

FINAL MINUTES
BOARD OF AGRICULTURE AND CONSUMER SERVICES

Room 204, Washington Building
1100 Bank Street
Richmond, Virginia
September 23, 2005

The meeting convened at 9:00 a.m. in Room 204, Washington Building, Richmond, Virginia. President requested a moment of silence and then called the meeting to order. The Board Secretary called the roll:

PRESENT

Stephen Wolfe
L. Bruce Holland
Paul W. Rogers, Jr.
T. M. Hardison
Wanda G. McDowell
Edward S. Fleming
Gregory J. Galligan
C. C. Clark, Jr.
John D. Hardesty, Jr.
Melvin E. Murphy
Eddie N. Moore, Jr.,
Dr. Mark A. McCann

DISTRICT

1st
2nd
3rd
4th
5th
7th
8th
9th
10th
11th
President, Virginia State University
Representing Dr. Charles W. Steger,
President, Virginia Tech

ABSENT

Andrea Lohr 6th

STAFF PRESENT

J. Carlton Courter, III, Commissioner
Donald G. Blankenship, Deputy Commissioner
Roy E. Seward, Board Secretary

APPROVAL OF MINUTES

The minutes of the July 13, 2005 meeting were approved as distributed.

REPORT FROM BOARD MEMBERS

Mr. Fleming in his report thanked the Commissioner for the informative orientation.

Mr. Hardison congratulated Mr. Holland on a job well done in hosting the July Board meeting and shared with the Board some of the information he has gathered regarding the land application of biosolids. He explained that his locality—Isle of Wight County—has been considering appropriate actions to address the subject. He mentioned that biosolids legislation is expected to be introduced in the 2006 session of the General Assembly.

Board of Agriculture & Consumer Services Final Minutes

September 23, 2005

Page 2

Mr. Hardesty reported that his district is drier than most of the state and described the impact that the lack of adequate rainfall has had on pastures and crops.

During his report Mr. Murphy thanked Andy Alvarez, Director, Division of Consumer Protection, for the presentation his staff and he provided on September 22, 2005.

Mr. Galligan also thanked Mr. Alvarez and his staff for their presentation and expressed appreciation to the Commissioner and Deputy Commissioner Blankenship for the new Board member orientation. In his report he shared with the Commissioner his interest in communicating with constituents in his district about consumer issues and suggested that the agency website be modified to expand opportunities for communication with the public regarding consumer issues. He also suggested that each Board meeting include a report on timely consumer issues. He then suggested that staff present a report on the use of antibiotics and other pharmaceuticals in livestock and the potential human health risks of this use at a future meeting.

Mr. Wolfe advised the Board that the number one consumer issue in his district was the price of gasoline. He added that suppliers in his area have been well behaved regarding the setting of retail prices. He also reported that lack of rain has hurt pastures, un-irrigated vegetables and late beans.

In his comments to the Board, Mr. Clark noted that the rising cost of gasoline is having a significant impact on the cost of doing business in his district. He mentioned that finding trucks to move livestock is a problem and recounted how a buyer in his district had difficulty getting trucks to haul livestock from a local livestock market and how this is affecting livestock sales. He also told about other impacts of Hurricane Katrina such as the rising cost and scarcity of construction materials. He reported that his district is very dry and that precipitation for the year is 5 to 8 inches below normal.

Ms. McDowell reported on the last feeder sales and told the Board that her three truck loads of calves went to Tennessee, North Carolina and Pennsylvania. She noted that Southside Virginia is very dry. She advised that the dry weather has affected the tobacco crop. She added that farmers are not getting a second hay cutting and that they have already begun to feed their cattle because of the drought.

Mr. Rogers reported that farmers in the Third Congressional District are just getting started harvesting peanuts, that the cotton harvest is just beginning, and that the corn harvest is winding down. He added that the soybean harvest is till a month off. He noted that the rising fuel cost is on everyone's mind and that his area is very dry also.

Dr. McCann reported that he is the new Interim Dean of Virginia Cooperative Extension at Virginia Tech. He echoed the comments of others regarding the dry conditions and their impact on agriculture. He stressed that Extension staff are prepared to work with farmers and localities in responding to drought conditions. He reported on Virginia Tech's staffing initiatives to fill vacant local Extension positions and state specialist

Board of Agriculture & Consumer Services Final Minutes

September 23, 2005

Page 3

positions. He also briefed the Board on Tech's building and capital initiatives concerning the College of Agriculture and Life Sciences.

Mr. Moore reported on the success of Virginia State's Field Day at Randolph Farm during August. He noted that Secretary Bloxom was the keynote speaker during that event. He reported that this fall In-state enrollment is up about 6 percent at the University. He added that the cost of education is getting very expensive for out-of-state students attending Virginia State. He advised that the University continues to need more student housing units as enrollment grows. He reported that the University hopes to have a new Dean of School of Agriculture and Extension Services in January 2006.

