

FINAL MINUTES

Virginia Board of Agriculture and Consumer Services
Oliver W. Hill Building, 102 Governor St., Richmond, Virginia
May 15, 2008

The meeting convened at 9:00 a.m. on Thursday, May 15, 2008, in Room 220 of the Oliver Hill Building, 102 Governor Street in Richmond, Virginia. President Holland requested a moment of silence and then called the meeting to order. The Board Secretary called the roll:

PRESENT

Stephen Ellis
L. Bruce Holland
Paul W. Rogers, Jr.
William B. Bain
Andrea Lohr
Edward S. Fleming
Charles C. Clark, Jr.
John D. Hardesty, Jr.
Melvin Murphy
Eddie N. Moore, Jr.
Dr. Mark A. McCann

DISTRICT

1st
2nd
3rd
4th
6th
7th
9th
10th
11th
President of Virginia State University
Representing, President of Virginia Tech

ABSENT

Traci R. Talley
Gregory J. Galligan

5th
8th

STAFF PRESENT

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

APPROVAL OF MINUTES

The minutes of the March 20, 2008 meeting were approved as distributed.

ELECTION OF BOARD PRESIDENT, VICE PRESIDENT, AND BOARD SECRETARY

President Holland turned the meeting over to Commissioner Haymore who called for nominations for Board President.

Mr. Clark nominated Mr. Holland for President. Mr. Hardesty seconded the nomination. Mr. Bain moved that nominations be closed, and Mr. Clark seconded the motion. The Board then elected Mr. Holland by a vote of 10-0 with Mr. Holland abstaining.

Mr. Holland took the gavel as President and called for nominations for Vice President. Mr. William Bain nominated Mr. Paul Rogers for Vice President and Mr. Fleming seconded the motion. Mr. Ellis moved that nominations be closed, and that Mr. Rogers be elected by a

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unanimous vote. Mr. Clark seconded the motion and Mr. Rogers was elected Vice President by a unanimous vote.

Mr. Holland called for nominations for Board Secretary. Mr. Clark nominated Mr. Seward, and Ms. Lohr seconded the motion. Mr. Rogers moved that the nominations be closed, and that Mr. Seward be elected by acclamation. Mr. Ellis seconded the motion and the Board voted unanimously to elect Mr. Seward, Board Secretary.

REPORT FROM BOARD MEMBERS

Mr. Clark reported that precipitation in the southwestern area of the state this spring has been spotty but that, overall, the area is much greener than it was last year. He noted that the first cutting of hay is going to be short and that, because of last year's short rainfall, grass is still in a survival mode. He talked about the impact of high fuel prices and high fertilizer prices. He told about a local business person with a couple of convenience stores in his area who reported his stores have sold more gas this year than in 2007.

Mr. Hardesty informed the Board that former Delegate Al Smith of his district passed away this spring. He asked that the record of the meeting include a remembrance of this extraordinary person, who was a tremendous friend and supporter of Virginia agriculture as well as an outstanding leader in the Virginia General Assembly during his years of service on the Virginia House of Delegates. On other subjects, Mr. Hardesty noted that both farmers and consumers in his district are concerned about the rising cost of fuel. He reported that the rains over the past two weeks are helping to replenish the groundwater in his area. He advised the Board that 60 percent of corn planting is complete, and that farmers are reporting a good hay crop due to the rain and a nice barley crop ready to harvest. He mentioned that apples had a fairly good bloom and a little problem with disease because of rain and that peaches had a good bloom and no freeze out.

Mr. Ellis reported that the recent rains have been a blessing in eastern Virginia, the Middle Peninsula, and the Northern Neck. He noted that commodity price levels for grain crops have held through the spring better than he had expected. He mentioned that crabbers in his district are waiting anxiously to see how the restrictions on crabbing will work out for them. He told the Board that the crops are great, that corn is all planted and emerging in fine form, that wheat and barley are thick and filling out, and that, hopefully, farmers in his area will have a blessing of a harvest come June.

