

DRAFT MINUTES
Board of Agriculture and Consumer Services
Oliver W. Hill Building, 102 Governor St., Richmond, Virginia
March 19, 2009

The meeting convened at 9:00 a.m. on Thursday, March 19, 2009, in Room 220 of the Oliver W. Hill Building, 102 Governor Street in Richmond, Virginia. Vice President Rogers requested a moment of silence and then called the meeting to order. The Board Secretary called the roll:

PRESENT

Stephen Ellis
Steve Sturgis
Paul W. Rogers, Jr.
William B. Bain
Andrea Lohr
Edward S. Fleming
Patrick A. Toulme
Charles C. Clark, Jr.
Melvin Murphy
Dr. Alma Hobbs

DISTRICT

1st
2nd
3rd
4th
6th
7th
8th
9th
11th
Representing, President of Virginia
State University
Representing, President of Virginia Tech

ABSENT

Traci R. Talley
John D. Hardesty, Jr.

5th
10th

STAFF PRESENT

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

APPROVAL OF MINUTES

The minutes of the December 4, 2008, meeting was approved as distributed.

REPORT FROM BOARD MEMBERS

During his report Mr. Clark stated that his district has had a cool winter, that it has been pretty dry, and that recent rains have started to green things up.

Mr. Toulme reported that there are three points of concern for consumers and farmers in his area--- (1) food safety and the need for easily accessible information when there is a food safety alert, such as the recent peanut issue; (2) use of growth hormones fed to livestock and the safety of that practice;

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and (3) reasonable restrictions that help protect small farms from encroaching commercialism (shopping malls being one example).

Mr. Ellis reported that snow in his area has helped improve moisture conditions. He noted that farmers have reduced substantially their acreage of small grain crops. He mentioned the problems with large flocks of geese that have been damaging crops. He also reported on concerns he has been hearing about the General Assembly's state budget amendment that calls for the privatization of the state weights and measures program. In his report he talked about his plans to host the Board's summer meeting in his district.

Mr. Sturgis, who was recently appointed by Governor Kaine to serve on the Board from the Second Congressional District, reported that he is looking forward to serving the Commonwealth. He advised the Board that Eastern Shore farmers are also having problems with geese.

Mr. Riddell, who represented the President of Virginia Tech, reported on a number of personnel changes at the University. He mentioned that Dr. Sharron Quisenberry has left Virginia Tech to accept a high-level position at Iowa State University. He noted that Dr. Loke Kok has been appointed Interim Dean of Agriculture and Life Sciences. He reported Dr. Mark McCann has returned to the Department of Animal and Poultry Science as a Professor and Extension Beef Cattle Specialist. He advised that Dr. Rick Rudd is Interim Associate Dean and Extension Director and Professor and Head of Agriculture and Extension Education.

Mr. Fleming reported that snow and rain in his area have improved soil moisture conditions and that farmers are preparing for planting season. He told the Board about Agriculture Week activities and Goochland County's kick-off of its School-to-Farm program that featured Virginia grown potatoes from a Virginia Beach farm. He expressed his support for the continuation of this program in Virginia's schools.

During his report Mr. Bain stated that the two fertilizer dealers he usually deals with have not had any fertilizer on their premises to sell so far this year. He noted that the peanut scare has devastated the peanut industry and that currently there are no peanut contracts with growers. He told the Board that Virginia growers, and representatives of the peanut industry, equipment manufacturers, and shellers raised \$8,000 for peanut butter for seven food banks. He mentioned that the Virginia Agribusiness Council has been keeping farmers informed of the weights and measures program budget issue and advised that many farmers are very upset about the idea of privatizing this program.

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Mr. Murphy recounted his experience with an unsatisfactory auto inspection and how he was able to get help with his complaint. He added that his complaint was resolved because the system really works.

Ms. Lohr reported that the Shenandoah Valley has gotten an inch of rain which has improved soil conditions. She noted that farmers are concerned about Pilgrim Pride's closing of several plants across the nation. She also mentioned her concerns about reports that Virginia Tech was partnering with the national humane society organization in promoting the use of eggs produced only by poultry not kept in cages. Mr. Riddell offered to update Ms. Lohr on actions the University is taking to correct misinformation about this matter.

Mr. Hardesty who was listening by telephone to the Board meeting presentations, but who was not participating in an official capacity, thanked everyone for their kindnesses in response to his wife's death. During his comments, he welcomed Mr. Sturgis to the Board.

Mr. Rogers reported on contacts he had received about the conditions of the animal pounds in Sussex and Surry counties. He noted that he was also contacted about the length of time the Virginia Seed Lab took to do germination testing. He added that Andy Alvarez, Director of the Division of Consumer Protection (DCP), addressed these concerns at the Virginia Crop Improvement Association's annual meeting in February. He echoed concerns of others regarding geese problems. He noted that very little, if any, fertilizer has been sown in his area and that farmers continue to be concerned about high input cost and relatively low commodity prices. He pointed out that farmers are also concerned about what is ahead for the state's peanut industry.