Mr. Holland reported that the Eastern Shore is also dry. He advised that the corn crop was good and that, until the rain stopped three weeks ago, the soybean crop looked very good. Concerning the tomato crop, he noted that growers tell him that staked tomatoes fair better in dry weather because the plants are irrigated and difficulties caused by excessive moisture are minimized. He noted that the potato crop this year was very good. In his report he remarked that the Chesapeake Bay Foundation's report indicates that Virginia continues to have a lot of nutrient runoff from its farms. He added that it is a positive note that the Foundation appears to recognize that there is only so much that can be done to improve the situation given the limited resources we have.

In response to Mr. Holland's questions, Mr. Blankenship provided an update regarding the status of a nutrient management regulation proposed earlier this year by the Department of Conservation and Recreation.

Mr. Hardison emphasized that the rising cost of fuel is going to push more farmers out of business and that the Board and the Governor need to consider what can be done to help with this situation.

In response to comments and questions about the enforcement of federal requirements relating to the prohibition on the use of non-highway diesel fuel in highway vehicles and Governor Warner's emergency action to permit this fuel in highway vehicles, the Commissioner stated he would check into the status of the Governor's emergency action and enforcement issues and give a report at the next Board meeting.

COMMISSIONER'S REPORT

The Commissioner reported on the following matters:

- Personnel Changes
- September Food Safety Month
- Virginia Grown Promotion Update
- Results From Production Area Tours
- Jamestown 2007 Partnership

Board of Agriculture & Consumer Services Final Minutes

September 23, 2005

Page 4

Federal Grant Programs
New Export Channels
Tobacco Industry Transition
Hurricane Katrina & Motor Fuel Issues
Soybean Rust
Giant African Snails
West Nile Virus Update
Agency Move Update
APA Audit Report
NASDA 2006 (September 15-20, 2006 in Norfolk)

Following his presentation, the Commissioner discussed with Messrs. Wolfe and Hardison the status of efforts to increase funding for gas pump inspections and the accuracy of gas pumps.

APPLE INDUSTRY REFERENDUM

Mr. Seward reviewed a staff recommendation that the Board authorize the holding of a referendum on the question of levying an apple excise tax as directed Section 3.1-636.1 of the Code of Virginia. He also presented draft Rules for Conducting Referendum on the Levy of An Excise Tax on Apples.

After discussion, Mr. Wolfe moved that the Board of Agriculture and Consumer Services, with respect to a referendum concerning apples, (1) authorize the holding of a referendum as specified by Section 3.1-636.1 of the Code of Virginia; and (2) adopt the Rules for Conducting Referendum on the Levy of an Excise Tax on Apples. Mr. Clark seconded the motion and it was carried by a unanimous vote.

HORSE INDUSTRY REFERENDUM

Mr. Seward advised that representatives of the horse industry have submitted a request that the Board authorize the holding of a referendum of horse owners on the question of levying an assessment on manufactured equine feed. He recommended that the Board accept the petition specified by Section 3.1-22.68 of the Code of Virginia. He also recommended that the Board authorize the holding of a referendum given the sufficient interest to justify a referendum. Mr. Seward also presented draft Rules for Conducting Referendum on Levy of an Assessment on Manufactured Equine Feed and a draft Verification Form to Qualify to Vote in a Referendum Among Horse Owners on the Levy of an Assessment on Manufactured Equine Feed.

In response to questions, Glenn Petty of the Virginia Thoroughbred Association advised the Board that North Carolina and Maryland both have a similar assessment and that approximately \$300,000 is collected annually in North Carolina and approximately \$200,000 is collected per year in Maryland.

Board of Agriculture & Consumer Services Final Minutes

September 23, 2005

Page 5

After discussion Mr. Clark moved that the Board of Agriculture and Consumer Services, with respect to a referendum concerning manufactured equine feed, (1) accept the industry petition specified by Section 3.1-22.68 of the Code of Virginia; (2) find, pursuant to Section 3.1-22.68 of the Code of Virginia, that sufficient interest exists among the members of the equine owners in the Commonwealth to justify a referendum, and do hereby authorize the holding of a referendum as specified by Section 3.1-22.68; (3) adopt the Rules for Conducting Referendum on Levy of an Assessment on Manufactured Equine Feed; and (4) approve the Verification Form to Qualify to Vote in a Referendum Among Horse Owners on the Levy of an Assessment on Manufactured Equine Feed.

Mr. Fleming seconded the motion and it was passed on a 11 to 1 vote with Mr. Hardison opposing the motion.

