegle provided an update on the status of the manual development and the pesticide applicator training programs. Dr. Weaver introduced Susan Nessler, Public Relations Assistant Specialist, replacing Dana Beegle.

ENFORCEMENT ACTIVITIES FOR THE QUARTER

At the July board meeting, the Board voted unanimously to accept the decision of the hearing officer in Case Numbers 15318 and 15441-United Industries, Inc., in favor of VDACS. After consideration of additional information, the hearing officer reversed his decision in favor of United Industries.

In the case involving Leo's Pest Control, Case Number 17111, the fact-finding officer reduced the assessed penalty of \$560 to \$240.

Mr. Tubbs moved to accept the decision of the hearing officer in both cases. Mr. Saunders seconded. The motion carried unanimously.

Liza Fleeson provided a brief summary of enforcement activities for the quarter.

DEPUTY COMMISSIONER'S REPORT

Mr. Blankenship reported a record harvest of corn and soybean crops this year. He stated that VDACS is in the middle of budget and legislative proposals for the governor and that the international export programs are focusing on Cuba, Latin America and China. He also reported that Dr. Marvin A. Lawson will retire on March 1, 2005.

PROGRAM MANAGER'S REPORT

Dr. Surles reported that OPS is continuing to automate as much as possible to ensure efficiency.

He updated the Board on the status of proposed modifications to the *Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act*. The review has been completed and approved by the Office of Planning and Budget.

Dr. Surles stated that OPS is providing information to Region III's Pesticide Compliance Activity Tracking System (CATS) for monitoring compliance cases.

Dr. Surles reported that Dan Schweitzer will retire on February 1, 2005.

CHAIRPERSON'S REPORT

No report.

ADJOURNMENT

Meeting adjourned at 12:05 p.m.

(For further detail, taped minutes of the meeting are on file at VDACS and can be accessed by calling 804/371-6558).