

**DRAFT MINUTES**  
**Board of Agriculture and Consumer Services**  
**Oliver W. Hill Building, 102 Governor Street**  
**Richmond, Virginia**  
**December 8, 2011**

The meeting convened at 9:00 a.m. on Thursday, December 8, 2011, in Room 220 of the Oliver W. Hill Building, 102 Governor Street in Richmond, Virginia. President Rogers called the meeting to order. Mr. Mills gave the invocation. The Board Secretary called the roll:

**PRESENT**

Stephen Ellis  
Steve Sturgis  
Paul W. Rogers, Jr.  
William B. Bain  
Robert Mills  
Rosalea Riley  
Edward S. Fleming  
Patrick A. Toulme  
Charles C. Clark, Jr.  
John D. Hardesty, Jr.  
Dr. Wondi Mersie

**DISTRICT**

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10<sup>th</sup>

Representing Dr. Keith T. Miller, President  
Virginia State University

Lonnie Johnson (not voting) Representing Dr. Charles W. Steger, President  
Virginia Tech

**ABSENT**

Melvin E. Murphy

11<sup>th</sup>

**STAFF PRESENT**

Matthew J. Lohr, Commissioner  
Sandra J. Adams, Deputy Commissioner  
Roy E. Seward, Board Secretary

**APPROVAL OF MINUTES**

Mr. Mills made a motion that the minutes of the meeting held on August 9, 2011, be approved as distributed. Mr. Ellis seconded the motion and the Board voted unanimously to approve the motion.

**REPORT FROM BOARD MEMBERS**

Mr. Ellis reported that it has been a busy fall. He noted that his area experienced substantial losses because of Hurricane Irene and heavy rains. He explained that this weather reduced the corn crop while the soybean crop was above average. He reported that farmers are still dealing with the tremendous tree damage created by the storms.

Mr. Mills reported that unfavorable weather this year created significant reductions in tobacco production and that all of the major contractors were a million pounds short, especially in flue-cured, burley and fire-cured tobaccos. He noted that because the tobacco harvest has been so late, the planting of small grains producer crops, which go behind tobacco in Southside Virginia, has been delayed and that farmers may have to put this acreage into something else. He advised that uranium mining is a big hot button issue in his area and that the potential mining

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site is about 35 miles east of where he lives and in the heart of Pittsylvania County. He noted that one of the first studies on uranium mining was released this week. He added that everyone is looking at the pros and cons of this mining. He pointed out that, according to the study, agriculture would take the largest negative impact, than any other industry in Southside Virginia. He noted that he is looking at all pros and cons as he considers the impact of uranium mining, but he acknowledged that there are those who are concerned about the stigma that uranium mining could place on agricultural products from Pittsylvania and Halifax counties and the possible public perception that this mining will contaminate these products. He explained that those who are concerned about this stigma see that there could be a significant loss of market share and reduction in price of products from the areas. He added that careful and thorough consideration of the pros and cons will be needed before the moratorium on mining is lifted and before the first pound of uranium is mined.

Mr. Johnson, Southeast District Director for Virginia Cooperative Extension, reported that Virginia Tech is in the process of filling about 40 Extension positions across the state. He added that the goal is to have them all filled by early 2012. He noted that Virginia Tech received a report from the Secretary of Education, who did a study of Cooperative Extension, and that the report recommended that Extension communicate more closely with its partners, stakeholders, etc. He reported that the new Director of Extension is in the process of meeting with all of the Extension leadership councils and has completed half of those meetings.

Dr. Mersie reported that Governor McDonnell will deliver the graduation address at Virginia State University (VSU) on Saturday, December 17, 2011, when approximately 400 students are expected to receive their degrees. He added that VSU plans to give Governor McDonnell an honorary Doctor of Law degree. He reported that VSU held a Meat Goat Expo on September 16 to update producers about current applied research on goat health issues and goat product marketing opportunities. He added that VSU conducted the Aquaculture Field Day on October 20.

Mr. Fleming reported that, overall, farming in his area has looked good this year. He noted that the local farmers market did very well and reported that a large number of consumers attended the market this year. He reported that a dry spell this year did impact his area's corn crop. He noted that because of soil moisture in the fields, some farmers have been delayed in completing their soybean harvest, but added that those beans that have been harvested thus far are looking good.

Mr. Bain reported all crops had average yield to above average yield but there was some damage to the corn and cotton crops. He noted that most of the cotton crop has been harvested, but there is a small percentage of cotton that is still in the field. He reported that there is a fair amount of soybeans in the field that needs to be harvested. He reported there is much work to be done around the fields to remove trees damaged by Hurricane Irene. He added that farmers harvested crops around the trees, but will need to go back this winter to get the big trees out of the fields and that this will be costly and time-consuming.

