

FINAL MINUTES

Board of Agriculture and Consumer Services
Oliver Hill Building, 102 Governor St., Richmond, Virginia
December 9, 2010

The meeting convened at 9:00 a.m. on Thursday, December 9, 2010, in Room 220 of the Oliver W. Hill Building, 102 Governor Street in Richmond, Virginia. President Rogers called on Mr. Ellis for the invocation. Mr. Rogers then called on the Board Secretary to read the roll:

PRESENT

Stephen Ellis
Steve Sturgis
Paul W. Rogers, Jr.
William B. Bain
Robert J. Mills, Jr.
Rosalea Riley
Edward S. Fleming
Patrick A. Toulme
Charles C. Clark, Jr.
John D. Hardesty, Jr.
Melvin E. Murphy

DISTRICT

1st
2nd
3rd
4th
5th
6th
7th
8th
9th
10th
11th

Dr. Wondi Mersie

Representing President of Virginia
State University

Dr. Brian Calhoun

Representing President of Virginia Tech

STAFF PRESENT

Matthew J. Lohr, Commissioner
Roy E. Seward, Board Secretary

NOTE ABOUT SEPTEMBER PUBLIC HEARING

President Rogers thanked Mr. Fleming for presiding at the Board's public hearing on September 30, 2010.

APPROVAL OF MINUTES

In response to Mr. Mills' motion and a second by Mr. Murphy, the Board approved the minutes of the July 14, 2010, meeting as distributed.

WELCOME TO MS. RILEY

President Rogers welcomed Ms. Riley of Staunton as a new member of the Board from the Sixth Congressional District.

REPORT FROM BOARD MEMBERS

Mr. Rogers welcomed Ms. Riley who was appointed by Governor McDonnell to fill Andrea Lohr's unexpired term.

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Mr. Clark reported that his area was very dry by summer's end. He advised that this year's corn crop was decent given timely precipitation.

Mr. Toulme reported that he enjoyed the Eastern Shore meeting and tours which Mr. Sturgis hosted. He noted that the meeting and tour were well planned and that the tour was educational. He thanked the Virginia Department of Agriculture and Consumer Services (VDACS) staff for briefing him after the July Board meeting on a veteran's charity organization. He noted that during each holiday season, there always seems to be more charity scams than the year before. He thanked VDACS staff for their efforts to educate citizens in his district regarding these scams.

Mr. Hardesty reported on the concerns of apple growers for the damage to apples caused by the stink bug. He noted that this plant pest is a concern to farmers who grow peaches, vegetables and soybeans. He advised that 2010 has been an extremely dry year in his area with corn yields averaging 40 bushels per acre and soybeans 15 bushels per acre. He added that a number of areas in his district had even lower yields. He reported that more small grains are being planted. He stated that the fall rains helped replenish the underground system and improve the chances for crops such as barley that were planted for the coming year.

Mr. Hardesty advised the Board that James W. Hazel, who chairs the Board of Game and Inland Fisheries, has offered to attend a future meeting of the Board to talk about concerns relating to animal health issues. He closed his report with a welcome to Ms. Riley.

Mr. Ellis reported that 2010 was an extremely dry year for the farmers in his district and that he and other grain producers in his area are looking for a better year in 2011. He noted that the federal crop insurance program was a great help to farmers in dealing with crop losses. He mentioned farmer concerns about the U.S. Environmental Protection Agency's increased efforts to clean up the Chesapeake Bay. He explained that farmers also want to help clean up the Bay but they want to see it done efficiently and without a lot of new government regulations and red tape.

Mr. Mills echoed what Mr. Ellis said about the effects of the 2010 drought and noted that he also is looking forward to a new year. He reported that Pittsylvania County farmers lost 71 percent of their hay and pasture production due to drought. He noted that the benefits of the crop insurance program and the federal disaster program in helping farmers with their drought losses. He expressed concern about World Health Organization (WHO) policy that will affect Virginia's burley industry. He added that, because of some of the things WHO is considering (which could affect FDA policy), there are many questions about what will happen next year including whether there will be a next year for burley growers. He added that 30 to 40% of the tobacco that goes into a cigarette is burley. He noted that tobacco growers in Southside Virginia are concerned about the future of flue-cured and dark-fired tobacco. He explained that growers are concerned about the contracting system and the possibility that many of the

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major tobacco companies will cut contracts. On a positive note, he reported that construction of the Old Dominion Agriculture Complex is finished and that the new facility should be up and running the first of the year.