Dr. McCann, who represented Virginia Tech President Dr. Charles Steger, reported on commencement activities at Tech. He noted that the largest class he has seen—500 undergraduates—received degrees in the University's College of Agriculture and Life Sciences. He added that the in-coming class for the College is expected to be the largest in many years, with the largest percentage increase in the Department of Human Foods, Nutrition, and Exercise. He reported that the occupancy rate for Virginia Cooperative Extension agent positions is above 94 percent---the highest rate in three

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years. He also mentioned continuing efforts to use electronic communications to distribute information in a faster, more efficient manner.

Mr. Moore reported that Virginia State University recently graduated just fewer than 1,000 students. He noted that the University commissioned more military officers than any other 1890 land-grant institution in the nation. He added that the students came from across the nation and from Germany and that 14 of the 15 the new officers went to active duty. He told the Board that Virginia State is expecting probably its largest freshman class in the history of the University. He explained that Virginia State has received about 2,000 applications and that the University is expected to accept 1100—more than Virginia State has accepted before. He added that, with the normal yield rate, the University might have a freshman class that is 30 percent larger than last year's.

Mr. Fleming reported that most of the corn is planted in his area, that small grains look good, that wheat, corn and bean prices are very good, and that farmers have finished their first cutting of hay. He noted that the cost of producing products was up substantially. He mentioned that milk prices were also up. He stated that the high cost of fuel, fertilizer, hay and other supplements is really taking away profits. He complimented the Commissioner and staff for the great job they did in planning and conducting the Virginia Food and Beverage Expo, which he attended on May 14.

Mr. Rogers reported that farmers are about 7 to 10 days behind in peanut planting. He added that 10 percent of the corn has been replanted. Concerning other crops, he commented that the wheat harvest is approximately 30 days away and that there is the potential for a good crop. He stressed that farmers and consumers both are concerned about the high input costs of fuel and related costs. He added that the high cost of transportation is not only reflected in what you put in your gas tank, but everything you buy, from food to clothes you wear.

Mr. Bain echoed concerns of other board members regarding rising energy costs and how these costs are affecting farmers and consumers. Concerning recent rainfall, he noted that some of the corn crop had to be replanted and that, in general, his farming operation is running 10 days behind whether it is planting or harvesting hay. He expressed concern that farmers are getting unjust blame for high food prices because prices paid to farmers are but a very small part of what contributes to the retail prices consumers pay. He noted that transportation costs affect everyone. He added that the price of wheat dropped dramatically in the last week or so and that we could see all commodity prices farmers receive fall significantly and leave farmers with a high input costs they will not recover. He pointed out that his input cost for 2008 has today already matched the total input cost for the entire year of 2007. He expressed hope that Virginia does not have a drought this year. He concluded with a note that tobacco planting in his area has been completed, that the cotton crop is coming up, that peanut planting is coming along, and the corn planted the first week of April looks good. On a

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final note, he reported that this year's Agricultural Expo will be held on August 14, 2008, at his farm.

Mr. Murphy, in his report, mentioned consumer complaints about peat moss and told the Board of the increased incidence of gasoline being stolen from vehicles as fuel prices continue to rise. Concerning recent weather, he noted that his area has experienced flooding from the heavy rains in his district. He also mentioned an earthquake recorded in Northern Virginia.

Ms. Lohr also mentioned heavy rains that have fallen in recent weeks in her district. She added that a number of crops are still to be planted as farmers wait for fields to dry. She reported her dismay over the lack of public understanding about the costs of inputs farmers must pay to produce food and the prices consumers pay at their retail food stores. She relayed a conversation between two persons who were overheard talking about the "wealth" farmers are enjoying, as consumers grow poorer because of the rising prices on food products.

