

FINAL MINUTES

Board of Agriculture and Consumer Services
Senate Room 3, State Capitol
Richmond, Virginia
December 6, 2012

The meeting convened at 9:00 a.m. on Thursday, December 6, 2012, in Senate Room 3 of the State Capitol in Richmond, Virginia. President Rogers called the meeting to order. Mr. Mills gave the invocation. The Board Secretary called the roll:

PRESENT

Stephen Ellis
Steve Sturgis
Paul W. Rogers, Jr.
William B. Bain
Robert Mills
Rosalea Riley Potter
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

Dr. Alan L. Grant

DISTRICT

1st
2nd
3rd
4th
5th
6th
7th
8th
9th
10th
11th
Pesticides - Agricultural
Pesticides – 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. Clark made a motion that the minutes of the meeting held on August 7, 2012, be approved as distributed. Mr. Hardesty seconded the motion and it was passed by the Board with a unanimous vote.

OPENING COMMENTS

President Rogers welcomed Mr. Wiles as the new Board member filing the position formerly held by Melvin Murphy.

REPORT FROM BOARD MEMBERS

Mr. Fleming thanked Mr. Hardesty for hosting the Board during August 7-8, 2012. He mentioned in his report that his area is very dry. He noted that all harvesting and planting is completed. He advised that 2012 was a crop year and that local farmers' markets were successful.

Board of Agriculture & Consumer Services – Final Minutes

December 6, 2012

Page 2

Mr. Bain reported that the yield on his thousand acres of corn was a very disappointing 42 bushels per acre. He stated that his peanut crop averaged over two tons per acre, his cotton averaged over two bales per acre, and that his soybeans averaged about 40 bushels to the acre. He pointed out that these yields did not off-set the loss he experienced from his corn crop even with crop insurance. He reported his area is still very dry and that water levels are dropping. He noted that the wheat that was planted still has not emerged. He stated that farmers are concerned about what Congress will include in the next Farm Bill. He commented that this federal legislation will affect farmers greatly and will have a big impact on agriculture overall. He stated that the 2013 federal H2A workers hourly wage rate set for Virginia will be over \$10.00. He added that the rate is above the minimum wage and that the situation needs to be addressed. Commissioner Lohr advised that this issue has been discussed at meetings of the National Association of State Departments of Agriculture and that there is considerable concern among member states regarding the impact of this issue on their producers and growers.

Mr. Sturgis reported on calls he received from Secretary of Agriculture and Forestry Todd Haymore before and after Hurricane Sandy came through the Eastern Shore area. He expressed appreciation for the concern the Secretary and Governor McDonnell showed for the Shore and its agricultural producers. He advised that the Governor, the Secretary, and others came to the Shore after the storm and that Mr. Sturgis was invited to tour the area with these officials.

Mr. Wiles reported that 2012 was a better than expected year for the wine industry. He noted that yields were down across the board but that, based on reports from producers in his district, the quality of this year's product is pretty high and that everyone is excited about the 2012 vintage.

Ms. White advised that she had no report.

Ms. Potter reported that farmers in her area have gotten corn yields ranging from approximately 130 bushels to about 200 bushels per acre. She advised that the one soybean producer she was able to contact told her that this year's yield averaged around 60 bushels per acre. She reported that her area currently is dry. She stated that Sandy brought only a little bit of rain and that there was not much storm damage. She added that some counties to the west did receive snow.

Mr. Kordek reported that on November 19 he met with Commissioner Lohr, Deputy Commissioner Adams, Division of Consumer Protection (DCP) Director Andy Alvarez, Board President Rogers, Board Secretary Seward and others to get an orientation on the protocol regarding agriculture and the pest management industry. He provided to the Board a handout on the Virginia Pest Management Association (VPMA) and reviewed this background information concerning the role of VPMA in representing the pest management industry.

