

FINAL MINUTES

Tuesday, July 21, 2020

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9:10 a.m. on Tuesday, July 21, 2020. The meeting was held by electronic communications means due to the state of emergency issued by Governor Northam as a result of the novel coronavirus (COVID-19). The meeting was held using Cisco Webex Events. President Barlow called the meeting to order.

ROLL CALL

The Board Secretary called the roll:

PRESENT

Clifton A. Slade
Shelley Barlow
Margaret Ann Smith
L. Wayne Kirby
Kay Johnson Smith
Richard Sellers
Neil Houff
Kevin J. Kordek
Mr. Lonnie Johnson

Dr. M. Ray McKinnie

CONGRESSIONAL DISTRICT

3rd
4th
6th
7th
8th
11th
Pesticides – Commercial Agricultural
Pesticides – Commercial Structural
Representing Dr. Timothy D. Sands, President,
Virginia Tech
Representing Dr. Makola Abdullah, President,
Virginia State University

ABSENT

O. Bryan Taliaferro, Jr.
Donald Horsley
Cecil Shell
James S. Huffard, III
John R. Marker

1st
2nd
5th
9th
10th

STAFF PRESENT

Jewel Bronaugh, Commissioner, Virginia Department of Agriculture and Consumer Services
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services
Katherine Coates, Virginia Department of Agriculture and Consumer Services

APPROVAL OF MINUTES

Mr. Houff moved that the draft minutes of the meeting on May 21, 2020, be approved as distributed.
Ms. Johnson Smith seconded the motion. The motion was approved by a unanimous roll call vote.

APPROVE: Slade, Barlow, M. Smith, K. Johnson Smith, Houff, Kordek, L. Johnson, McKinnie

OPPOSE: None

REPORT FROM BOARD MEMBERS

A full recording of Board Member reports can be found at the following link:

<http://www.vdacs.virginia.gov/mp3/julybacsrecording.mp4>

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Clifton Slade

Mr. Slade reported on the vegetable growing season in the Southeast, stating that it has been one of the most profitable seasons of his life, with farmers selling record numbers of crops. He reported on the local corn and soybean crops and the rainfall in his region. He concluded his report by sharing his experience growing hemp in 2020.

Margaret Ann Smith

Ms. Smith reported on the rainfall and temperatures in her district. They have had a substantial number of cattle runs in July. She concluded her report with an update on the hay, corn, and soybean crops in her district, noting that there has been substantial variability in the crops.

Kay Johnson Smith

Ms. Johnson Smith reported that Northern Virginia has entered Phase 3 of reopening. The supply chain issues have been resolved for stores and restaurants, but food banks are still over run. The farmers' markets in her region were able to stay open and are encouraged to take pre-orders and pre-box orders. She concluded by noting that golf courses in her region have also reopened.

Neil Houff

Mr. Houff reported on the end of the application season and the impact of COVID-19 on supply chains. He reported on the weather patterns and corn crop in his district. He shared that the Virginia Crop Production Association (VCPA) decided to cancel its annual crop summit, which is usually held in January, because of the uncertainty caused by the pandemic. He concluded his report by noting that VDACS will be receiving a letter from the VCPA president asking VDACS to consider waiving continuing education credits for re-certification in light of the cancellation of the summit.

Kevin Kordek

Mr. Kordek began his report with a story about the excellent peach crop he saw during a visit to Cullipher Farm. He reported on challenges faced by the National Pest Management Association due to the COVID-19 pandemic, including the cancellation of its in-person events. He noted the Virginia Pest Management Association was uniquely positioned because it was in the process of moving to a virtual platform prior to COVID-19. The VPMA State Technical Meeting has been delayed from late September to December 8-10, 2020, in Virginia Beach.

He thanked VDACS for its support of the industry during the pandemic. He reported that mergers and acquisitions and industry consolidation is back on track after being put on hiatus. Many companies have moved very quickly to add disinfection services, which have proved very popular. He concluded his report with an update on mosquito and tick season.

Dr. M. Ray McKinnie

Dr. McKinnie reported that Virginia State University (VSU) is preparing to reopen in the fall and outlined its plans, social distancing efforts, and monitoring measures. Courses will be offered both online and face-to-face.

He reported that VSU's Virginia Cooperative Extension (VCE) program was one of the first to embrace virtual platforms and Facebook live virtual field walks. He gave an overview of the virtual activities conducted during the late spring and summer. Randolph Farm reopened, and research plantings for this year were completed. Last month, VSU reopened the research labs

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at Randolph Farm with social distancing measures in place. He concluded his report by announcing that VSU is excited to welcome 17 recipients of 1890 scholarships this year.