Mr. Holland reported that the northern part of the Eastern Shore has been receiving significant rainfall while the southern part needs more precipitation. He noted that the potato crop looks good, that the tomato crop is not doing well, that about 75 percent of the corn crop has been planted, and that some of the corn in the wetter areas of the Shore needs to be replanted. He told the Board that the wheat crop looks better than he has ever seen. He expressed a concern that consumers have not yet seen the peak in rising food prices. He also expressed concern about the major impact that rising commodity prices are having on poultry and livestock producers. He added that it is not to anyone's benefit to let commodity prices continue to rise and drive these producers out of business.

Commissioner Haymore relayed to the Board a brief report from Ms. Talley who was unable to attend the May meeting. In that, Ms. Talley reported on the considerable rainfall in her area and the problems farmers are having with transplanting their tobacco.

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.

ACCEPTANCE OF GIFTED ASSETS – VIRGINIA WINE BOARD

Steven Jack of the Office of the Attorney General briefed the Board concerning gifts offered to the Virginia Wine Board from two organizations—the Jefferson Wine Classic Foundation and the Virginia Wine and Food Society. Mr. Jack explained that the Wine Board has been offered a monetary gift by the Foundation and non-monetary assets by the Society, but that the Wine Board does not have statutory authority to accept these gifts directly. He advised that the Board of Agriculture and Consumer Services, under

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Section 3.1-4 of the Code of Virginia, has the authority “to receive and hold in trust any donation made to it for the advancement of the agricultural interests of the Commonwealth and to administer the same.”

After discussion, Mr. Moore moved that the Board, under its authority in Section 3.1-4 of the Code of Virginia, accept the monetary gift from the Jefferson Virginia Wine Classic Foundation and direct staff to have the gift placed in an account for the Virginia Wine Board established for the Virginia Wine Promotion Fund under Section 3.1-1064.6 of the Code of Virginia. Mr. Clark seconded the motion and it was carried by a unanimous vote.

Concerning the gifts offered by the Society, Mr. Ellis moved that the Board, under its authority in Section 3.1-4 of the Code of Virginia, accept on behalf of the Virginia Wine Board non-monetary assets donated by the Virginia Wine and Food Society. Mr. Clark seconded the motion and it was carried by a unanimous vote.

ENFORCEMENT OF VIRGINIA GASOLINE AND MOTOR FUEL LAW (2 VAC 5-420)

Andy Alvarez, Director, Division of Consumer Protection, briefed the Board on public comment received during the 30-day public proceeding held to seek public input on proposals to amend 2 VAC 5-420 and advised the Board of staff's recommended response to the comments.

After Mr. Alvarez completed his presentation, and Mr. Seward asked if there were any Board members who may have a personal interest in the outcome of the Board's action on 2 VAC 5-420. Mr. Moore indicated he might have some personal interest as a retiree of a petroleum company. Mr. Moore completed a disclosure statement of financial impact that noted his possible interest in the vote on 2 VAC 5-420 but which declared that he could vote objectively and in the public's interest. A copy of the disclosure statement he completed and signed is included with the record of the meeting.

After discussion, Mr. Clark moved that, in response to the Renewable Fuel Standard Requirements issued by the U.S. Environmental Protection Agency pursuant to the Clean Air Act, as amended by the Energy Independence and Security Act of 2007, which present cause for regulatory action as presented by staff, and in recognition that this regulatory action is exempt from the Administrative Process Act, pursuant to Va. Code § 2.2-4002(A)(21), the Board adopt the recommended amendments to Section 30 of 2 VAC 5-420, Enforcement of the Virginia Gasoline & Motor Fuel Law, as presented by staff, and direct staff to file the amendments to the regulation with the Registrar of Regulations, pursuant to Va. Code § 2.2-4103, upon which filing the regulation becomes effective. Mr. Murphy seconded the motion and it was carried by a unanimous vote.

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DISPOSAL OF ENTIRE FLOCKS OF DEAD POULTRY – 2 VAC 5-200

Dr. Richard Wilkes, Director of the Division of Animal and Food Industry Services, presented a draft proposal on Disposal of Entire Flocks of Dead Poultry (2 VAC 5-200). Dr. Wilkes explained that the draft proposal would update the current regulation.