Mr. Clark reported that his area is very dry. He noted that Sandy brought snow to his area. He advised the cattle market is still strong and that producers have been able to save a lot of hay this time of the year for the cattle. He noted that folks in his area are concerned about news that the Soil and Water Conservation District Program possibly could be moved from the Department of Conservation and Recreation to the Department of Environmental Quality.

Board of Agriculture & Consumer Services – Final Minutes

December 6, 2012

Page 3

Mr. Toulme reported on the positive feedback from folks in his district regarding a recent *Washington Post* article about Secretary Haymore's recent trade mission to Havana, Cuba. He noted that folks in northern Virginia strongly support the Secretary's efforts to increase the Commonwealth's agricultural trade with Cuba. He noted that Cuba is now Virginia's 7th largest export market, and that, among all states, Virginia is third behind Louisiana and Florida in trade with Cuba.

Mr. Hardesty reported that this year's apple crop is good. He noted that corn yields averaged 150 bushels per acre. He added that the soybean harvest is 65% done and that wheat has been planted.

Mr. Ellis reported that the soybean crop in his district is good with yields averaging between 40 to 45 bushels per acre. He noted that corn yields averaged 25 to 50 bushels per acre. He reported that conditions are dry but that his district did receive some rain from two storms. He noted that the wheat and barley crops are looking very good at the moment. He added that farmers hope the Farm Bill is passed soon and that Congress includes crop insurance as a part of this legislation.

Mr. Mills reported dry conditions in his area. He noted that corn yields range from three to 100 bushels. He advised that the wheat crop is very poor because of a lack of rain. He noted that some of the barley crop had sprouted and then dried up and that farmers are very concerned about small grain crops. He reported that the soybean crop was good. In his comments on the rebirth of tobacco, he advised that tobacco yields for flue-cured and dark-fired tobacco are probably the best farmers in his area have seen in ten years. He noted improvements in the market situation, adding that tobacco companies are eager to contract with farmers to purchase their crops in 2013.

Dr. Grant, who represented Dr. Steger, President of Virginia Tech, reported that fall commencement exercise is scheduled for December 21, 2012. He noted that the graduate and undergraduate programs of Tech's College of Agriculture and Life Sciences continue to grow in enrollment. He reported on efforts to recruit and fill Cooperative Extension positions around the Commonwealth. He advised that Dr. Bobby Grisso is now the Extension Associate Director for Agriculture and Natural Resources. He added that Dr. Grisso has considerable experience in agricultural extension.

Dr. Mersie, who represented Dr. Miller, President of Virginia State University (VSU), reported that approximately 110 persons attended VSU's 25th Aquaculture Field Day on October 18, 2012, at the university's Randolph Farm. He advised that VSU, at the request of the Virginia Farm Bureau Federation, participated at the 2012 State Fair of Virginia where the university displayed live fish, had a fish fry stand, and conducted agricultural program demonstrations. He reported that VSU's 2012 fall commencement exercise will be held on December 15 and that nearly 400 graduates are expected to participate.

President Rogers reported that farmers in his district were blessed with good crops this year and that they had record crops for cotton, peanut and corn. He added that the soybean crop was excellent and that the wheat crop was very good. He reported that Sandy brought four inches of rain to his district.

Board of Agriculture & Consumer Services – Final Minutes

December 6, 2012

Page 4

President Rogers advised that later in the meeting the Board would be hearing comments from the public regarding two petitions that request amendments to two pesticide regulations. He asked that speakers limit their remarks to two to three minutes.

Mr. Rogers mentioned that this was the Board's second meeting since the abolishment of the Pesticide Control Board and the transfer of pesticide regulation making to the Board of Agriculture and Consumer Services. He also noted the Governor's appointment of Mr. Kordek and Ms. White to the BACS.

Mr. Rogers welcomed Bruce Holland, who once served as a member and president of the Board.

COMMISSIONER'S REPORT

Commissioner Lohr welcomed Mr. Wiles as a new member of the Board and welcomed Mr. Holland to the meeting. The Commissioner noted that it has been many years since the Board has met in the State Capitol. He also reported on the special recognition Dr. Richard Wilkes, Director of the Division of Animal and Food Industry Services, received at the annual meeting of the Virginia Farm Bureau Federation in northern Virginia. He also gave a brief report on efforts to study what can be done to ensure that high school students who are in career tech programs such as those related to agriculture are able to pursue higher education opportunities at Virginia Tech and other colleges and universities.