Lonnie Johnson

Mr. Johnson reported on Virginia Tech's plans for students to return to campus in the fall. They will operate with a hybrid model of in-person and virtual instruction. He outlined the adjustments being made in VCE centers to accommodate social distancing. He mentioned some of the challenges and missed opportunities due to the pandemic, including the cancellation of 4-H summer camps. He noted that the National Association of County Agriculture Extension Agents that was going to be hosted in Virginia Beach has gone virtual, which will result in lost revenue.

L. Wayne Kirby

Mr. Kirby reported on the status of the spring wheat, vegetable, corn, and soybean crops in his district as well as the challenges caused by the drought.

Shelley Butler Barlow

President Barlow began her report by stating that she was disappointed that she could not host the Board meeting at her farm. She reported on the drought in her area and how it has impacted the corn and cotton crop. She spoke about the stress and unknowns caused by the COVID-19 pandemic. She stated her appreciation for the efforts of VCE, VDACS, and the U.S. Department of Agriculture to support farmers during the pandemic.

She concluded by reporting that VALOR class interviews were held over Zoom, and the new class will be announced soon and will start in September.

Richard Sellers

Mr. Sellers reported on the operations of farmers' markets, church gardens, and urban gardens in his region. He stated that he hopes that, in the future, the General Assembly approves the Urban Agriculture Council legislation they failed to approve during 2020 Session of the General Assembly.

COMMISSIONER'S REPORT

Commissioner Bronaugh delivered her report to the Board. During the presentation of this report, she briefed the Board on personnel changes, recent events, and other matters relating to VDACS and the COVID-19 state of emergency. A copy of the written report on which her presentation was based was included in the Board meeting agenda.

2020 SESSION OF THE GENERAL ASSEMBLY – LEGISLATIVE

President Barlow called on Kevin Schmidt, Director of the Office of Policy, Planning, and Research. Mr. Schmidt provided a brief overview of legislation tracked by VDACS during the 2020 Session of the General Assembly.

2020 SESSION OF THE GENERAL ASSEMBLY – BUDGET REPORT

President Barlow called on Kendra Shifflett, Director of Administrative and Financial Services. Ms. Shifflett provided a brief overview of agency budget issues related to the 2020 Session of the General Assembly and responded to Board member questions.

EXEMPT ACTION TO ADOPT AMENDMENTS NECESSARY TO CONFORM TO CHANGES IN VIRGINIA STATUTORY LAW – 2 VAC 5-405 (REGULATIONS FOR THE APPLICATION OF FERTILIZER TO NONAGRICULTURAL LANDS), AND THE NOTICE OF INTENDED REGULATORY ACTION – 2 VAC 5-405 (REGULATIONS FOR THE APPLICATION OF FERTILIZER TO NONAGRICULTURAL LANDS)

President Barlow called on David Gianino, Program Manager, Office of Plant Industry Services. Mr. Gianino presented the Board with a brief overview of the proposed exempt action to amend 2 VAC 5-405 and the proposed Notice of Intended Regulatory Action to amend 2 VAC 5-405.

Following Mr. Gianino's presentation and discussion by the Board, Mr. Sellers moved that the Board of Agriculture and Consumer Services adopt 2 VAC 5-405, Regulations for the Application of Fertilizer to Nonagricultural Lands, as presented by staff, and that the Board authorize staff to take any and all steps necessary to amend this regulation through an exempt regulatory action as authorized by Section 2.2-4006 of the Virginia Administrative Process Act

Mr. Houff seconded the motion. The Board voted unanimously to approve the motion.

APPROVE: Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Sellers, Houff, Kordek, L. Johnson, McKinnie

OPPOSE: None

Following the approval of the prior motion, Mr. Sellers moved that the Board of Agriculture and Consumer Services authorize staff to take any and all steps necessary to file a Notice of Intended Regulatory Action for 2 VAC 5-405, Regulations for the Application of Fertilizer to Nonagricultural Lands, for public comment

Mr. Kirby seconded the motion. The Board voted unanimously to approve the motion.

APPROVE: Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Sellers, Houff, Kordek, L. Johnson, McKinnie

OPPOSE: None

PROPOSED EXEMPT ACTION TO PROMULGATE 2 VAC 5-595 (REGULATIONS GOVERNING THE MANUFACTURING AND SALE OF PRODUCTS THAT CONTAIN INDUSTRIAL HEMP EXTRACTS INTENDED FOR HUMAN CONSUMPTION)

President Barlow called on Dr. Charles Broaddus, State Veterinarian and Director, Division of Animal Food and Industry Services. Dr. Broaddus provided an overview of 2 VAC 5-595. Dr. Broaddus then called on Ryan Davis, Program Manager, Office and Dairy and Foods. Mr. Davis briefed the Board on the proposed exempt action to promulgate on 2VAC 5-595 and answered board member questions.