Dr. Calhoun, who represented Dr. Charles Steger, Virginia Tech's President, echoed Mr. Mills' excitement about the Old Dominion Agriculture Complex. He mentioned Virginia Tech's recruitment/interview efforts for filling a top-level Cooperative Extension position. He also discussed the ongoing efforts for restructuring Virginia Cooperative Extension.

Dr. Mersie, who represented Dr. Keith Miller, Virginia State University's President, reported that approximately 300 attended the Agriculture Field Day his university held on August 26. He also reported that about 110 attended the Aquaculture Field Day held on October 21. He advised that VSU is expected to have 308 students taking their degrees at the winter graduation to be held December 18, 2010. He also noted that the Virginia Agribusiness Council held its board meeting on December 8 at the Randolph Farm Pavilion and that the Council toured the farm and school.

Mr. Fleming reported that farmers in his area expect to have a good wheat crop. He added that one farmer in his district cut his first corn crop for silage, planted a second crop and then actually had a better crop the second time. He noted that late hay was pretty good. He added that there are dry areas in his district and that farmers there need moisture.

Mr. Bain reported that every one of his crops failed because of drought. He noted that soybean yields (bushels per acre) were in the single digits, corn yields averaged in the upper teens, that tobacco yields were fair but that the cost of irrigation cut into grower profits, and that a lot of peanut acreage was destroyed. He reported that he attended one of the hearings about the Chesapeake Bay and stressed that VDACS needs to be proactive in representing agriculture's interests because everyone else appears to be working against the interests of farmers. He added that if we do not step up to the plate farmers are going to have a rough road ahead as far as new federal requirements affecting agriculture. He also voiced his concerns about his locality not having an Extension Agent.

Mr. Sturgis reported that agriculture in his district also has been in bad shape. He explained that crop production fell this past summer and that yields were probably 50 percent less than the year before. He noted that it is some help to farmers that prices are up a little. He reported that the wheat planted this fall has had a great start thanks to significant rainfall. He thanked everyone for coming to the Eastern Shore last summer.

Mr. Sturgis reported that the memorandum of agreement (MOA) between tomato companies and the Eastern Shore Soil and Water Conservation District has been signed. He explained that the MOA provides a positive, cooperative approach for

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addressing the use of Best Management Practices in growing tomatoes on plasticulture on the Shore. He gave credit to VDACS, the Department of Environment Quality and the Virginia Agribusiness Council for helping negotiate this agreement.

Mr. Murphy reported that residents of the District of Columbia also had problems with stink bugs. He noted that pumpkin sales have been average. He thanked everyone for the cards and condolences on the passing of his mother.

Ms. Riley thanked everyone for welcoming her to the Board. She stated that she is an Augusta County native who grew up participating in the 4H program. She noted that she has a farm in Augusta County where she has a cow-calf commercial operation, a sheep flock, a herd of goats, a few donkeys and one turkey house in which she grows turkeys for Cargill. She explained that growing up in the 4H and the FFA and working and living on a farm her entire life gave her a passion for educating people about agriculture. She stated that she majored in agriculture education at Virginia Tech and teaches agriculture education at Buffalo Gap High School. She added that she is also an FFA advisor. She reported that her crops were drastically reduced this year because of drought.

Mr. Rogers reported that 2010 has been a dry crop year and that, on average, yields were reduced by 30 to 40 percent on average. He noted that his area received 14 inches of rain over a three-day period before peanut harvesting began and his area still needs more rain. He added that he also is concerned about the Extension Agent situation.

COMMISSIONER'S REPORT

Commissioner Lohr briefed the Board on personnel changes, recent and future events and other matters relating to VDACS and its efforts to promote agriculture and consumer protection. A copy of a written report on which his presentation was based was included in the Board's meeting folders.