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

PROPOSED FINAL ADOPTION OF 2 VAC 5-320, RULES & REGULATIONS FOR THE ENFORCEMENT OF THE ENDANGERED PLANT AND INSECT SPECIES ACT

President Rogers called on Mr. Alvarez, DCP Director, who introduced Erin Williams of his staff. He advised that Ms. Williams would be handling the briefings concerning 2 VAC 5-320 and other regulations, and that he would make the presentation concerning the citizen petitions listed on the agenda. Ms. Williams reviewed with the Board actions taken thus far regarding the proposed 2 VAC 5-320 and briefed the Board on public comments received during the public comment period, including the public hearing held by the Board. The proposed regulation would remove from the current state listing one plant species (*Nestronia umbellula*) as endangered since this plant is no longer considered globally rare. The proposal would add two plant species (*Boltonia Montana* and *Isoetes virginica*) and one insect species (*Pseudanophthalmus thomasi*) to the regulation as endangered. Also, the proposal adds one plant species (*Clematis viticaulis*) to the regulation as threatened. Ms. Williams recommended the Board adopt the proposed regulation as final. (A copy of the proposed 2 VAC 5-320 was included in the Board folders and a copy was sent to the Board prior to the December meeting.)

After an opportunity for questions and comments, Mr. Mills made the motion that the Board adopt the proposed 2 VAC 5-320, Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act, presented today by staff as final and that the Board authorize staff to take any and all steps necessary to make 2 VAC 5-320 a final regulation. Mr. Clark seconded the motion and it was passed by a unanimous vote of the Board.

Board of Agriculture & Consumer Services – Final Minutes

December 6, 2012

Page 5

PROPOSED REPEAL OF 2 VAC 5-335, VIRGINIA EMERALD ASH BORER QUARANTINE FOR ENFORCEMENT OF THE VIRGINIA PEST LAW

Ms. Williams briefed the Board on the current situation regarding the Emerald Ash Borer and the need to now repeal 2 VAC 5-335 which established the Virginia Emerald Ash Borer Quarantine. It was explained that the state quarantine is no longer needed and that staff recommends that the Board seek the repeal of 2 VAC 5-335 through exempt regulatory action.

Following Ms. Williams' presentation, Mr. Clark made the motion that the Board repeal 2 VAC 5-335, Virginia Emerald Ash Borer Quarantine for the Enforcement of the Virginia Pest Law, and that the Board authorize staff to take any and all steps necessary to effectuate the repeal of 2 VAC 5-335 through exempt regulatory action. Mr. Sturgis seconded the motion and it was passed by a unanimous vote of the Board.

DRAFT PROPOSAL – 2 VAC 5-440, RULES & REGULATIONS FOR ENFORCEMENT OF THE VIRGINIA PEST LAW – COTTON BOLL WEEVIL QUARANTINE

Ms. Williams reviewed with the Board the provision of the draft proposed 2 VAC 5-440 for the Board's adoption as the proposed text of the regulation and the Board's authorization to file the proposed regulation for public comment. (A copy of the draft 2 VAC 5-440 was sent to the Board prior to the meeting and a copy was included in the meeting folders.)

Following Ms. Williams' presentation of the draft proposed 2 VAC 5-440, Board members asked questions about the inspection of used cotton equipment and the impact of the regulation on custom operators. Larry Nichols, DCP's Program Manager of the Office of Plant Industry Services, stated that VDACS does not restrict the movement of cotton equipment from one county to another. He added that it is equipment that is moved long distances that must be inspected and that it would be the responsibility of the company moving the equipment to Virginia to have the equipment inspected before it is moved to the Commonwealth. Mr. Alvarez noted that the public will be given an opportunity to present comments to the Board concerning the provisions of the proposed 2 VAC 5-440.

