

FINAL MINUTES

Board of Agriculture and Consumer Services
Patrick Henry Building
East Reading Room
1111 E. Broad St
Richmond, Virginia

Thursday, December 7, 2023

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9:00 a.m. on Thursday, December 7, 2023, at the Patrick Henry Building. Vice President Smith called the meeting to order.

ROLL CALL

The Board Secretary called the roll:

PRESENT

Keith Harris
Cecil Shell
Margaret Ann Smith
Kailee Tkacz Buller
Tyler Wegmeyer
Richard Sellers
Neil Houff
Charles Church
Dr. Robert Corley

Lonnie Johnson

CONGRESSIONAL DISTRICT

1st
5th
6th
8th
10th
11th
Pesticides – Commercial Agricultural
Pesticides – Commercial Structural
Representing Dr. Makola Abdullah, President,
Virginia State University
Representing Dr. Timothy D. Sands, President,
Virginia Tech

ABSENT

Donald Horsley
Raymond Keating
Vacant
Jacquelin Easter
James S Huffard, III

2nd
3rd
4th
7th
9th

STAFF PRESENT

Joseph Guthrie, Commissioner, Virginia Department of Agriculture and Consumer Services (VDACS)
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services
Nicolas Robichaud, Policy Assistant, VDACS

APPROVAL OF MINUTES

Mr. Sellers moved that the draft minutes of the meeting on August 4, 2023, be approved as distributed. Mr. Houff seconded the motion. The Board voted unanimously to approve the motion.

REPORTS FROM BOARD MEMBERS

Charles Church

Mr. Church remarked that the Virginia Pest Management Association (VPMA) celebrated its 75th anniversary this year, noting the evolving regulation of the pesticide industry and VPMA's dedication to building strong pesticide businesses throughout its history. VPMA's held its annual state technical conference in Virginia Beach December 6-7, where approximately 850 people were educated in the pest management industry.

Neil Houff

Mr. Houff noted that the Virginia Crop Production Association will hold its annual Crop Summit in Richmond January 16-18. He noted that the supply chain has been strong recently. The Shenandoah Valley has been very dry, and Mr. Houff looks forward to a rebound next year.

Keith Harris

Mr. Harris reported an abundance of rain in District 1 this year. The wheat crop was remarkably strong, though heavy rainfall led to deteriorating quality. Corn yields were high, leading to an overall strong year for the region. Mr. Harris is expecting continued price drops in the coming year.

Cecil Shell

Sporadic rain in District 5 led to a moderate crop yield this year. Mr. Shell noted that prices are generally holding steady, though fertilizer prices have fallen.

Kailee Tkacz Buller

Ms. Buller remarked on the Farm Bill extension and the efforts to keep government agencies open on January 19 and February 2. There is uncertainty on multiple funding items in the Farm Bill, which expires in September 2024, that will be areas of focus. With the upcoming election year, the Food and Drug Administration (FDA) and the U. S. Department of Agriculture (USDA) are picking up regulatory action, with FDA dealing with a lead in apple sauce crisis and several labelling and transparency issues and USDA focusing on child nutrition programs and food stamps. She noted that supply chains are generally normalizing post COVID, with prices still high but stabilizing. With leadership changes imminent, Ms. Buller reports that the Surface Transportation Board is a focus of the agriculture industry, especially among those who rely on rail transportation.

Tyler Wegmeyer

The 10th District has been historically dry, and untimely rain during weekends has negatively impacted agritourism and retail efforts. Christmas tree demand continues to outpace supply, which is a continuing issue in the region.

Richard Sellers

At Commissioner Guthrie's request, Mr. Sellers attended a brainstorming session for the Ruth and Hal Lauenders Charitable Trust at Virginia Tech. The meeting revolved around determining potential uses for a nine acre parcel. Keeping with the Trust's mission of addressing food insecurity, Mr. Sellers recommended a large greenhouse to encourage year-round gardening. Mr. Sellers offered his continued support for the Trust. Mr. Sellers also reported on a strong vegetable season in District 11.