During his report the Commissioner welcomed Ms. Riley as a new Board member. He also talked about the series of six listening sessions sponsored by the Virginia Agribusiness Council that he and other state agency representatives participated in this year. The Commissioner also recognized the considerable efforts of Secretary of Agriculture and Forestry Todd Haymore to represent the budgetary and other needs of the Department.

The Commissioner noted that Beach Vitex (BV) will be on the agenda for the March 2011 meeting of the Board when staff will recommend that BV be classified as a noxious weed. He explained that the current quarantine does not appear to allow local governments to treat BV on private property.

Commissioner Lohr mentioned that during the 2010 session of the General Assembly, the state legislature passed legislation that replaced general funds for the Weights and Measures (W&M) Program with an authority for VDACS to charge W&M fees. He noted that he expects that the W&M fees will come up in the 2011 session.

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The Commissioner talked about the Chesapeake Bay restoration effort being pushed by the federal government and mentioned that VDACS, through its Agricultural Stewardship Act Program, has worked with state natural resource agencies to develop strategies included in Virginia's Watershed Improvement Plan (WIP) that utilize the ASA Program in addressing water quality issues relating to agricultural operations. The Commissioner also noted that VDACS has requested additional FTE's and funding to employ two more ASA positions. He added that currently the Department has one ASA Coordinator covering the entire state.

In response to the Commissioner's comments about the Chesapeake Bay, Mr. Ellis mentioned a recent report issued by the U.S. Department of Agriculture (USDA) relating to farmers' use of cover crops and other Best Management Practices to minimize water quality problems associated with cropland. The Commissioner noted that agriculture is considered an easy target for more restrictions whereas dealing with urban, non-farm contributors to pollution is considered too costly.

Concerning the efforts of the Van Der Hyde family to fully implement plans for a power generating project, the Commissioner told Mr. Mills that he would explore what VDACS can do to help with any remaining obstacles to this project.

PROPOSED FINAL ACTION - 2 VAC 5 - 490 - REGULATIONS GOVERNING GRADE "A" MILK

President Rogers called on Dr. Richard Wilkes, State Veterinarian and Director of the Division of Animal and Food Industry Services (DAFIS), to begin the staff presentation on 2 VAC 5-490, Regulations Governing Grade "A" Milk. Dr. Wilkes introduced John Beers, Manager for the Dairy Services Program, who briefed the Board on actions taken on behalf of the Board to process the proposed regulations. Mr. Beers reviewed what public comments were received and some proposed amendments to the original proposed regulation. (A copy of the proposed regulations with amendments was sent to Board members prior to the meeting and a copy was in each Board meeting folder.)

In response to a question from President Rogers, Mr. Beers advised that once the proposed regulations become effective the Dairy Services staff will inform dairy farmers of new requirements through inspection visits to the dairies.

Following the staff briefing and Board questions/comments, the Board Secretary advised the Board that Mr. Hardesty acknowledged his potential financial interest in the regulations before the Board in the following statement which was read to the Board:

"I, John D. Hardesty, Jr., a member of the Board of Agriculture and Consumer Services, acknowledge that I may possibly be financially impacted as a result of the vote concerning 2 VAC 5-490, Regulations Governing Grade "A" Milk. The nature of my personal interest is as follows: I am a partner in my family's dairy. I am a member of a business, profession, occupation, or group affected by the transaction. I am nevertheless able to vote fairly, objectively, and in the public interest."

The Board Secretary noted that this statement was signed by Mr. Hardesty and dated December 9, 2010, and that this statement will be included in the written minutes of the December meeting.

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Mr. Ellis moved that the Board adopt the proposed Regulations Governing Grade “A” Milk, 2 VAC 5-490, with amendments presented by staff today and that the Board authorize staff to take any and all steps necessary to make this a final regulation of the Board. Mr. Mills seconded the motion and the Board passed it unanimously.