Following the staff response to questions, Mr. Mills made the motion that the Board propose the draft 2 VAC 5-440, Rules and Regulations for Enforcement of the Virginia Pest Law – Cotton Boll Weevil Quarantine, as presented by staff today, and that the Board authorize staff to take any and all steps necessary to have this proposal filed with the Registrar of Regulations for public review and comment. Mr. Clark seconded the motion and it was carried by a unanimous vote.

RESPONSE TO PETITIONS FOR RULEMAKING: 2 VAC 5-670 & 2 VAC 5-680

President Rogers called on Mr. Alvarez who opened the presentation of the petitions from H. Ronald Coake of Draper, Virginia, that were submitted on September 17, 2012, requesting that the Board initiate rulemaking concerning 2 VAC 5-670 and 2 VAC 5-680 to address matters of concern to Mr. Coake regarding pesticides. (Copies of Mr. Coake's petitions, public comments submitted during a 21-day comment period after the petitions were published, and other documents received were sent to Board members and Mr. Coake prior to the December Board meeting and these documents were included in the Board meeting folders.)

Following Mr. Alvarez's presentation, President Rogers called on the Board Secretary who advised the Board that the Code of Virginia provides specific directions on how an agency

Board of Agriculture & Consumer Services – Final Minutes

December 6, 2012

Page 6

responds to a citizen's petition for rulemaking and summarized what staff had done in response to Mr. Coake's petitions.

President Rogers then asked the Board Secretary to call on those persons who indicated an interest in presenting comments on the petitions. Mr. Coake spoke in support of his petitions, explaining why the Board should begin the regulatory process for amending 2 VAC 5-670 and 2 VAC 5-680 to address the issues he presented in his petitions.

The other persons who spoke expressed opposition to Mr. Coake's petitions. The following provides a summary of these comments:

*John A. Pirko of Richmond, affiliated with LeClair Ryan and representing Virginia Electric Cooperatives, indicated that Mr. Coake's proposals would be costly and nearly impossible to accomplish;

*Andrea Coron of Fredericksburg, affiliated with the Virginia Pest Management Association, noted that the proposals would undermine mosquito and invasive species spray work;

*Lindsay Reams of Richmond, affiliated with the Virginia Farm Bureau Federation, expressed concerns about the impact of the proposals on farmers;

*Brian Waymack of Richmond, affiliated with the Virginia Department of Transportation, noted the Commonwealth has the third largest transportation system in the U.S. and that the proposals would be opposed because the costs, etc., would create a burden in maintaining the state's system;

*Jay Griles of Richmond, affiliated with Dominion Resources, stated that prior landowner consent would greatly hamper work to protect power lines and indicated that Mr. Coake's proposals are unnecessary;

*Philip Wright of Charleston, West Virginia, affiliated with Appalachian Power Company (APCO), noted that most of his company's lines are above ground, that the proposed requirements would be impractical and impossible to implement and that establishing such requirements would set an unfortunate precedence;

*Katie Frazier of Richmond, affiliated with Virginia Agribusiness Council, questioned the Board's authority to establish the proposed requirements relating to notice, agreed with concerns about the impact on farmers, expressed concern about the impact of the proposals on Integrated Pest Management activities, and is concerned about the impact of severe penalties;

*Gil Grattan of Richmond, affiliated with the Virginia Turfgrass Council, noted that the proposed notice requirement could require his industry to contact hundreds of homeowners each day and urged the Board to reject the petitions;

*Christian Sain of Richmond, affiliated with the Virginia Golf Course Superintendents Association, stated that it would be extremely challenging and costly for the members of his group to carry out the proposed notice requirement;

*Katie Hellebush of Richmond, affiliated with the Virginia Grain Producers Association, advised that she also represents the Virginia Wine Council, that the proposed requirements would be costly and are not needed, that existing mechanisms are supported and that the petitions should be denied; and

*Bruce Holland of New Church, Virginia, affiliated with the Virginia Potato Board, the Virginia Soybean Board and the Virginia Potato and Vegetable Growers Association, stated that the proposed new burdens should not be placed on power companies, that power companies in his area have become more green friendly, and that the petitions should be denied.