Following Mr. Davis's presentation and discussion by the Board, Mr. Slade moved that the Board of Agriculture and Consumer Services adopt 2 VAC 5-595, Regulations Governing the Manufacturing and Sale of Products that Contain Industrial Hemp Extracts Intended for Human Consumption, as presented by staff, and that the Board authorize staff to take any and all steps necessary to promulgate this regulation through an exempt regulatory action as authorized by

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Section 3.2-5145.5 of the Virginia Food and Drink Law and to file this proposed regulation for public comment as required therein.

Mr. Kordek seconded the motion. The Board voted to approve the motion.

APPROVE: Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Houff, Kordek, L. Johnson, McKinnie

ABSTAIN: Sellers

OPPOSE: None

OFFICE OF PESTICIDE SERVICES – CASE DECISION – LAWN DOCTOR OF STAFFORD (CASE # 66174)

President Barlow called on Justin Bell, Office of the Attorney General (OAG), who serves as Board counsel. Mr. Bell briefed the Board on its roles and responsibilities pertaining to the review of the case decision for Lawn Doctor of Stafford (Case # 66174) and the recommendation of the hearing officer for the formal hearing held in this case. Mr. Bell stated that while he is the Board's attorney, the Office of Pesticide Services (OPS) would be represented in this matter by its own OAG representative, Ms. Gray O'Dwyer.

Mr. Kordek noted that the OPS Civil Penalty Matrix was not included in the Board packet. Mr. Bell advised President Barlow and Secretary Schmidt that it was appropriate to take a brief recess in order to distribute the penalty matrix to Board members and to make the matrix available on Virginia's Regulatory Town Hall (Town Hall) so that it was accessible to members of the public.

MEETING RECESS

President Barlow called for a recess. The penalty matrix was distributed to Board members and posted on Town Hall. The meeting reconvened approximately five minutes later.

OFFICE OF PESTICIDE SERVICES – CASE DECISION – LAWN DOCTOR OF STAFFORD (CASE # 66174) - CONTINUED

President Barlow called on Mr. Christopher Bradford, owner of Lawn Doctor of Stafford. Mr. Bradford presented his position on the case.

President Barlow called on Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services. Ms. Fleeson Trossbach provided the Board with a brief overview of the case decision concerning Lawn Doctor of Stafford.

At the advice of Mr. Bell, President Barlow called again on Mr. Bradford, who made additional comments.

Mr. Bradford, Ms. Fleeson Trossbach, Mr. Bell, and Ms. O'Dwyer responded to Board member questions.

After discussion and review of each position presented, Mr. Houff moved that the Board of Agriculture and Consumer Services reject the Hearing Officer's recommendation in Office of

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Pesticide Services Case Number 66174 concerning Lawn Doctor of Stafford and that the Board amend the civil penalty assessed by the previous decision of OPS to \$50.

Mr. Kordek seconded the motion. During the roll call vote, Dr. McKinnie raised concerns about the clarity of the motion. The roll call vote was not completed. Secretary Schmidt requested a recess to work with Mr. Bell to draft a motion that addressed Dr. McKinnie's concerns.

MEETING RECESS

President Barlow called for a recess. The meeting reconvened approximately 10 minutes later.

**OFFICE OF PESTICIDE SERVICES – CASE DECISION – LAWN DOCTOR OF STAFFORD
(CASE # 66174) - CONTINUED**

Secretary Schmidt asked Mr. Bell whether the roll call needed to be completed or whether Mr. Houff could withdraw his motion at this point. Mr. Bell confirmed that Secretary Schmidt could request that Mr. Houff withdraw his motion prior to the completion of the roll call on that motion. Mr. Houff agreed and withdrew his motion. Mr. Houff then moved that the Board of Agriculture and Consumer Services uphold the decision of the Office of Pesticide Services in Office of Pesticide Services Case Number 66174; agree that Lawn Doctor of Stafford was in violation of Section 3.2-3930(A) of the Virginia Pesticide Control Act as documented in Office of Pesticide Services Case Number 66174; and reduce the civil penalty assessed by the previous decision of the Office of Pesticide Services in Office of Pesticide Service Case Number 66174 to \$50.

The motion was seconded by Dr. McKinnie. The Board voted unanimously to approve the motion.

APPROVE: Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Sellers, Houff, Kordek, L. Johnson, McKinnie

OPPOSE: None

NEW BUSINESS

No new business was introduced.

PUBLIC COMMENT PERIOD

Rebecca Hobden, President, ECC Test Lab, commented with concerns about the requirements for testing industrial hemp derived extracts intended for human consumption.

Heather Ebling, Medicinal Genomics, left written comments about microbial allowable limits for hemp-derived tinctures and oils.

FUTURE BOARD MEETINGS

The December Board meeting will be held on Friday, December 11, 2020, in Richmond.

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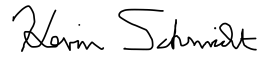
ADJOURNMENT

There being no further business, the Board adjourned at approximately 12:51 p.m.

Respectfully submitted,



Shelley Barlow
Board President



Kevin Schmidt
Board Secretary