Mr. Sturgis reported that Hurricane Irene delivered seven inches of rain to the Eastern Shore and that the tomato crop was hit pretty hard by this storm. He noted that the Secretary of Agriculture and Forestry, Todd Haymore; the Deputy Secretary, Travis Hill; the Governor's Chief of Staff, Martin Kent; and Governor McDonnell visited the Shore following the hurricane. He added that during that visit it was mentioned that his area experienced several million dollars in

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crop losses. He noted that the yield of early soybeans were impacted somewhat by saltwater damage. He reported that precipitation did help the double-cropped beans and that the wheat crop is off to a great start. He asked Commissioner Lohr to report on the dedication of the Eastern Shore seafood facility in his report.

Ms. Riley reported that crop production in her area has ranged from a low of 75 to 80 bushels per acre up to 150 bushels per acre in some parts. She noted that, if you got any rain, the soybean crop was good with about 40+ bushels per acre. She reported that cattle prices continue to rise. She noted that Commissioner Lohr visited a food processing plant in Staunton during the Farm-to-School Week celebration and that his visit was covered by a local newspaper. She added that this visit focused attention on the lack of training and education for people wanting to enter the processing industry and the fact that there are not very many qualified applicants for jobs in this industry. She added that most of the training is hands-on job training. She noted that the real reason behind the Commissioner's visit was to promote the use of local foods in the school system. On that subject, she commented that the public schools' food system cannot afford to purchase local foods without some type of additional funding. She explained that some local school systems depend on PTA's to provide additional funding for schools to purchase local foods. She added that at present local schools cannot do this because of money issues. She noted that there is an incentive to feed school children local foods because these students can tell the difference and eat all of their food when they are served local products versus products from big bulk companies.

Mr. Rogers reported that farmers in his district had a tremendous crop and that it was one of the best crops they have ever had. He noted that the corn and soybean crops were very good but that Hurricane Irene hurt the cotton crop. He echoed earlier member reports about tree damage caused by the storm and the need to clean up the fields this winter. He noted the news release the Board members received concerning the work of Virginia's Extension personnel in the area of pesticide safety education. He also noted that Christmas tree growers are supplying a lot of the wreaths and trees for the Governor's Mansion. He echoed the comments made by Mr. Johnson concerning the efforts of Cooperative Extension. Concerning the state budget for the biennium 2012-2014, he stressed the need for keeping our focus on core services and the people being served. He added that he hoped VDACS will do its best to maintain support for the core programs and services.

Mr. Clark offered his apologies to Mr. Mills for missing the summer Board meeting and tour, but explained his obligation to attend a conflicting meeting of his county board of supervisors when he and his fellow board members met to resolve local school issues. He reported that the Southwest has had one of the prettiest fall seasons in several years. He noted that cattle prices are good. He reported that land prices have not been great, and that they are down a little. He noted that, thanks to the weather, little winter feeding has been done so far.

Mr. Toulme reported that the folks in Northern Virginia were pleased to see that VDACS and the Pesticide Board recognized the local Extension agent for work with the Pesticide Disposal Program. He noted that the disposal of pesticides and herbicides is a real concern in Northern Virginia—both commercially and to homeowners alike. He added that there are a number of farmers markets in Northern Virginia and the issue of how that food gets grown, especially by the smaller, local farmers, is a topic of discussion. He reported that USDA's regulations concerning what is "organic" and the considerable paperwork and related requirements local farmers must satisfy in having their products certified by the federal government as "organic" is

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of considerable concern to folks in his district. He noted that the word “organic” carries a good bit of weight at the local farmer’s market and it is a shame when some of our smaller Virginia farmers are excluded from using it because of a bureaucratic burden at the federal level. He added that he does not know how much can be done at the state level to address these concerns but he wanted to bring the matter to the attention of the Board and VDACS.

Mr. Hardesty reported that his area received six inches of snow on Halloween and survived. He noted that his area also had a lot of trees damage because of the storm. He reported this year’s apple crop was down a little bit but that the size was good. He noted that, thanks to spraying, damage from the stink bug was reduced this year. He reported that farmers in his area had about 60 percent of the corn crop and that yields averaged about 60 or 70 bushels. He noted that the yield for soybeans was about 45 to 50 bushels. He reported that his area has good fall pastures and there has been no winter feeding in his area thus far. He noted that small grains look good and about the same amount has been planted. Concerning plans for the 2012 summer meeting and tour in his area, he reported that the tentative dates are August 7 and 8.

