

FINAL MINUTES

Board of Agriculture and Consumer Services
Alson H. Smith, Jr. Agricultural Research & Extension Center
595 Laurel Grove Road, Winchester, Virginia
Tuesday, August 7, 2012

The meeting convened at 12:00 noon on Tuesday, August 7, 2012, in the Alson H. Smith, Jr. Agricultural Research and Extension Center, 585 Laurel Grove Road, Winchester, Virginia. President Rogers called the meeting to order.

Dr. Tony Wolf welcomed the Board to the Alson H. Smith, Jr. Agricultural Research & Extension Center.

President Rogers called on Mr. Hardesty who gave the invocation.

The Board Secretary called 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.
Elizabeth L. White
Kevin J. Kordek
Dr. Jewel E. Hairston

Dr. Alan L. Grant

DISTRICT

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

Pesticides – Commercial Agricultural
Pesticides – Commercial Structural
Representing Dr. Keith T. Miller, President,
Virginia State University
Representing Dr. Charles W. Steger, President,
Virginia Tech

ABSENT

Vacant Position

11th

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 May 24, 2012, be approved as distributed. Mr. Mills seconded the motion and it was passed by the Board with a unanimous vote.

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RECOGNITION OF NEW BOARD MEMBERS

President Rogers recognized Ms. White and Mr. Kordek who were recently appointed by Governor McDonnell to serve on the Board as the two new at-large members representing the pesticide industry. He welcomed them and encouraged their continued participation.

REPORT FROM BOARD MEMBERS

Mr. Clark reported that his area has received a lot of rain. He said that cattle markets got nervous when corn made national news. He stressed the need for the drought conditions to improve. He reported that pastures in his area are in good condition. He noted that everyone is gearing up for the county fair this August and he encouraged folks to attend and support their local fairs.

Mr. Toulme reported on the impact of fairly recent storms that damaged homes and property and left folks without electrical power for an extended period in northern Virginia.

Mr. Hardesty welcomed the Board, staff and guests, including former Commissioner Mason Carbaugh, to the Winchester area. He reported that his area had a good hay crop. He advised the Board the peach harvest was about 20 to 30 percent complete. He added that the apple crop looks good. He noted that folks have not had a stink bug problem so far. He reported that the barley crop looks good with yields of 80 to 90 bushels. He told the Board that the wheat crop, which is averaging about 70 to 75 bushels per acre, is a little bit off due to hot weather. He also reported that the corn crop is fairly good and looks promising. He noted that the soybean crop looks good, too. He pointed out that the high grain and soybean prices are putting a lot of pressure on dairy farmers.

Mr. Ellis reported that farmers in his district started with the prettiest corn crop, but then the rain stopped for about six weeks and high temperatures cooked the corn in the field before it had a chance to make an ear. He added that the corn picked on his farm yesterday had 16% moisture and that the yield per acre was 65 bushels. He noted that rains in the last week or two have been spotty. He reported that, thanks to recent rain, the soybean crop is starting to grow. He noted that the soybean crop can recover over time. He also reported that wheat and barley crops were about average and that they were not a total loss. He noted that there is not much livestock in his district. Therefore, he is not hearing much about the impact of the high cost of grain.

Mr. Mills apologized for not being able to attend the May meeting because of a prior commitment to attend a meeting of the Virginia Farm Bureau Federation. He reported that his area has seen a mixed bag of weather conditions. He noted that some areas are extremely dry and the crops there are a total loss. He added that there are some areas where they have produced some corn. He reported that it appears that the double crop beans in the area will do better than the earlier beans. He noted that his district has a lot of livestock and that there are some concerns about the grain prices and that dairy producers are concerned about the price of milk going down and the price of grain going up. He noted his concern for the impact of the rising price of beef and grain on everyone and added that we have a scary situation, not just in Virginia, but in the U.S. Regarding the tobacco crop, he reported that if a farmer did not irrigate, the situation is pretty bad.

Dr. Hairston, who was named Dean of the School of Agriculture at Virginia State University (VSU) in March, represented Dr. Keith T. Miller, VSU's President. In her report she informed

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the Board that VSU's fall enrollment should be approximately 5,000. She noted that the School of Agriculture enrollment is expected to be 400+ this year. She reported on VSU's efforts to streamline programs and noted that her university has received reaffirmation of accreditation for their dietitian and nutrition program. She also talked about the partnership that Virginia State has with a food company that has operations in Chesterfield County, Virginia.

