

**FINAL MINUTES
PESTICIDE CONTROL BOARD MEETING
APRIL 21, 2005**

The Pesticide Control Board meeting was held at 9:00 a.m. in the Washington Building, Richmond, VA, Scott Mayausky, Chairman, being in the chair, and the Secretary being present.

The following Board members were present: Dr. William Boshier; Dr. George Brown; Ruth Brown; Scott Mayausky; Ernest Morse; Robin Rinaca; Tom Saunders; Mark Tubbs; Joe Wilson and Carl Garrison, III. The following Board members were absent: Dr. Sharron Quisenberry (represented by Dr. Michael Weaver); and Dr. Lorenza Lyons (represented by Dr. Asmare Atalay).

The following staff members were present: Andres Alvarez; Dr. Wayne Surles; J. Carlton Courter, III; Don Blankenship; William Diamond; Liza Fleeson; Robert Bailey; Kathy Dictor; Bobbie Lee; Elaine Lidholm; and Rhonda Bates.

Others present: Don Goff, Chesapeake Public Schools; Liz White, VA Horticulture Society; Billy Walls, Consultant; Laurie Coulter, Dow AgroSciences; Frank Gasperini, RISE; Tom Tracy, VA Turf Council; Donna Pugh Johnson, VA Agribusiness Council; Brock Herzberg, VA Farm Bureau; Jim Oliver, VA Crop Production Association; Ellen Davis, VA Corn Growers Association and Susan Nessler, VA Tech.

CALL TO ORDER

Chairman Mayausky called the meeting to order.

DETERMINATION OF A QUORUM

Chairman Mayausky announced that a quorum was present.

APPROVAL OF MINUTES

Mr. Saunders moved to adopt the minutes of the January 20, 2005 Board meeting. Dr. Brown seconded. The motion carried unanimously.

PUBLIC COMMENT PERIOD

Jim Oliver, representing VA Crop Production Association, expressed concerns regarding the recently approved pesticide discontinuance policy which the Association feels may negatively influence the basic manufacturer's decision to register products in VA. Also of concern are the proposed changes to the regulations governing licensing of pesticide businesses (2 VAC 20-40). Mr. Oliver respectfully requested that the Board reopen the regulatory public comment period on this proposal to allow association members an opportunity to be heard. Ellen Davis, representing VA Corn Growers Association and Small Grain Association, supported Mr. Oliver's comments and encouraged the Board to reopen the public comment period. Donna Johnson, VA Ag & Business Council, echoed the comments heard by Mr. Oliver and Ms. Davis.

REVISIONS TO ADMINISTRATIVE PROCEDURE FOR PROCESSING VIOLATIONS OF THE PESTICIDE CONTROL ACT

At the January meeting, the Board directed staff to work with VDACS' Office of Policy, Planning & Research and the Attorney General's Office to restructure the appeal process and present such at this meeting. Robert Bailey, of OPS, and Bill Diamond, of the Attorney General's Office (AG), presented the revisions with Mr. Bailey beginning and Mr. Diamond handling referrals. Mr. Bailey briefly reviewed the current appeal process and stated that after the AG's review of the current process, it became apparent that certain changes were necessary to comply with the Administrative Process Act. Mr. Diamond advised that the entire file of each appealed case must be reviewed by every Board member. After a lengthy discussion, Mr. Wilson moved to retain the current process for administering violations. Dr. Brown seconded. The motion carried unanimously.

DISCONTINUANCE POLICY UPDATE

Dr. Surles directed the Board's attention to handouts placed before them that included the results of a survey of 275 pesticide distributors, dealers and retailers to determine their opinion of the Discontinuance Policy. He also brought the Board up-to-date on the policy's implementation, noting that Mr. Diamond, the Assistant AG, advised that OPS may encounter legal issues enforcing the policy. Based on that advice, Dr. Surles asked the Board to rescind the Virginia Pesticide Discontinuance Policy. Questions from the Board were referred to Mr. Diamond, who reminded all that the policy is voluntary and that the Board has a legal right to adopt the policy. He advised the Board that the regulation may not support OPS taking action against any registrant that has legally sold a registered product, although that product was no longer registered. After further deliberation, Mr. Tubbs moved to retain the Virginia Pesticide Discontinuance Policy. Mr. Mayausky seconded. Motion carried.

