

FINAL MINUTES

Pesticide Control Board
Oliver Hill Building, Richmond, VA
January 18, 2012

The Pesticide Control Board (Board) met at 9:00 a.m. on January 18, 2012 at the Oliver Hill Building, Richmond, VA. Presiding members were William C. Boshier, Jr., Chairman and Liza Fleeson, Executive Secretary.

The following Board members were present: Dave Black; Dr. William Boshier; Dr. George Brown; Carl Garrison; Dr. Alan Grant (represented by Dr. Michael Weaver); Dona Huang; Dr. Wondi Mersi (represented by Dr. Asmare Atalay); Richard Nunnally; Robin Rinaca; Anne Barker-Smith; Liz White; and Joe Wilson.

The following staff members were present: Matthew Lohr; Sandy Adams; Liza Fleeson; Doug Edwards; Jeffrey Rogers; Micah Raub; Vickie Rengers; Tonita Clark; Erin Williams; Larry Nichols; Elaine Lidholm and Rhonda Bates.

Others present: Buck Tharpe and Daryl Clay, VA Crop Production; Andrea Coron and Kristin Coron, VA Pest Management Association; John Horsley, Terminix; Dr. Wayne Surlis, WS Associates; Dr. Iain Kelly, Bayer Crop Science; Dr. Richard Fell and Dr. Troy Anderson, VA Tech.

CALL TO ORDER

Chairman Boshier introduced newly appointed Board member Dona Huang. Dr. Boshier then called the meeting to order.

DETERMINATION OF A QUORUM

Chairman Boshier announced that a quorum was present.

COMMISSIONER'S REPORT

Commissioner Lohr thanked the Board for their service and provided an update on the proposed merger of the Pesticide Control Board and the Virginia Board of Agriculture and Consumer Services (VDACS). He stated that the Governor formed a Government Reform Commission in the interest of making government more efficient. All boards were evaluated by the Commission. The outcome of that evaluation was the recommendation to merge the Pesticide Control Board (PCB) with the VDACS Board. The VDACS Board is comprised of one member from each of the 11 Congressional Districts. Currently, seven members are farmers and four members are consumers. With the merger, the powers of the PCB will roll into the powers of VDACS Board and two new at-large members will be added – structural commercial applicator and commercial sale or application of agricultural pesticides. In addition, within the now merged board, at least eight of the eleven members representing the Congressional Districts will be farmers. The president of VPI&SU and VSU, or their designees will continue to serve on the VDACS Board. All funds generated through pesticide services

will continue to be dedicated to the Office of Pesticide Services and for the purpose of carrying out the provisions of the Virginia Pesticide Control Act. The goal of the Governor and his administration is to have these proposals rolled into one and voted on together. Commissioner Lohr and Deputy Commissioner Sandy Adams entertained questions from the Board.

PUBLIC COMMENT

None.

APPROVAL OF MINUTES

Dr. Brown moved to adopt the minutes of the October 20, 2011, Board meeting. Mr. Wilson seconded. The motion carried unanimously.

PROJECT STATUS – IMPACT OF PESTICIDES ON HONEYBEES IN VIRGINIA

Dr. Troy Anderson, VA Tech, presented a status report on the project *“Impact of Pesticides on Honeybees in Virginia”*.

OVERVIEW – VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PROGRAM

Mr. Fred Cunningham, Director, Office of Water Permits and Compliance Assistance, Department of Environmental Quality (DEQ), provided an overview of the history and permitting requirements for pesticide discharges. On November 27, 2006, EPA issued a final rule to codify its interpretation of the Clean Water Act as not requiring NPDES permits for application of pesticides to, over, including near waters of the United States, if the applications are consistent with Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requirements. On January 7, 2009, the 6th Circuit Court of Appeals vacated the EPA rule and required that National Pollutant Discharge Elimination System (NPDES) permits be issued for all biological pesticide applications and chemical pesticide applications that leave a residue in water when such applications are made in or over, including near, waters of the U.S. On June 8, 2009, the Court granted the Department of Justice’s request for a two-year stay of the Court’s decision, until April 9, 2011, to provide EPA and states time to develop and issue NPDES permits. Based on the stay, EPA’s rule remained in effect and NPDES permits for applications of pesticides to or over, including near U.S. waters were not required until April 9, 2011. Virginia’s Pesticide Discharge Elimination System general permit regulation was developed to comply with the 6th Circuit Court’s ruling. On March 28, 2011, the 6th Circuit Court of Appeals granted EPA’s request for a further extension of the effective date of the Court’s ruling and deadline for when permits will be required for pesticide discharges from April 9, 2011 to October 31, 2011. The Director of the Department of Environmental Quality suspended the effective date of 9VAC25-800 to be consistent with the 6th Circuit Court’s ruling. Virginia’s general permit is available to operators who discharge to surface waters from the application of biological or chemical pesticides that