Dr. Grant, Dean of the College of Agriculture and Life Sciences, represented Dr. Charles W. Steger, President of Virginia Tech. He reported that his university is expected to have approximately 488 new freshmen entering the College this fall. He noted that the College is expected to have a total of about 2700 undergraduates this fall. He also reported on plans for field days being sponsored by Tech this fall and noted that attendance so far this year has been good. He also provided an update on efforts to fill new Extension related positions. He reported that, with an infusion of new state funds which many folks helped Virginia Tech obtain through their support, his university has been able to add these additional positions.

Mr. Kordek, who was just recently appointed to the Board to represent commercial applicators who treat structures with pesticides, introduced himself and promised to have a report at the next meeting.

Mr. Fleming reported that farmers in his district started off the spring with an excellent corn crop and then went about 6 or 7 weeks with no rain and then everything just fell apart. They had a full swing of chopping the late corn, which looks better than the early corn this year. He noted that the early soybean crop is very good, but that farmers had problems with the late soybeans. He also reported on the options that the Colonial Gas and Pipeline is offering to landowners for controlling vegetation this year along the right-of-way.

Mr. Bain reported that some of the counties in his district are experiencing a major drought. He added that Dinwiddie County has already been declared a disaster area, as well as some counties north and west of that locality. He advised that the extreme dry weather and excessive heat destroyed what would have been a beautiful crop in Virginia. He noted that farmers started feeding hay to their cattle by the second week in July and are still feeding them because they have not had enough rain. He added that farmers have experienced a very disappointing year with high prices. He reported that the wheat harvest was better than fair. He stated that because of the lack of rain, farmers in his area had to replant their double crop soybeans and received just enough moisture to get them out of the ground. He reported that tobacco farmers in his area seem to be fairing well, that they have been irrigating over a month now to develop their crop, and they are now just beginning to harvest tobacco.

Mr. Sturgis noted that the weather on Virginia's Eastern Shore has been diverse. He added that, on the lower end, some farmers had to file for crop insurance because their soybeans had received too much rain, while on the northern end, the situation is quite the opposite and Accomack County officials are working to file a disaster declaration because of crop losses. He reported that farmers in his area of the Shore will start harvesting corn in the next couple of weeks. He noted that, because of excessive heat, potato growers will not have a good crop. He pointed out that snap beans were very dry on one end of the Shore but too wet on the other end. He reported that growers in his area had a decent wheat crop and look forward to a good soybean crop. He advised that the situation for seafood production looks good.

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Ms. White, who identified herself as a Winchester native, was just recently appointed to the Board to represent the segment of the pesticide industry associated with commercial agriculture. She reported that there has been a good growing season for apples and peaches and the season is about three weeks ahead of a normal year. She also reported that producers are in the process of picking apples. She noted that growers in Michigan and New York do not have apples this year and that out-of-state buyers were in Virginia purchasing a lot of our fruit that will be going to processors in other states. She added that it is good for our growers because the prices are really good.

Ms. Riley reported that her area had been dry toward the end of June and the beginning of July. She noted that the winds from recent storms that hit her area caused quite a bit of damage to the dry and brittle corn crop. She added that her area is now getting too much rain which is damaging the crops, flooding fields and knocking crops down. She reported that during the recent storm, farmers were using backup generators to make sure their livestock were getting plenty of water. She noted that farmers were also concerned about their livestock having access to the downed cherry trees after the storms. She reported that her area has plenty of green right now and farmers are making hay when they can.

Mr. Rogers reported that crop conditions in his district look pretty good. He noted his area had a dry spell in July that they did have showers. He noted that he has heard about other areas of the state that are experiencing drought conditions right now. He reported that all crops in southeast Virginia, where he lives, look good.

COMMISSIONER'S REPORT

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

RECOGNITIONS

Following the Commissioner's report, President Rogers recognized S. Mason Carbaugh, Virginia's tenth Commissioner of Agriculture and Consumer Services, who thanked the Board for the opportunity to join them for the meeting, the dinner and the next day's tour. President Rogers also recognized Deputy Secretary of Agriculture and Forestry Travis Hill, who gave a brief report to the Board.