FOOD SAFETY PRESENTATION

Mr. Holland announced that he had asked Dr. McCann and Dr. Wilkes to make a presentation on food safety at the next meeting of the Board. (Note: Following the meeting, Dr. McCann and Dr. Wilkes were asked to delay their presentation until the March 2006 meeting.)

WITHDRAWAL OF EQUINE INFECTIOUS ANEMIA NOIRA

Dr. Richard Wilkes, Director, Division of Animal and Food Industry Services, and State Veterinarian, briefed the Board on the staff recommendation that the Notice of Intended Regulatory Action for 2 VAC 5-70, Health Requirements Governing the Control of Equine Infectious Anemia in Virginia, published on August 23, 2004, in The Virginia Register of Regulations, be withdrawn. He explained that staff recommends this action to provide an opportunity for a reassessment of the need for any changes to the regulation.

Following discussion, Mr. Moore moved that the Board of Agriculture and Consumer Services withdraw a Notice of Intended Regulatory Action to amend regulations entitled 2 VAC 5-70, Health Requirements Governing the Control of Equine Infectious Anemia in Virginia. The notice of intended regulatory action first appeared in The Virginia Register of Regulations for August 23, 2004.

Mr. Wolfe seconded this motion and it was carried by a unanimous vote.

PROPOSED FOOD CODE REGULATION

President Holland called on Doug Saunders who heads the Office of Dairy and Foods in the Division of Animal and Food Industry Services to review a draft proposed Food Code regulation which was sent to the Board prior to the Board meeting and which was included in the meeting folders. Mr. Saunders advised that the draft 2 VAC 5-585, Retail Food Establishment Regulations, is being presented with the recommendation that the Board propose this draft regulation and authorize staff to file the proposal for public review and comment under an abbreviated regulatory process provided by

Board of Agriculture & Consumer Services Final Minutes

September 23, 2005

Page 6

Section 3.1-398(C) of the Code of Virginia. He explained that the proposed Food Code, which is based on the Food and Drug Administration's model 2001 Food Code and the 2003 supplement, would replace 2 VAC 5-580, Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food Stores.

Gary Hage of the Virginia Department of Health (VDH) talked about his agency's plans to adopt a similar Food Code so that both VDACS and VDH will have in place similar requirements for both retail food stores regulated by VDACS and restaurants regulated by VDH.

Following discussion, Mr. Wolfe moved that the Board of Agriculture and Consumer Services propose 2 VAC 5-585, Retail Food Establishment Regulations, that this proposed regulation be developed in accordance with the Administrative-Process-Act exempt process for such proposed regulation specified by Section 3.1-398(C) of the Code of Virginia, and that staff be directed to develop and file with the Virginia Registrar of Regulations and with any other appropriate entity any and all necessary or appropriate documents associated with this proposal.

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

STATE VETERINARIAN'S ROLE

Deputy Commissioner Blankenship presented the staff recommendation that the Board take action to authorize its veterinarian, the State Veterinarian, pursuant to Section 3.1-726 of the Code of Virginia, to take any and all necessary measures to eradicate and prevent the spread of animal disease.

After some discussion, Mr. Clark made the motion that the Board of Agriculture and Consumer Services hereby authorize its veterinarian, the State Veterinarian, pursuant to Section 3.1-726 of the Code of Virginia to take any and all necessary measures to eradicate and prevent the spread of animal disease. Mr. Fleming seconded the motion and it was carried by a unanimous vote.

REGULATION OF BIOSOLIDS APPLICATION

Dr. Cal Sawyer, Director, Division of Wastewater Engineering, Virginia Department of Health, presented a briefing on the work of VDH to regulate the land application of biosolids.

PLANS FOR FUTURE BOARD MEETINGS

Mr. Seward asked the Board to reserve December 8, 2005, and March 16, 2006, for future meetings of the Board in Richmond.

PUBLIC COMMENT PERIOD

Eileen McAfee presented a report on her work with the counties of Chesterfield and Prince George to resolve complaints involving the treatment of animals at their animal control facilities. Ms. McAfee recommended, as a discouragement to those who might

Board of Agriculture & Consumer Services Final Minutes

September 23, 2005

Page 7

make false statements to VDACS inspectors regarding their animal pound and shelters, that a perjury statement be included on the VDACS pound and shelter inspection form which local officials sign. She indicated she had already requested that Department staff add such a statement but had not received a staff response to her request. Mr. Seward stated he would check on the status of Ms. McAfee's earlier request.

Donald Marro told the Board that he would be meeting with Mr. Hardesty who represents his Congressional district to arrange a time on the agenda of a future meeting to make a presentation to the Board.

ADJOURNMENT

The meeting adjourned at approximately 12:30 p.m.

Respectfully submitted,

L. Bruce Holland, President

Roy E. Seward, Board Secretary