Board of Agriculture & Consumer Services – Final Minutes

December 6, 2012

Page 7

In response to a question from Mr. Bain, Mr. Wright advised the Board that APCO notifies its customers when it contracts with a company to have rights-of-way sprayed.

Following comments and questions from the Board, Mr. Alvarez recommended that the Board deny Mr. Coake's petitions. Mr. Alvarez suggested that the Board take action on each of the two petitions through separate motions.

Mr. Toulme made the motion that, after consideration of H. Ronald Coake's petition for rulemaking concerning 2 VAC 5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law, as well as public comments received concerning the petition and staff recommendations, the Board deny the petition and authorize staff to take any and all steps necessary to effectuate/communicate the Board's decision regarding Mr. Coake's petition.

Mr. Clark seconded Mr. Toulme's motion and this motion was passed by a unanimous vote.

Mr. Toulme then made the motion that, after consideration of H. Ronald Coake's petition for rulemaking concerning 2 VAC 5-680, Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act, as well as public comments received concerning the petitions and staff recommendations, the Board deny this petition and authorize staff to take any and all steps necessary to effectuate/communicate the Board's decision regarding Mr. Coake's petition.

Mr. Mills seconded Mr. Toulme's motion and this motion was passed by a unanimous vote.

GYPSY MOTH PROGRAM BRIEFING

Mr. Nichols of DCP briefed the Board on the state gypsy moth program administered by his staff in the Division of Consumer Protection.

REPORT ON EXPANSION OF 2 VAC 5-330 - VIRGINIA GYPSY MOTH QUARANTINE

Ms. Williams reported on the Commissioner's recent action to expand the Virginia Gypsy Moth Quarantine to include Tazewell County in the covered area. She explained that state law requires that the Board receive a report on the Commissioner's action but that the Board does not need to take action on the expansion of the quarantine.

REPORT ON EXPANSION OF 2 VAC 5-318 – THOUSAND CANKERS DISEASE QUARANTINE

Ms. Williams reported on the Commissioner's recent action to expand the Thousand Cankers Disease Quarantine to include the counties of King and Queen, King William, and New Kent in the covered area. She explained that state law requires that the Board receive a report on the Commissioner's action but that the Board does not need to take action on the expansion of the quarantine.

ADOPTION OF RECORD OF REGULATION DEVELOPMENT, 2 VAC 5-405, REGULATIONS FOR THE APPLICATION OF FERTILIZER TO NONAGRICULTURAL LANDS

Ms. Williams presented the Board with the official record of regulation development for 2 VAC 5-405, Regulations for the Application of Fertilizer to Nonagricultural Lands, which staff assembled. She explained that agency policy on regulation making requires that this official record be prepared to include all of the documents created during the process of developing an

Board of Agriculture & Consumer Services – Final Minutes

December 6, 2012

Page 8

agency regulation. She added that this official record will be placed in the agency regulation file for future reference.

Mr. Sturgis made the motion that the Board adopt the record of regulation development for 2 VAC 5-405, Regulations for the Application of Fertilizer to Nonagricultural Lands, prepared by staff and that the Board direct staff to maintain this record for future reference.

Ms. Potter seconded the motion and it was carried by a unanimous vote.

REAPPOINTMENT OF VIRGINIA WINERY DISTRIBUTION COMPANY BOARD OF DIRECTORS

President Rogers called on the Board Secretary who advised the Board is being asked to reappoint the members of the board of directors of the Virginia Wine Distribution Company. Mr. Seward noted that Section 3.2-102 of the Code of Virginia authorizes the Board to make these appointments.

Mr. Seward stated that the Board is being asked to reappoint —

*Randy Phillips of Mt. Jackson, to the board of directors of the Virginia Winery Distribution Company for a term from July 1, 2012, through June 30, 2016. (Mr. Phillips serves as an owner or manager of a winery or farm winery licensee that is not served by a wholesaler when appointed to the VWDC board of directors.)