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

After being introduced by President Rogers, Andy Alvarez, Director, Division of Consumer Protection (DCP), called on Erin Williams of his staff to report on Commissioner Lohr's recent expansion of Virginia's Thousand Cankers Quarantine to include the counties of Fairfax and Prince William and the cities of Fairfax, Falls Church, Manassas and Manassas Park. Ms. Williams advised the Board that state law requires that the Board be briefed at its next meeting, after the Commissioner takes such action. A copy of the expanded quarantine was sent to Board members before the meeting and this document was included in the meeting folders prepared for the Board members.

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REPORT ON EXPANSION OF 2 VAC 5-335, VIRGINIA EMERALD ASH BORER QUARANTINE

Mr. Alvarez called on Ms. Williams of his staff to report on Commissioner Lohr's two separate actions to expand the Virginia Emerald Ash Borer (EAB) Quarantine to include additional localities. It was noted that, with the second expansion, the EAB quarantine now covers the entire state. It was explained that, under state law, the Commissioner is permitted to expand this quarantine and staff is required to brief the Board at its next meeting following the Commissioner's action. The two expanded quarantines were sent to Board members before the meeting and these documents were included in the meeting folders prepared for the Board members.

PESTICIDE SERVICES PROGRAM & BOARD'S NEW ROLE FOR PESTICIDES

President Rogers called on Mr. Alvarez who introduced Liza Fleeson, Manager, Office of Pesticide Services, who briefed the Board on this program and the new duties and responsibilities the Board received following the action of the 2012 General Assembly to abolish the Pesticide Control Board (PCB), effective July 1, 2012.

Following the staff briefing, the Board was asked to consider the adoption of a draft matrix that would be used by staff in assessing civil penalties for violations of the Virginia Pesticide Control Act. Staff explained that the draft matrix sent to Board members before the meeting and which was included in the Board meeting folders, is based on the matrix the PCB adopted and includes amendments to update the matrix. After questions and comments, Mr. Clark moved that the Board adopt the draft matrix presented by staff for use in assessing civil penalties for violations of the Virginia Pesticide Control Act. Mr. Ellis seconded the motion and it was passed by the Board by a unanimous vote. (NOTE: Since this meeting, staff has posted the adopted matrix on Virginia's Commonwealth Regulatory Townhall as a guidance document associated with pesticide regulations. A copy of this matrix will be attached to the final minutes of the meeting of August 7, 2012.)

The staff also presented the Board with proposed administrative procedures which the Division of Consumer Protection (DCP) staff would use in the administration of the Virginia Pesticide Control Act, and other laws administered by DCP. A copy of the proposed procedures was sent to Board members before the meeting and a copy was included in the Board meeting folders. After more comments and questions, Mr. Clark moved that the Board adopt the proposed administrative procedures presented by staff for use in the administration of the Virginia Pesticide Control Act and other laws administered by DCP. Mr. Mills seconded the motion and it was carried by a unanimous vote of the Board. (NOTE: Staff has posted the adopted administrative procedures on Virginia's Commonwealth Regulatory Townhall as a guidance document associated with pesticide regulations and other regulations promulgated under other laws administered by DCP. A copy of the administrative procedures will be attached to the final minutes of the meeting of August 7, 2012.)

PROPOSED EXEMPT ACTION – REPEAL OF 2 VAC 20-11, PUBLIC PARTICIPATION GUIDELINES

Mr. Alvarez called on Ms. Williams of his staff to present a recommendation that 2 VAC 20-11, Public Participation Guidelines, promulgated by the former Pesticide Control Board (PCB) be repealed through exempt regulatory action since this regulation is no longer needed. It was explained that the Board of Agriculture and Consumer Services (BACS) does not need to

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transfer this PCB regulation to the BACS because it already has a similar regulation providing guidance for public participation.

Following an opportunity for comments and questions, Mr. Ellis moved that the BACS, in implementing the transfer of duties and responsibilities of the former Pesticide Control Board to the BACS, repeal 2 VAC 20-11, the Public Participation Guidelines of the PCB, through exempt regulatory action and authorize staff to take any and all steps necessary to effectuate this repeal. Mr. Toulme seconded the motion and it was carried by a unanimous vote of the Board.