Dr. Hobbs, who represented the President of Virginia State University, reported that Virginia State was included in Governor Kaine's tour of the Petersburg area. She reported that through a special promotion offered by the National 4-H Council in the southern region of the United States, VSU received \$5,000 to enhance its 4-H program. She stated that Virginia State is working in partnership with the Mayor of Petersburg to mobilize the community for economic and community development. Dr. Hobbs advised that the University is enhancing its recruitment activities in the Agriculture and Human Ecology Department through a grant of \$30,000 from Altria (a subsidiary of Philip Morris). She explained that this grant is allowing VSU to offer 12 new students an opportunity to come to the university and major in agriculture.

COMMISSIONER'S REPORT

Commissioner Haymore briefed the Board on personnel changes, recent and future events and other matters relating to the Department and agriculture and consumer

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protection. A copy of a written report on which his presentation was based was included in the Board's meeting folders.

LEGISLATIVE UPDATE

Deputy Commissioner Blankenship briefed the Board on legislation considered during the 2009 Session of the General Assembly. During his comments he recognized the efforts of the Office of Policy, Planning and Research, the four divisions and other offices whose staff were involved in the 2009 session. A copy of the most recent edition of the VDACS legislative tracking record was included in the Board's meeting folders.

BUDGET UPDATE

Commissioner Haymore and the Deputy Commissioner presented a report on the actions of the General Assembly concerning the VDACS budget for FY 2009 and FY 2010.

Following this report, the Board discussed with the Commissioner and the Deputy Commissioner the General Assembly's amendment to the state budget that would require that Virginia's Weights and Measures (W&M) Program be privatized with only limited funding to VDACS for administration of the program. After the Board's discussion, Mr. Clark moved that a letter from Vice President Rogers be sent to Governor Kaine and the Secretary of Agriculture and Forestry expressing the Board's opposition to privatization of the W&M Program and its support of VDACS conducting a study of options for funding the program. Mr. Fleming seconded the motion and the Board passed it by a unanimous vote.

EQUINE INFECTIOUS ANEMIA REGULATIONS – DRAFT PROPOSAL

Dr. Richard Wilkes, Director, Division of Animal and Food Industry Services (DAFIS), called on Doug Saunders, Assistant Director, DAFIS, who reviewed with the Board a draft proposed Health Requirements Governing the Control of Equine Infectious Anemia in Virginia, 2 VAC 5-70.

Following Mr. Saunders' presentation, Mr. Ellis moved that the Board propose the draft Health Requirements Governing the Control of Equine Infectious Anemia in Virginia, 2 VAC 5-70, presented by staff and authorize staff to take any and all actions necessary to have the regulations filed with the Virginia Registrar of Regulations and published in The Virginia Register of Regulations as proposed regulations for public review and comment.

Mr. Bain seconded the motion and it was carried by a unanimous vote.

HUMANE INVESTIGATORS QUALIFICATIONS REGULATION – REPEAL BY EXEMPT ACTION

Dr. Wilkes, DAFIS Director, recommended that the Board repeal by exempt action the Rules and Regulations Governing the Qualifications for Humane Investigators, 2 VAC 5-100. He told the Board that the Office of the Attorney has informed the agency that 2

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VAC 5-100 can be repealed through action exempt from the Virginia Administrative Process Act, pursuant to Section 2.2-4006.A.4.a of the Code of Virginia, in order to comply with changes to the Code and where no discretionary authority is granted to the Board.

Following Dr. Wilkes' presentation, Mr. Clark moved that the Board authorize staff to take any and all actions necessary to facilitate the repeal of Rules and Regulations Governing the Qualifications for Humane Investigators, 2 VAC 5-100, through action exempt from the Virginia Administrative Process Act pursuant to Section 2.2-4006.A.4.a of the Code of Virginia and where no discretionary authority is granted to the Board.

Mr. Murphy seconded the motion and it was carried by a unanimous vote.

ANIMAL ADMISSION/IMPORTATION REGULATIONS – NOIRA

Dr. Wilkes, DAFIS Director, presented the recommendation that the Board authorize the initiation of regulatory action to consider the continued need and effectiveness of Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds into Virginia, 2 VAC 5-140. Dr. Wilkes stated that there is an interest in considering changes to the regulations that would update them.

After Dr. Wilkes' comments, Mr. Toulme 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 Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds into Virginia, 2 VAC 5-140.

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

DISPOSAL OF ENTIRE DEAD FLOCKS REGULATIONS – FINAL ADOPTION

Dr. Wilkes, DAFIS Director, called on Doug Saunders, DAFIS Assistant Director, who presented a summary of public comments received concerning the proposed Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry, 2 VAC 5-200. He also presented staff recommendations regarding responses to the public input, and answered questions concerning suggested changes to the proposed regulations to address public comments.

Mr. Seward advised the Board that Ms. Lohr just signed a statement disclosing that, as a poultry farmer, she might be financially impacted as a result of votes by the Board concerning 2 VAC 5-200, since she is a member of a business, profession, occupation or group potentially affected by the Board's actions concerning these regulations, but that she believes that she is able to vote fairly, objectively and in the public interest. A copy of Ms. Lohr's signed statement will be kept with the official record of the meeting.