*Jay Colston of Alexandria, to the VWDC board of directors for a term from July 1, 2012, through June 30, 2016. (Mr. Colston serves as an owner or manager of a wine wholesaler licensee.)

*Joe Gigliotti of Richmond to the VWDC board of directors for a term from July 1, 2012, through June 30, 2016. (Mr. Gigliotti serves as an owner or manager of wine wholesaler licensee.)

*Jim Corcoran of Waterford to the VWDC board of directors for a term from July 1, 2012, through June 30, 2017. (Mr. Corcoran is an owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year.)

Following the staff presentation, Mr. Fleming made the motion that the Board reappoint Randy Phillips, Jay Colston and Joe Gigliotti to the board of directors of the Virginia Winery Distribution Company to terms July 1, 2012, through June 30, 2016; and that the Board reappoint Jim Corcoran to the board of directors of the Virginia Wine Distribution Company for a term July 1, 2012, through June 30, 2017.

Mr. Sturgis seconded the motion and it was passed by a unanimous vote.

BUDGET UPDATE

Deputy Commissioner Adams introduced Kendra Shifflett of the Office of Administrative and Financial Services who briefed the Board on the agency's submission of proposed budget increases as well as proposed reductions to the agency budget in response to the Governor's request to state agencies to submit a plan for four percent budget cuts should the Commonwealth need to adjust appropriations in response to reductions in the federal budget.

Board of Agriculture & Consumer Services – Final Minutes

December 6, 2012

Page 9

VIRGINIA AGRICULTURAL STATISTICS UPDATE

Herman Ellison, Director of the Virginia Office of the National Agricultural Statistics Service of USDA, updated the Board on the 2012 Census of Agriculture and gave the members a copy of USDA material concerning the Census. Mr. Ellison thanked the Commissioner for his help in communicating with the public concerning the Census and asked the Board to help encourage those receiving Census surveys to participate in the survey process.

NEW BUSINESS

Mr. Bain expressed concern for Governor McDonnell's support of efforts to seek a reduction in federal requirements concerning the use of ethanol in gasoline. He noted that there are differences of opinion regarding the use of corn to produce ethanol but pointed out that ethanol has been extremely beneficial to corn producers in Virginia in terms of corn prices paid to farmers. Commissioner Lohr acknowledged the difficulty of choosing a policy position on ethanol that is acceptable to everyone given that the state's agricultural industry is divided on the subject. Mr. Bain provided Board members background concerning the benefits of ethanol production for Virginia.

Commissioner Lohr advised the Board that the Secretary of Natural Resources (SNR), at the request of the General Assembly, has submitted a report on plans for consolidating water quality programs of the Department of Conservation and Recreation with those of the Department of Environmental Quality (DEQ). The Commissioner noted that some persons in the ag industry have expressed support for moving programs associated with Soil and Water Conservation Districts to VDACS. He added that the SNR's report calls for these programs to be moved to DEQ.

PLANS FOR FUTURE BOARD MEETINGS

President Rogers called on Mr. Seward who reported that the first two meetings for the Board in 2013 are tentatively scheduled for March 28 and May 23. He cautioned that, if there are any regulations identified in periodic review as needing amendment or repeal, the Board will need to meet in late February instead of late March. He also asked the Board to share with staff their comments on the new meeting location. (It should be noted that soon after the meeting ended, Ms. Potter volunteered to host the summer meeting of the Board in the Lexington area.)

PUBLIC COMMENT PERIOD

Danny Wayland, Executive Secretary of the Virginia Crop Production Association, invited the Board members to attend the Association's annual meeting on January 22, 2013, which will be held in Richmond.

ADJOURNMENT

There being no further business, the Board adjourned at approximately 12:40 p.m.

Respectfully submitted,

Paul W. Rogers, Jr., Board President

Roy Seward, Board Secretary