leave a residue. The following pesticide use patterns are covered under the general permit: mosquito and other flying insect pest control; weed, algae and pathogen control; animal pest control; and forest canopy y pest control. The general permit does not require the submission of a registration (Notice of Intent) and reporting is only required in years where there have been adverse incidents

REGULATORY ACTIONS

Ms. Williams, Policy and Planning Coordinator, asked the Board to consider two amendments to 2 VAC 20-51-60, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act – to exempt (i) gypsy moth surveyors and (ii) cotton boll weevil surveyors from pesticide applicator certification. She recapped the procedure leading to this point. In April 2011 the Board received two petitions for rulemaking requesting exemption from certification for gypsy moth surveyors and cotton boll weevil surveyors. At the July 2011 meeting, the Board granted the petitions exempting gypsy moth surveyors and cotton boll weevil surveyors working under the auspices of VDACS from having to hold or obtain pesticide applicator or registered technician certification. Pursuant to Section 2.2-4006 under the Virginia Administrative Process Act, regulations of the Pesticide Control Board that are adopted pursuant to Clause 6 of Sub-Section C of Section 3.2-3931 of the Virginia Pesticide Control Act are exempt from the requirement of the Administrative Process Act, after those regulations are considered at two or more Board meetings and one public hearing. The required public hearing was held January 18, 2012, which constituted the first of the two required meetings. Today's meeting is the second required meeting.

Ms. White moved that the Pesticide Control Board adopt the amendments to 2 VAC 20-51 as presented by staff today, and authorize staff to take any and all actions necessary to put the amended regulation into effect. Mr. Garrison seconded. Motion carried unanimously.

COMPLIANCE ACTIVITIES FOR THE QUARTER

Mr. Edwards provided a summary of enforcement activities for the quarter.

PROJECT PROPOSAL FRAMEWORK

Ms. Fleeson directed attention to the final draft of the project proposal requirements. Comments received from the Board have been incorporated into the final document. Mr. Wilson moved to accept the final draft. Mr. Black seconded. Dr. Atalay suggested a change in the points distribution. A discussion ensued, after which Mr. Nunnally moved to amend the motion accepting Dr. Atalay changes. Mr. Wilson seconded. Motion carried unanimously.

STATUS OF PESTICIDE APPLICATOR SAFETY TRAINING PROGRAM

Dr. Weaver provided updates on the pesticide applicator training and manual development.

EXECUTIVE SECRETARY'S REPORT

Ms. Fleeson reported the container/containment regulations are currently undergoing review in the Governor's Office. The soil fumigation risk mitigation measure Phase II implementation date is December 2012. She also reported that on January 12, the Office of Pesticide Services and the Agency hosted two officials with the Egyptian Ministry of Agriculture and Land Reclamation. Drs. Mohamed I. Abdel-Mgeed, Chair, and Yehia A. Ibrahim, Vice Chair, Agricultural Pesticide Committee, met with the OPS management team to discuss pesticide regulatory practices in Virginia. Topics of discussion included the registration of pesticides, marketplace inspections, the proper use of pesticides and outreach and education programs for pesticide applicators.

CHAIRMAN'S REPORT

No report.

ADJOURNMENT

Meeting adjourned at 12:00 p.m.

(For further detail, an audio recording of the meeting is on file at VDACS and can be accessed by calling 804.225-2223.)