PROPOSED FINAL ACTION - 2 VAC 5 - 540 – RULES AND REGULATIONS PERTAINING TO CARBONATED AND STILL WATER BOTTLING PLANTS AND BEVERAGES

President Rogers called on Dr. Wilkes to begin the staff presentation on 2 VAC 5-540, Rules and Regulations Pertaining to Carbonated and Still Water Bottling Plants and Beverages. Dr. Wilkes introduced Ryan Davis, Program Manager of the Office of Dairy and Foods, who briefed the Board on actions taken to process the proposed repeal of 2 VAC 5-540. He also shared a summary of public comments received. (A copy of the proposed repeal was sent to the Board members prior to the meeting and a copy was included in the Board meeting folders.)

In response to a question from President Rogers, Mr. Davis explained that the proposed repeal would dispose of a existing regulation that was no longer necessary. He explained further that the requirements in 2 VAC 5-540 have been incorporated in state law.

Following the staff briefing and Board questions/comments, Mr. Clark moved that the Board adopt the proposed repeal of Rules and Regulations Pertaining to Carbonated and Still Water Bottling Plants and Beverages, 2 VAC 5-540, presented by staff today and that the Board authorize staff to take any and all steps necessary to make this repeal a final regulatory action of the Board. Following Mr. Murphy’s second, the Board passed the motion by a unanimous vote.

PROPOSED NOIRA - 2 VAC 5 - 60 – RULES AND REGULATIONS GOVERNING THE OPERATION OF LIVESTOCK MARKETS

President Rogers call on Dr. Wilkes to begin the staff presentation on 2 VAC 5-60, Rules and Regulations Governing the Operation of Livestock Markets. Dr. Wilkes introduced Dr. Charles Broaddus, Program Manager, Office of Veterinary Services, who recommended that the Board authorize the filing of a notice of intended regulatory action to begin the regulatory process to consider the continued need and effectiveness of 2 VAC 5-60, the current Rules and Regulations Governing the Operation of Livestock Markets.

Following the staff briefing and Board questions/comments, Mr. Clark 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 Rules and Regulations Governing the Operation of Livestock Markets, 2 VAC 5-60. Mr. Sturgis seconded the motion and it was passed by a unanimous vote.

PROPOSED NOIRA - 2 VAC 5 - 120 – RULES AND REGULATIONS GOVERNING THE RECORDKEEPING BY VIRGINIA CATTLE DEALERS FOR THE CONTROL OR ERADICATION OF BRUCELLOSIS OF CATTLE

Dr. Broaddus briefed the Board on the need to file a notice of intended regulatory action to initiate the regulatory process to consider to the continued need and effectiveness of 2 VAC 5-120, Rules and Regulations Governing the Recordkeeping by Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle.

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Following the staff briefing and Board questions/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 Rules and Regulations Governing the Recordkeeping by Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle, 2 VAC 5-120. Mr. Murphy seconded the motion and it was passed by a unanimous vote.

EXPANSION OF PINE SHOOT BEETLE QUARANTINE (2 VAC 5-325)

President Rogers called on Andy Alvarez, Director of the Division of Consumer Protection, to begin the staff briefing on the expansion of the Pine Shoot Beetle Quarantine, 2 VAC 5-325. He introduced Larry Nichols, Manager, Office of Plant Industry Services, who explained that Commissioner Lohr took action in November to expand the quarantine to include an additional locality--Loudoun County. (State law requires that the Commissioner's expansion of the quarantine be reviewed with the Board within 90 days of the Commissioner's action. A copy of the expanded quarantine was provided prior to the meeting and included in the Board meeting folders.) During the briefing, Mr. Nichols explained that the quarantine will continue for an indefinite period.

CONSENT AGREEMENT – SOUTHAMPTON COUNTY, CIVIL PENALTIES, POUNDS/SHELTERS

Doug Saunders, Assistant Director of DAFIS, introduced Dr. Dan Kovich, Staff Veterinarian and Program Manager, Office of Animal Care and Health Policy, of his division who briefed the Board on the proposed consent agreement concerning civil penalty assessments for violations of the Comprehensive Animal Care Laws and regulations regarding the maintenance of animal pound facilities in Southampton County. (A copy of the proposed consent agreement was sent to the Board members prior to the meeting and the meeting folders included a copy.)