PROPOSED EXEMPT ACTIONS – TRANSFER OF PESTICIDE CONTROL BOARD (PCB) REGULATIONS TO BOARD OF AGRICULTURE AND CONSUMER SERVICES (BACS)

Mr. Alvarez called on Ms. Williams of his staff to present the recommendation that four of the former PCB regulations be transferred to the BACS through exempt regulatory action. Copies of these regulations in the form to be transferred were sent to the Board members before the meeting and copies were included in the Board meeting folders.

During a discussion of the proposed transfer of pesticide regulations, Mr. Sturgis expressed concern that current requirements relating to where commercial pesticide applicators may take the pesticide applicator tests need to be revised to provide more flexibility. He described the challenges of attempting to take an applicator's test at a DMV location. Mr. Alvarez agreed to check into the matter and get back with him.

Following questions and comments, Mr. Fleming moved that the BACS, in implementing the 2012 General Assembly's legislative action to transfer the duties and responsibilities of the former PCB to the BACS, transfer to the BACS, through exempt regulatory action and in the form presented by staff, the four regulations of the former PCB listed below, and that the Board authorize staff to take any and all steps necessary to implement these transfers through exempt regulatory action:

****2 VAC 20-20, Rules and Regulations for Enforcement of the Virginia Pesticide Law, to be transferred to the BACS and given the new number 2 VAC 5-670;**

****2 VAC 20-30, Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services, to be transferred to the BACS and given the new number 2 VAC 5-675;**

****2 VAC 20-40, Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act, to be transferred to the BACS and given the new number 2 VAC 5-680; and**

****2 VAC 20-51, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act, to be transferred to the BACS and given the new number 2 VAC 5-685.**

Ms. Riley seconded the motion and it was passed by a unanimous vote of the Board.

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MEETING RECESS FOR PUBLIC HEARING

At approximately 1:50 p.m., President Rogers called for a recess to allow the Board and staff to get ready for a public hearing on the proposed Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act, 2 VAC 5-320.

SUMMARY OF PUBLIC HEARING – PROPOSED RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE ENDANGERED PLANT AND INSECT SPECIES ACT (2 VAC 5-320)

At 2:00 p.m., President Rogers opened the public hearing on the proposed Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act (2 VAC 5-320). A court reporter was present to make a record of the hearing which will be included with the minutes of the meeting.

President Rogers called on Mr. Alvarez, who introduced Ms. Williams to brief the Board concerning the proposed Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act (2 VAC 5-320).

Following Ms. Williams' presentation, President Rogers called on the Board Secretary who advised him that no one had signed up to speak at the public hearing. After no one came forward following his invitation to speak, Mr. Rogers asked the Board members if they had any questions regarding the proposed quarantine.

At the conclusion of the questions and responses, the President advised the Board that following the public comment period that ends August 31, 2012, staff will review oral and written comments received with the Board and present recommendations concerning the proposed regulations at a future Board meeting.

The President adjourned the public hearing and called for a break. Later he called the Board into session to complete the meeting agenda.

PROPOSED WITHDRAWAL OF PESTICIDE CONTROL BOARD'S (PCB) PROPOSAL FOR 2 VAC 20-60, REGULATIONS FOR PESTICIDE CONTAINERS AND CONTAINMENT UNDER AUTHORITY OF VIRGINIA PESTICIDE CONTROL ACT

Mr. Alvarez called on Ms. Williams of his staff to present a recommendation that the Board withdraw from further consideration the former PCB's proposal for 2 VAC 20-60, Regulations for Pesticide Containers and Containment Under Authority of Virginia Pesticide Control Act. The Board was advised that the proposed regulations have been under executive review but that, with the PCB's abolishment and the transfer of the PCB's responsibilities and duties to the BACS, this proposal needs to be withdrawn from the regulatory process and that, as a separate action, BACS needs to consider proposing the adoption of similar regulations under the fast-track regulatory process.

After questions and comments, Mr. Clark moved that the BACS withdraw 2 VAC 20-60, Regulations for Pesticide Containers and Containment Under Authority of Virginia Pesticide Control Act, proposed by the former PCB, and authorize staff to take any and all steps necessary to effectuate the withdrawal of this proposal from the regulatory process. Mr. Toulme seconded the motion and it was carried by a unanimous vote of the Board.