2 VAC 20-20, RULES AND REGULATIONS FOR ENFORCEMENT OF VIRGINIA PESTICIDE LAW AND 2 VAC 20-51, REGULATIONS GOVERNING PESTICIDE APPLICATOR CERTIFICATION UPDATES

Kathy Dictor gave the Board an outline of the standard regulatory process and briefly explained each step, and where 2 VAC 20-20 and 2 VAC 20-51 were in this process.

The Board authorized staff to develop and file a Notice of Intended Regulatory Action (NOIRA) at the October 14, 2004 meeting for 2 VAC 20-20. Once developed, it went into the executive review process where it was determined that some changes needed to be made. VDACS' Office of Policy, Planning & Research suggested that the Board authorize OPS to develop new regulations to include deletion of certain portions of existing regulations and amending others. The original motion adopted and approved on October 14, 2004 limited the proposed NOIRA to only repeal portions of existing regulations.

Mr. Tubbs moved that the Pesticide Control Board withdraw its action on October 14, 2004 authorizing the filing of a Notice of Intended Regulatory Action (NOIRA) to repeal those portions of 2 VAC 20-20, Rules and Regulations for Enforcement of the Virginia Pesticide Law, that will be incorporated in the new regulations for the registration of pesticide products or are otherwise out-of-date. Dr. Boshier seconded. Motion carried unanimously.

Mr. Tubbs further moved that the Board authorize the filing of a Notice of Intended Regulatory Action (NOIRA) concerning the repeal and the amendment of portions of 2 VAC 20-20, Rules and Regulations for Enforcement of the Virginia Pesticide Law; and that staff be directed to have this notice published in the Virginia Register of Regulations; and that staff be authorized to take any and all steps necessary or appropriate concerning the Notice of Intended Regulatory Action. Mr. Morse seconded. Motion carried unanimously.

Ms. Dictor stated that 2 VAC 20-51 is awaiting approval of the Governor to send forward as a proposed regulation.

BOARD APPROVAL OF 2 VAC 20-40, RULES AND REGULATIONS GOVERNING LICENSING OF PESTICIDE BUSINESSES

Ms. Dictor advised that this regulation has been published as a proposal. It was opened for public comment from August 9, 2004 until November 1, 2004 with no comments received during the period. Ms. Dictor reviewed the changes made to this regulation and asked the Board to adopt it as a final regulation. Chairman Mayausky inquired about the procedure for reopening the public comment period as requested by industry representatives and was advised that this would require an additional 60 days. Mr. Saunders moved that the public comment period for 2 VAC 20-40 be reopened for 60 days and that the Board would vote on the final regulation at the first eligible meeting thereafter. Mr. Wilson seconded. Motion carried unanimously. Industry representatives requesting this extension are asked to comment timely.

ENFORCEMENT ACTIVITIES FOR THE QUARTER

Liza Fleeson provided a summary of enforcement activities for the quarter. There was one case requiring Board approval, Case Number 19325, Chesterfield Pest Control, where the fact-finding officer reduced the assessed penalty of \$640 to \$120.

Mr. Tubbs moved to accept the decision of the hearing officer in this case. Ms. Rinaca seconded and the motion carried unanimously.

PESTICIDE DISPOSAL AND PESTICIDE CONTAINER RECYCLING SUMMARIES

Liza Fleeson stated that the Pesticide Disposal Program organizational meeting was held February 28. Eighteen counties and six cities in the middle and northern neck areas will participate this year, with all collections in August. There are no specific sites and collection dates as yet. Fourteen localities have expressed interest in participating in the Pesticide Container Recycling Program this year.