Dr. Robert Corley

Dr. Corley reported that Virginia State University (VSU) will host a nationally televised Presidential debate in 2024. Enrollment and funding are up at the College of Agriculture, and Cooperative Extension efforts continue alongside Virginia Tech. VSU hosted 3 USDA-funded farmers markets to increase food security on college campuses, which were highly attended and profitable for local producers. Dr. Jewel Bronaugh hosted a Leadership Impact Series attended by Virginia Farm Bureau Federation. Dr. Corley informed the Board that Dr. Bronaugh would be leaving VSU in the spring after accepting the role of CEO for the 1890 Foundation. The National Urban Agriculture Initiative kickoff event took place in Richmond, and there will be another event in the spring. Dr. Corley reported on a successful Association of Public Land-Grant Universities meeting, in which the Farm Bill was heavily discussed. VSU will be hosting Dr. Manjit K. Misra, director of the USDA's National Institute of Food and Agriculture, in the near future.

Lonnie Johnson

Dr. Alan Grant, Dean of the College of Agriculture and Life Sciences, announced his upcoming retirement, leading to a nationwide search to fill his role. There has been significant leadership turnover at Virginia Tech in the past year. New Associate Dean of the College of Agriculture and Life Sciences Dr. Mike Gutter has visited nearly every district in Virginia and attended several meetings with industry groups. The College has filled several vacant positions but continues to work to fill remaining vacancies.

Margaret Ann Smith

Weather conditions in the 6th District have been unstable, with alternating patterns of extreme dry and extreme rain. Cow markets have been friendly until market prices became volatile in the past three weeks. Ms. Smith anticipates prices rebounding in early 2024 from their recent sudden sharp downturn and that, long term, cattle prices should remain decent. Ms. Smith reports that heifer retention has not begun. Grass quality is subpar, especially in the west. Record prices have affected producers.

COMMISSIONER'S REPORT

Commissioner Guthrie delivered his report to the Board. During the presentation of this report, he briefed the Board on personnel changes, recent events, and other matters relating to VDACS. A copy of the written report on which his presentation was based was included in the Board meeting agenda and materials.

BUDGET UPDATE

Vice President Smith called on Dr. W. Dewey Jennings, VDACS Director of Administrative and Financial Services, to provide a budget update to the Board. There were no questions for Dr. Jennings.

MEETING RECESS

At 9:45 a.m., Vice President Smith recessed the meeting to hold a public hearing on the proposed regulations for 2 VAC 5-317, Regulations for Enforcement of the Noxious Weeds Law.

PUBLIC HEARING – PROPOSED REGULATIONS FOR 2 VAC 5-317 (REGULATIONS FOR ENFORCEMENT OF THE NOXIOUS WEEDS LAW)

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At 10:02 a.m., Vice President Smith opened the public hearing on the proposed regulations for 2 VAC 5-317.

Vice President Smith called on Larry Nichols, Director, Division of Consumer Protection, to brief the Board on the proposed amendments to 2 VAC 5-317.

Mr. Nichols briefed the Board on the proposed amendments and advised the Board that the purpose of the hearing was to provide interested parties an opportunity to comment on the proposal.

There being no public comments or questions, Vice President Smith adjourned the public hearing at 10:07 a.m. and reconvened the Board meeting.

**OFFICE OF PESTICIDE SERVICES – CASE DECISION – THIBAUT ENTERPRISES, LLC
(CASE # 73148)**

Vice President Smith introduced Kate Kulbok, Assistant Attorney General, as the Board's legal counsel regarding the case decision for Office of Pesticide Services Case #73148. Since the Board's regular legal counsel, Justin Bell, already represented VDACS on this matter during the formal hearing, Ms. Kulbok advised that Mr. Bell is not able to represent the Board on this matter as well due to a potential conflict of interest.

Mr. Bell provided legal context regarding the situation and informed the Board that legal counsel for Thibault Enterprises was not in attendance to present their client's case. Mr. Bell asked that the Board continue the decision until the next meeting to ensure proper notice be given. Ms. Kulbok concurred, advising that the Board should defer its decision to a later date.

Mr. Sellers moved that the Board defer this action on OPS Case #73148 until the Board meeting on March 21, 2024. Ms. Buller seconded this motion.