Before any action was taken on the draft proposed regulation Disposal of Entire Flocks of Dead Poultry, 2 VAC 5-200, Mr. Seward advised the Board that Mr. Holland and Ms. Lohr each completed and signed a disclosure statement of financial impact when a Board member chooses to vote. (These statements will be included with the record of the meeting.)

Following discussion, Mr. Clark moved that the Board propose the draft regulation 2 VAC 5-200, Disposal of Entire Flocks of Dead Poultry presented by staff and that the Board authorize staff to take any and all steps necessary to make this draft a proposed regulation of the Board. Mr. Bain seconded the motion and the motion was carried by a vote of 9-0 with Mr. Holland and Ms. Lohr abstaining.

QUALIFICATIONS FOR HUMANE INVESTIGATORS – 2 VAC 5-100

Dr. Wilkes briefed the Board on the staff recommendation that the Board authorize the use of the fast track regulatory process to repeal the regulation Qualification for Humane Investigators, 2 VAC 5-100. It was explained that the specific authority upon which the regulation was based was repealed by the General Assembly.

Following the staff presentation, Mr. Fleming moved that the Board concurs with the staff recommendation that 2 VAC 5-100, Qualification for Humane Investigators, be repealed given that the statutory authority for this regulation has been repealed, and that the Board direct staff to take any and all steps necessary to repeal 2 VAC 5-100 through the fast track regulatory process provided by state law. Mr. Murphy seconded the motion and it was carried by a unanimous vote.

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 planting intentions for 2008.

STATUS REPORT ON AGRICULTURAL RESEARCH AND EXTENSION CENTERS

Dr. McCann presented the Board members with a briefing and handout information concerning Virginia's Agricultural Research and Extension Centers (ARECs) and briefed them on plans for the Virginia Tech Board of Visitors to take a look at the status of ARECs and the resources needed for these facilities.

NEW BUSINESS

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

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PLANS FOR FUTURE BOARD MEETINGS

Mr. Holland called on Mr. Rogers to give a brief report on plans for the August 19th Board meeting and August 20th tour in Mr. Rogers' district. Mr. Seward advised the Board that the last meeting of the year is on December 4 in Richmond.

PUBLIC COMMENT PERIOD

During her comments regarding the final scrapie regulation adopted by the Board at the March 20th meeting, Christine Solem shared with the Board research she had done concerning what other states have or have not done concerning the adoption of a scrapie eradication regulation to comply with requirements of the U.S. Department of Agriculture. She stated that, contrary to what VDACS and USDA staff presented to the Board, Virginia is not the only state that did not have a state scrapie regulation in place. She also stated that there are several states that have adopted scrapie regulations that include provisions that are less burdensome than what the Board adopted. She advised the Board that the opponents of the scrapie regulation adopted by the Board will be expressing their opposition to the Governor and members of the Joint Commission on Administrative Rules and will continue to pursue legislative action to address their concerns.

Lois Smith talked about the impact of rising fuel costs and the importance of buying food products locally from farmers. She noted that unnecessary regulatory restrictions such as those the scrapie regulation provides can make buying locally impossible for consumers.

Donald Marro spoke in opposition to the Board's earlier action to authorize staff to begin the fast track regulatory process to repeal the regulation 2 VAC 5-100 concerning qualifications of human investigators. Mr. Marro told the Board he had requested that he be given an opportunity to speak to the Board on the matter before the Board took action on the staff proposal and that his request had been denied. He expressed his view that it is not an equitable or efficient process to prevent public comment on the proposal to repeal 2 VAC 5-100 before the Board takes action. He told the Board that he would present in writing a request for reconsideration of the Board's action, and, if the Board does not reconsider its action, he will petition the courts and the administrative agencies to make the Board's decision null and void.

ADJOURNMENT

The Board adjourned at approximately 11:35 a.m.

Respectfully submitted,

L. Bruce Holland, Board President

Roy Seward, Board Secretary