TERMITICIDE PRE-TREATMENT TASK FORCE REPORT

Robert Bailey stated that the first meeting of the termiticide pre-treatment task force (appointed by the Board to develop a plan to assure compliance with pesticide label instructions for termite pre-construction treatment) was held in April. Additional attendees from the Department of Professional and Occupational Regulation (DPOR), particularly the contractors' board and the real estate board; State Home Builders Association; and the VA Association of Realtors would allow the task force to work the problem from all directions. The task force agreed that building contractors have the greatest influence in proper pre-treats. The challenge is to educate builders and contractors to operate within the existing regulations that are in place. It is a multi-agency approach to addressing this problem.

STATUS OF PESTICIDE APPLICATOR SAFETY TRAINING PROGRAM

Dr. Weaver and Susan Nessler provided an update on the status of the manual development and the pesticide applicator training programs. Dr. Weaver informed all that the 2005 Pesticide Safety Education Workshop is scheduled for October 10-12, 2005, at UVA's Zehmer Hall in Charlottesville. VA Tech and OPS will host the Pesticide Inspectors Residential Training (PIRT), September 11-15, 2005 in Blacksburg. This PIRT will specialize in structural pest control, to develop a strategy to deal with the pre-treatment enforcement problem in Virginia and other states.

APPOINTMENT OF CHAIRPERSON FOR THE VA COOPERATIVE EXTENSION (VCE) AGENT AWARDS COMMITTEE

Chairman Mayausky appointed Joe Wilson as Chairman of the VCE Awards Committee.

HILL SCHOOL INTERACTION

Dr. Weaver reported that he, Dr. Surles and Dr. Tony Wolf met with the Hill School board and administration, as well as some of the school parents on March 9, to discuss the issue of pesticide spray drift and the interface with the school and a local vineyard. There is no evidence to suggest that violations have occurred. Dr. Weaver presented slides of the geographical location of Hill School and the vineyard. Hill School is retaining Stewart Ag Research to develop a drift monitoring protocol. OPS will respond to any complaints from Hill School. Ongoing drift education is recommended for all parties.

COMMISSIONER'S/DEPUTY COMMISSIONER'S REPORT

Mr. Blankenship stated that the Governor has signed legislation affecting the makeup of the Board – one of the two commercial applicators on the Board is required to be a structural pest applicator. He stated that the VA Grown promotion kicks off in May.

EXECUTIVE SECRETARY'S REPORT

Dr. Surles reiterated that his, Dr. Weaver's and Dr. Wolf's visit to the Hill School was most productive, as well as their subsequent visit with Mr. William Couzens.

He stated that OPS has about 600 products registered with Kelly Registration Systems (KRS). Electronic scanning of files is underway in anticipation of relocating to the Finance Building in September.

He stated that Liza Fleeson has continued to handle Compliance Manager functions with no loss of ground while fulfilling her new duties as Environmental Program Planner. Joe Dictor has been selected as the Compliance Manager.

Dr. Surles reported that Warbex, a product that was once an EPA registered pesticide used to control cattle warblers, is now being used to poison grain at grain storage facilities and feedlots. The indiscriminate use kills as birds feed on the grain. This product is regulated by the FDA, and, as such, doesn't come under OPS' regulatory stewardship because it's not considered a pesticide. The Board will be asked to consider this as a pesticide at a later date.

OPS staff has assisted a multi-agency team to investigate a case in Roanoke County, VA, in which an exotic bird owner has used Temik (aldicarb) to kill various predators – cats, dogs, raccoons, and one hawk.

Dr. Surles complimented David Holshouser, VA Cooperative Extension, for chairing a task force regarding the soybean rust problem. OPS have eight Section 18 products in place to combat the disease in VA.

Dr. Surles asked the Board to consider meeting in the Winchester area for the October meeting.

CHAIRPERSON'S REPORT

No report.

ADJOURNMENT

Meeting adjourned at 12:55 p.m.

(For further detail, taped minutes of the meeting are on file at VDACS and can be accessed by calling 804/371-6558.)