### **COMMISSIONER’S REPORT**

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

### **PROPOSED EXEMPT ACTION – 2 VAC 5-405 – FERTILIZER APPLICATION ON NON-AGRICULTURAL LANDS**

Erin Williams of the Division of Consumer Protection (DCP) briefed the Board on the proposed Regulations for the Application of Fertilizer to Nonagricultural Lands (2VAC5-405). Ms. Williams called to the Board’s attention the draft regulation 2 VAC 5-405 that was sent to the Board in advance of the December meeting and which was included in the Boards meeting folders. She advised the Board that staff recommends that the Board take action to adopt this draft regulation that includes changes to 2 VAC 5-405 through an exempt regulatory process since the Board has to bring the regulation into agreement with the changes to state law enacted by the 2011 General Assembly.

Following comments and questions, Mr. Toulme moved that the Board adopt 2 VAC 5-405 pertaining to Fertilizer Application on Non-Agricultural Lands, as presented by staff, to implement changes required by amendments to state law enacted by the state legislature and that the Board authorize staff to take any and all steps necessary through exempt regulatory action to put the amended regulation into effect.

Mr. Mills seconded the motion and it was carried by a unanimous vote by the Board.

### **PROPOSED ACTION - 2 VAC 5-320 – RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE ENDANGERED PLAN AND INSECT SPECIES ACT**

Ms. Williams of DCP briefed the Board concerning 2 VAC 5-320, Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act, and the need to approve amendments to the regulation. She explained that at its meeting on December 3, 2009, the Board took action to propose a draft regulation that included several changes to the current regulation 2 VAC 5-320 relating to the listing of plants and insects. She added that staff filed the proposed regulatory package as authorized by the Board and that the package underwent a review by the Department of Planning and Budget, the Secretary of Agriculture and Forestry,

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and the Governor. She explained that during the executive review VDACS was advised that the proposed regulation needed to be revised and that staff presented before this meeting and in today's meeting folder an amended proposed regulation, which staff requests the Board to consider for approval for re-filing.

Following questions and comments, Mr. Mills moved that the Board approve the amendments to the Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act, 2 VAC 5-320, presented by staff today and that the Board authorize staff to take any and all steps necessary to have 2 VAC 5-320, in this amended version, filed with the Virginia Registrar of Regulations and published in The Virginia Register of Regulations for public review and comment.

Mr. Hardesty seconded the motion and it was carried by a unanimous vote by the Board.

### **NOTICE OF INTENDED REGULATORY ACTION - 2 VAC 5-60 - RULES AND REGULATIONS GOVERNING THE OPERATION OF LIVESTOCK MARKETS (PROPOSED WITHDRAWAL)**

Dr. Richard Wilkes, State Veterinarian and Director of the Division of Animal and Food Industry Services, introduced Dr. Charles Broaddus of his staff, who briefed the Board concerning the need to withdraw the Notice of Intended Regulatory Action (NOIRA) which the Board approved for filing at its meeting on December 9, 2010, for 2 VAC 5-60, Rules and Regulations Governing the Operation of Livestock Markets. Dr. Broaddus explained that staff is unable to complete the drafting of a proposed regulation for the Board's consideration until the U.S. Department of Agriculture (USDA) completes its work to finalize rules that have a major impact on the proposed state regulation. He advised that staff now recommends that the NOIRA for 2 VAC 5-60 be withdrawn since no further regulatory action can be taken at this time. In response to Board members, Dr. Broaddus explained that current regulations in place will continue to be in effect. Concerning USDA's final adoption of its rules, staff advised that staff expects to come back to the Board in the future to begin a new regulatory process concerning 2 VAC 5-60 after USDA has finalized the rules that impact this state regulation.

After questions and discussion, Mr. Ellis moved that the Board withdraw its Notice of Intended Regulatory Action that was published in The Virginia Register of Regulations on February 28, 2011, concerning amending 2 VAC 5-60, Rules and Regulations Governing the Operation of Livestock Markets.

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

### **NOTICE OF INTENDED REGULATORY ACTION - 2 VAC 5-120 - RULES AND REGULATIONS GOVERNING THE RECORDKEEPING BY VIRGINIA CATTLE DEALERS FOR THE CONTROL OR ERADICATION OF BRUCELLOSIS OF CATTLE (PROPOSED WITHDRAWAL)**

Dr. Broaddus briefed the Board concerning the need to withdraw the NOIRA the Board approved for filing at its meeting on December 9, 2010, for 2 VAC 5-120, Rules and Regulations Governing the Recordkeeping by Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle. Dr. Broaddus explained that, as in the case of 2 VAC 5-60, staff is unable to complete the drafting of a proposed regulation (2 VAC 5-120) for the Board's consideration until the U.S. Department of Agriculture (USDA) completes its work to finalize rules that have a major impact on the proposed state regulation. He advised that staff now recommends that the

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NOIRA for 2 VAC 5-120 be withdrawn since no further regulatory action can be taken at this time. Dr. Broaddus explained that current regulations in place will continue to be in effect. As in the case of 2 VAC 5-60, staff expects to come back to the Board in the future to begin a new regulatory process concerning 2 VAC 5-120 after USDA has finalized the rules that impact this state regulation.