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PROPOSED FAST-TRACK ACTION - ADOPTION OF 2 VAC 5-690, REGULATIONS FOR PESTICIDE CONTAINERS AND CONTAINMENT UNDER AUTHORITY OF VIRGINIA PESTICIDE CONTROL ACT

Mr. Alvarez called on Ms. Williams of his staff to recommend that the Board adopt, through fast-track regulatory action, 2 VAC 5-690, Regulations for Pesticide Containers and Containment Under Authority of Virginia Pesticide Control Act. She noted that similar regulations had been proposed by the former PCB and that these regulations are needed to address pesticide containers and containment. It is noted that a copy of the proposed regulations was sent to the Board members before the meeting and that a copy was included in the Board meeting folders.

Following questions and comments, Mr. Clark moved that the BACS adopt 2 VAC 5-690, Regulations for Pesticide Containers and Containment Under Authority of Virginia Pesticide Control Act, presented by staff and that the Board authorize staff to take any and all steps necessary to have these regulations become final through fast-track regulatory action. Ms. Riley seconded the motion and it was carried by a unanimous vote of the Board.

BRIEFING ON ANIMAL DISEASE TRACEABILITY

Dr. Richard Wilkes, State Veterinarian and Director of the Division of Animal and Food Industry Services, introduced Rick Odom of his staff who gave a presentation on animal disease traceability (ADT). During his report, Mr. Odom briefed the Board on various aspects of ADT such as the devices being used to facilitate disease traceability.

VIRGINIA AGRICULTURAL STATISTICS UPDATE

Herman Ellison, Director of the Virginia Office of the National Agricultural Statistics Service of USDA, briefed the Board on recent surveys and reports and plans for the 2012 Census of Agriculture. He thanked the Board members for their cooperation and support.

PLANS FOR BOARD'S VISIT TO WINCHESTER AREA

President Rogers called on Mr. Hardesty who gave a report on the events planned for the remainder of the Board's visit to his district.

NEW BUSINESS

President Rogers and Commissioner Lohr presented Donna Pugh Johnson, who recently retired from her position as President of the Virginia Agribusiness Council, a special certificate of recognition for her outstanding service to Virginia agriculture during her distinguished career.

President Rogers called on Commissioner Lohr who briefed the Board on a proposal that those Board members elected or re-elected to serve as Board President at the end of their last term of office be permitted to continue serving as President through June 30 of their last year on the Board. The Commissioner explained that the Board President is an ex officio member of Virginia Tech's Board of Visitors and that allowing an out-going Board President to serve as President through June 30 of his last year of office as a Board member will allow him to complete his service as a BACS representative for that fiscal year and prevent a break in the Board's representation on the Tech Board of Visitors. Currently, when a Board President's term on the BACS ends, there can be as many as two meetings of the Tech Board of Visitors when no BACS representative is in attendance. The Commissioner noted that an out-going Board President will need to continue to serve on the Board through June 30 of his last

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year to permit him to complete his last year of service on the Tech Board of Visitors. It was noted that is a matter that will need to be brought to the attention of the Governor to get his agreement to delay the replacement of an out-going Board President until after June 30.

Following a discussion of the Commissioner's proposal, Mr. Bain moved that the Board elect the Board President to a term effective July 1 and which would expire June 30 of the following year. Mr. Ellis seconded the motion and it was carried by a unanimous vote of the Board.

Deputy Secretary Hill reported on the Governor's Agriculture and Forestry Development Fund initiative and efforts to update Virginia's Agriculture and Forestry Economic Study which was last done in 2008.

Kitty Hockman-Nicholas of The Herds Inn at Hedgebrook Farm gave a brief report on her enterprises and offered Board members and others present an opportunity after the meeting to sample cheese produced from the milk of her Jersey cows.

Dee Cook, who works with the Virginia Farm Bureau Federation's Virginia Main Street Program, reported that this program is bringing agriculture education to the public in Winchester and other Virginia communities. She mentioned plans for a special Virginia Main Street event in Winchester on October 6, 2012, and noted that profits from the event will support the Ag in the Classroom Program.

PLANS FOR FUTURE BOARD MEETINGS

President Rogers advised that the Board is scheduled to have its last meeting for 2012 in Richmond on December 6. He reported that the first two meetings for 2013 are planned for March 28 and May 23 in Richmond.

PUBLIC COMMENT PERIOD

There were no comments from the public.

ADJOURNMENT

There being no further business, the Board adjourned at approximately 3:15 p.m.

Respectfully submitted,

Paul W. Rogers, Jr.
Board President

Roy E. Seward, Jr.
Board Secretary