Following the staff briefing and Board member comments/questions, Mr. Toulme moved that the Board approve the proposed consent agreement that staff presented concerning the handling of the civil penalty assessments for violations of the Comprehensive Animal Care Laws and regulations regarding the maintenance of animal pound facilities in Southampton County. Mr. Ellis seconded the motion and it was carried by a unanimous vote.

CONSENT AGREEMENT – RUSSELL COUNTY, CIVIL PENALTIES, POUNDS/SHELTERS

Dr. Kovich briefed the Board on the proposed consent agreement concerning civil penalty assessments for violations of the Comprehensive Animal Care Laws and regulations regarding the maintenance of animal pound facilities in Russell County. (A copy of the proposed consent agreement was sent to the Board members prior to the meeting and the meeting folders included a copy.)

Following the staff briefing and Board member comments/questions, Mr. Clark moved that the Board approve the proposed consent agreement that staff presented concerning the handling of the civil penalty assessments for violations of the Comprehensive Animal Care Laws and regulations regarding the maintenance of animal pound facilities in Russell County. Mr. Sturgis seconded the motion and it was passed by unanimous vote.

VDACS SEED LAB OVERVIEW

President Rogers called on Mr. Alvarez who introduced Susan Reed, Manager of VDACS Seed Laboratory. Ms. Reed briefed the Board on the work of the Department's Seed Lab. Mr.

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Alvarez noted that Ms. Reed was successful in convincing the international seed officials organization to hold its next annual convention in Virginia.

NEW BUSINESS

Mr. Clark commented on proposed plans for the Extension and 4H programs under the restructuring of Virginia Cooperative Extension and then called on Dr. Calhoun to brief the Board on the proposed plans. Dr. Calhoun in his comments noted that the final restructuring plan is expected to be fully implemented in 2013.

Mr. Clark thanked Dr. Calhoun for his briefing and stated that there are a lot of questions being raised about the proposed plans.

Dr. Calhoun thanked the Board members for their comments and invited them to communicate their questions/remarks about the proposed plans to Dr. Alan Grant by letter or email.

At the request of President Rogers for her input on the subject, Donna Pugh Johnson, President of the Virginia Agribusiness Council, noted that the Board member comments on the proposed Extension restructuring were very helpful.

President Rogers reported that the summer Board meeting will include a presentation on the powers and duties of the Board as a policy making body. He asked staff to prepare a briefing on this subject for that meeting and mentioned involving the Assistant Attorney General assigned to the Board in the briefing.

Commissioner Lohr briefed the Board on the suggestion that the state law concerning the Board be amended to make it clear that the presidents of Virginia Tech and Virginia State University may designate a staff member to represent them at Board meetings who can vote and be counted as part of the meeting quorum.

Mr. Mills expressed concern about the decision of the Board of Game and Inland Fisheries to move ahead with the re-introduction of elk into Virginia despite opposition from the Board of Agriculture and Consumer Services, the Commissioner of Agriculture and Consumer Services, state farm groups, and individual farmers.

PLANS FOR FUTURE BOARD MEETINGS

President Rogers reported that the Board is scheduled to meet in 2011 on March 24, May 26, and December 8. He stated that Mr. Mills has agreed to host the summer meeting and tour. Mr. Mills advised that the summer meeting and tour will be in late August and that he looked forward to hosting the Board.

PUBLIC COMMENT PERIOD

Ms. Johnson briefed the Board on the press conference held by the Agricultural Nutrient Policy Council (ANPC) earlier in the day. She pointed out some of the issues raised in the ANPC report regarding differences in data generated by USDA's Natural Resources Conservation Service and the U.S. Environmental Protection Agency relating to the Chesapeake Bay situation and the efforts of farmers to minimize water quality issues on lands in the Bay area

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ADJOURNMENT

There being no further business, the Board meeting adjourned at 12:15 p.m. (The next scheduled meeting is March 24, 2011 in Richmond.)

Respectfully submitted,

Paul W. Rogers, Jr., Board President

Roy Seward, Board Secretary