Prior to the Board's vote on this motion, Mr. Church and Mr. Harris asked Ms. Kulbok several questions regarding proper practices in discussing and seeking clarification regarding details of the decision.

Mr. Bell asked if Vice President Smith had the power to appoint a designated panel to make case decisions on the Board's behalf. Vice President Smith consulted with Ms. Kulbok and Secretary Schmidt regarding her ability to make that designation, and Vice President Smith confirmed that she did have such authority.

Mr. Sellers withdrew his previous motion, and Ms. Buller withdrew her second. Mr. Sellers moved that the Board continue this decision until next meeting or until a panel is designated by the President to handle this case. Ms. Buller seconded this decision.

The Board unanimously voted to approve this motion.

Mr. Houff asked Mr. Bell how, according to VDACS procedure, this case has come to this point before the Board. Mr. Bell deferred to Ms. Kulbok's judgement as Board's counsel as to whether he could provide the Board with VDACS procedure, which she allowed, providing that Mr. Bell inform the Board of general VDACS processes and not provide his legal perspective. Ms.

Kulbok briefly provided background information regarding how this case has moved through VDACS before reaching the Board.

Ms. Buller, Mr. Houff, Vice President Smith, Mr. Church, Mr. Harris, and Mr. Sellers asked several background questions regarding these legal procedures, including general procedures, the frequency of these hearings, how hearing officers are chosen, whether industry-specific knowledge is provided to general counsel, and appellate processes beyond the Board's decision. Ms. Kulbok, Secretary Schmidt, and Mr. Bell answered these questions as they arose. Secretary Schmidt also reminded the Board that the OPS case decision administrative guidance document was provided in their meeting materials.

Before moving on to further agenda items, Commissioner Guthrie voiced to the Board his respect for VDACS staff and procedures and his belief that VDACS did indeed follow proper protocol in providing notice.

NOTICE OF INTENDED REGULATORY ACTION – 2 VAC 5-680 (REGULATIONS GOVERNING LICENSING OF PESTICIDE BUSINESSES OPERATING UNDER AUTHORITY OF THE VIRGINIA PESTICIDE CONTROL ACT) AND 2 VAC 5-685 (REGULATIONS GOVERNING PESTICIDE APPLICATOR CERTIFICATION UNDER AUTHORITY OF VIRGINIA PESTICIDE CONTROL ACT)

Vice President Smith called on Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services. Ms. Trossbach requested that the Board authorize staff to initiate the first step of the three-stage regulatory process to amend the regulations for both pesticide applicator certification and the licensing of pesticide businesses.

Mr. Harris asked a clarifying question regarding how and when additional information could be accessed. Secretary Schmidt advised that, this being the first stage of the process, there is no language to approve or review and that a mockup of the proposed changes would be made available for the Board's review and for public comment during the second stage.

Vice President Smith asked whether consideration would be made for age restrictions for applicators given technological advances, specifically regarding the use of drones. Ms. Trossbach provided background knowledge of federal rules, including the federal minimum age of applicators being 18, with limited exceptions.

Dr. Corley asked for a general timeline for compliance. Ms. Trossbach answered that, including potential implementation timelines following regulatory procedures, these changes could take 5 to 10 years.

Mr. Sellers moved that the Board authorize staff to take any and all steps necessary to file for public comment a Notice of Intended Regulatory Action to amend 2 VAC 5-680, Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act, and 2 VAC 5-685, Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act, as presented by staff today. Mr. Shell seconded this motion. The Board voted unanimously in favor of the motion.

PROPOSED FAST TRACK ACTION TO AMEND 2 VAC 5-585 (RETAIL FOOD ESTABLISHMENT REGULATIONS)

Vice President Smith called on Pamela Miles, Program Manager, Office of Dairy and Food. Ms. Miles briefed the Board on the proposed fast-track action to amend 2 VAC 5-585.

Mr. Sellers asked a clarifying question, which Ms. Miles addressed. Secretary Schmidt also provided background procedural clarification regarding the difference between this process and that of the previously-discussed Notice of Intended Regulatory Action.

There being no further questions. Mr. Sellers moved that the Board adopt 2 VAC 5-585, Retail Food Establishment Regulations, as presented by staff today, and that the Board authorize staff to take any and all steps necessary to amend this regulation through a fast-track regulatory action. Mr. Houff second this motion. The Board voted unanimously in favor of the motion.