After questions and discussion, Mr. Clark moved that the Board withdraw its Notice of Intended Regulatory Action that was published in The Virginia Register of Regulations on February 28, 2011, concerning amending 2 VAC 5-120, Rules and Regulations Governing the Recordkeeping by Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle.

Mr. Fleming seconded the motion and it was carried by a unanimous vote by the Board.

### **RECESS FOR PUBLIC HEARING**

President Rogers called a recess of the Board meeting so that the Board may conduct a public hearing at 10:00 a.m. concerning the proposed adoption of a permanent Thousand Cankers Disease Quarantine (2 VAC 5-318).

### **NOTE ON PUBLIC HEARING RE: THOUSAND CANKERS DISEASE QUARANTINE (2 VAC 5-318)**

President Rogers noted during the public hearing that a court reporter was present to transcribe comments from persons who offered remarks on the proposed permanent Thousand Cankers Disease Quarantine (2 VAC 5-318). The Board Secretary reported that no persons signed up to speak. After no persons came forward in response to the President's request for comments, staff presented a briefing on the proposed permanent quarantine. After an opportunity for Board questions and comments, the President adjourned the public hearing.

### **PROPOSED ADOPTION – 2 VAC 5-318 - PERMANENT THOUSAND CANKERS DISEASE QUARANTINE**

President Rogers called the Board back into session and called on Andy Alvarez, Director of the Division of Consumer Protection, to open the staff presentation concerning the adoption of 2 VAC 5-318, Thousand Cankers Disease Quarantine. As staff explained, the proposed permanent quarantine, which was sent to Board members prior to the meeting and which was included in the Board meeting folders, if adopted by the Board, would replace the temporary quarantine adopted by Commissioner Lohr.

Following the staff presentation and an opportunity for questions and comments, Mr. Toulme moved that the Board adopt as a final regulation the Thousand Cankers Disease Quarantine, 2 VAC 5-318, as presented by staff today and that the Board authorize staff to take any and all steps necessary to put this regulation into effect.

Mr. Clark seconded the motion and it was carried by a unanimous vote by the Board.

### **PESTICIDE SERVICES PROGRAM**

Liza Fleeson, Manager of the Pesticide Services Program, briefed the Board on this program. Following Board comments and questions about the program, Commissioner Lohr complimented Ms. Fleeson on the work that she and her staff are doing.

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### **VIRGINIA AGRICULTURAL STATISTICS REPORT**

Herman Ellison, who heads the Virginia State Office of the National Agricultural Statistics Service (NASS) of the U. S. Department of Agriculture, briefed the Board concerning recent agricultural statistics reports released by NASS on Virginia. Mr. Ellison also reported on surveys to be conducted. He then introduced Kevin Harding, his deputy, who presented a PowerPoint briefing on NASS's use of new technology in collecting data from the field.

### **NEW BUSINESS**

Mr. Bain briefed the Board on concerns shared with him regarding the difficulties the state peanut association and other agricultural commodity groups have been facing in obtaining exhibit space at the State Fair. A copy of emails received from State Fair personnel about exhibit space for commodities was presented to the Board members.

Mr. Ellis reported that farmers and other business persons who placed significant resources in accounts with MF Global have seen their accounts frozen—with the possibility that none of these resources will be recovered. He explained that he and other farmers were using the services of MF Global to protect their business against risk. It was noted that the head of MF Global was scheduled to speak before a Congressional committee to answer questions about his role in the management of MF Global.

Mr. Sturgis reported on plans for the annual ag conference on the Eastern Shore in January 2012. He also reported on his participation in the state kill-permit study group. He noted that Commissioner Lohr had asked him to serve on this study group and that a report of the group will be released.

President Rogers noted that the staff program briefings received today and at past meetings continue to provide Board members with a better understanding of the programs and services of VDACS. He expressed his appreciation for the contributions that the staff continues to make in keeping the Board informed and up-to-date on important issues.

### **PLANS FOR FUTURE BOARD MEETINGS**

President Rogers noted that the Board is scheduled to meet in Richmond during 2012 on March 22, May 24, and December 6. He also noted that Mr. Hardesty has agreed to host in his district the summer Board meeting on August 7 and a tour on August 8.

### **PUBLIC COMMENT PERIOD**

There were no comments from the public.

### **ADJOURNMENT**

There being no further business, the Board adjourned at approximately 11:45 a.m.

Respectfully submitted,

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Paul W. Rogers, Jr., Board President

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Roy Seward, Board Secretary