Following Mr. Saunders' report, Mr. Bain moved that the Board adopt as final regulations the draft Rules and Regulations Pertaining to the Disposal of Entire Flocks

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of Dead Poultry, 2 VAC 5-200, presented by staff and authorize staff to take any and all actions necessary to make these regulations final.

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

THREATENED AND ENDANGERED PLANT SPECIES – NOIRA

Andy Alvarez, Director of DCP, called on Larry Nichols, Program Manager, Office of Plant Pest Services, who presented the recommendation that the Board authorize the opening of the regulatory process to consider the need for updating the Regulations for the Enforcement of the Endangered Plant and Insect Species Act, 2 VAC 5-320. Mr. Nichols reported the agency has been contacted by the Department of Conservation and Recreation about the listing and de-listing of certain species.

Mr. Bain expressed concern about government over-regulation and endangered species.

Following Mr. Nichols' presentation and Board comments, Mr. Murphy 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 Regulations for the Enforcement of the Endangered Plant and Insect Species Act, 2 VAC 5-320.

Ms. Lohr seconded the motion, and it was passed by a unanimous vote.

GYPSY MOTH QUARANTINE UPDATE

Mr. Nichols, Program Manager for the Office of Plant Pest Services, reported on the actions of Commissioner Haymore to expand the gypsy moth quarantine by adding the City of Radford and the counties of Bland and Pulaski. He noted that a written report is included in the Board meeting folders. Mr. Nichols explained that state law requires that the Board be informed of the Commissioner's action to expand the quarantine.

WEIGHTS AND MEASURES CASE APPEAL – HEARING OFFICER REPORT

Vice President Rogers called on Mr. Alvarez, DCP Director, who briefed the Board on the appeal of VDACS' civil penalty assessment against the Moore Scale Service of Western Virginia, Inc. Mr. Alvarez explained that the court-appointed hearing officer who heard Moore's appeal of the civil penalty assessment recommended that this assessment be withdrawn. He added that, in accordance with the procedure for handling appeals, the Board now needs to respond to the hearing officer's report. He recommended that the Board accept this report and agree to abate the assessment.

Mr. Rogers called on William D. Hamner, attorney representing Moore Scale Service, who also urged the Board to accept the hearing officer's report and abate the assessment.

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After providing the Board an opportunity to comment and ask questions, Mr. Rogers called on Mr. Alvarez who restated his recommendation that the Board accept the report of the hearing officer and to abate the assessment.

Mr. Clark made the motion that the Board accept the recommendations of the hearing officer concerning Moore Scale Service's appeal and abate the weights and measures civil penalty assessed by VDACS. Mr. Fleming seconded the motion and it was carried by a unanimous vote.

AGRICULTURAL STATISTICS REPORT

David Mueller, Assistant Director of the Virginia Office of the National Agricultural Statistics Service (NASS), reported on the results of the 2007 Agriculture Census. During discussion Mr. Ellis stressed the need for future Census reports to include information that shows the high level of success of Virginia and American farmers in implementing soil and water conservation measures on their farms. He suggested that the Board communicate to NASS the need for the 2012 Ag Census to properly address all conservation practices implemented on farms.

Mr. Rogers agreed to write a letter on behalf of the Board that would express the Board's consensus on this matter.

NEW BUSINESS

No new business was discussed.

PLANS FOR FUTURE BOARD MEETINGS

Vice President Rogers reported that the Board's next meeting is scheduled for May 21, 2009, in Richmond and that the election of the Board officers (president, vice-president, and secretary) will be held at that meeting. He added that the Board's last meeting of the year will be on December 3, 2009 in Richmond.

Concerning Mr. Ellis's plans to host the Board's summer meeting and tour during August, Mr. Rogers asked Mr. Seward to contact Mr. Ayers to explore the possibility of the Virginia Agricultural Council joining the Board for its tour this summer.

PUBLIC COMMENT PERIOD

Eileen McAfee presented a report to the Board concerning the state of Virginia's local pounds and shelters and urged the Board members to visit facilities in their districts to learn more about the conditions of these facilities. Ms. Eileen McAfee provided Mr. Rogers with a list of the localities that have major problems based on VDACS inspection reports. She emphasized that Virginia does not need new laws to address pounds and shelters, but that the state should enforce those laws on the books. She recommended that the State Veterinarian, who has limited resources, involve the State Police and the Office of the Attorney General in prosecuting those localities whose pounds and shelters are found to be in violation of state law.

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Nancy Lowe of Southampton County recounted her experiences with trying to reclaim her dog after it had been injured and then taken to the county pound. She thanked the Board for giving her the opportunity to talk about what happened to her dog.

Donna P. Johnson, President of the Virginia Agribusiness Council, thanked the Board for its concerns regarding the General Assembly's budget amendment that would require the privatization of Virginia's Weights and Measures Program and the Board's willingness to encourage Governor Kaine to veto this budget amendment.

ADJOURNMENT

The Board adjourned at noon.

Respectfully submitted,

Paul W. Rogers, Jr., Board Vice President

Roy Seward, Board Secretary