PETITION FOR RULEMAKING – ANIMAL PARTISAN’S PETITION FOR REGULATIONS FOR THE TRANSPORTATION OF POULTRY

Vice President Smith advised the audience to sign up on the public comment sheet should they wish to speak on the petition for rulemaking. She also asked that Secretary Schmidt explain the Board and agency’s requirements regarding petitions for rulemaking. Secretary Schmidt provided an overview and directed the Board to consult the provided public comments and those sent directly to the agency in their meeting materials.

Vice President Smith called on Dr. Carolyn Bissett, Program Manager, Office of Veterinary Services. Dr. Bissett presented the petition requesting that the Board initiate rulemaking to promulgate regulations setting minimum standards of care for the transportation, handling, and lairage of poultry prior to slaughter within the Commonwealth. Dr. Bissett recommended that the Board deny this petition.

Mr. Sellers asked Dr. Bissett if there have been any enforcement actions taken under current regulations, to which Dr. Bissett answered there have been.

Mr. Harris asked if additional information besides the provided images in the petition suggest a systemic issue requiring further regulation of poultry transportation. Dr. Bissett answered that there was not and, considering the magnitude of poultry transported across the Commonwealth, the agency considers the images to be isolated incidents.

Vice President Smith called on Mr. Will Lowery to provide his comments in support of Animal Partisan’s petition.

Following Mr. Lowery’s statement, Vice President Smith called on those individuals who signed the public comment sheet. Hobey Bauhan, representing the Virginia Poultry Federation; Brad Copenhaver, representing the Virginia Agribusiness Council; and Grayson Middleton, representing the Delmarva Chicken Association, spoke against the petition.

Mr. Sellers moved that the Board deny the motion for the reasons stated by the agency. Mr. Houff seconded this motion. The Board voted unanimously to deny the motion.

PESTICIDE CONTROL FUND REPORT TO THE BOARD

Vice President Smith called on Liza Fleeson Trossbach to provide an update on the Pesticide Control Fund.

Mr. Harris asked a clarifying question, which Ms. Trossbach addressed.

REGULATORY ADVISORY PANEL FOR 2 VAC 5-675 (REGULATIONS GOVERNING PESTICIDE FEES CHARGED BY THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES) REPORT TO THE BOARD

Vice President Smith called on Liza Fleeson Trossbach to provide this report to the Board. Mr. Sellers asked a question regarding the process leading to an increased cash reserve in the Pesticide Control Fund and strategies for decreased money in the reserve, with which Mr. Harris concurred. Vice President Smith asked whether funding can be used to provide support for Vocational/Technical school for community colleges and how Virginia's fee structure relates to neighboring states' systems. Ms. Trossbach and Mr. Houff provided clarification regarding the fund's current allocations and legal limitations on spending.

Commissioner Guthrie also spoke to the processes and strategies regarding this Fund, including conversations with the Virginia Farm Bureau Federation regarding potential program enhancement.

NEW BUSINESS

There was no new business brought before the Board.

FUTURE BOARD MEETINGS

Vice President Smith mentioned the 2024 Board meeting dates of March 21, May 23, and December 12, all in Richmond. A summer meeting and tour will be announced at a later date.

PUBLIC COMMENT PERIOD

Secretary Schmidt distributed a public comment submitted by Caryn Yost regarding Case #73148. Mr. Harris asked a clarifying question regarding the Board's action taken earlier in the meeting, which Commissioner Guthrie addressed.

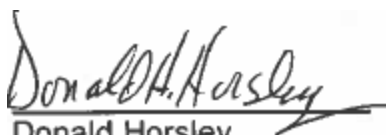
Justin Bell provided public comment notifying the Board of the possibility of his absence from future meetings and voiced his appreciation for working with the agency.

Commissioner Guthrie provided notice that USDA census participation data had been released and briefly provided those statistics.

ADJOURNMENT

There being no further business, the Board adjourned at approximately 11:52 a.m.

Respectfully submitted,


Donald Horsley
Board President


Kevin Schmidt
Board Secretary