

Minutes

February 15, 2017

N. C. Board of Agriculture

Maurice K. Berry, Jr.

Mark Peters

Doug Boyd

Ben Shelton

Tommy Burleson

Bob Sutter

John William Carter, III

Jeffrey Turner

Anne Faircloth

Faylene Whitaker

Jim Lambeth

Steve Troxler, Chairman

Table of Contents

Call to Order and Reading of Ethics Reminder

Approve Minutes from November 10 and November 16 Meetings

Petition for Rule-making – NC Child

Imported Fire Ant Quarantine Approval

Approval to Start the Rule-making Process – Agronomics

HB 74 Rule Reports – Initial Agency Determinations

Other Business:

- 1) Legislative Preview
- 2) Update on Industrial Hemp

Minutes

February 15, 2017

N.C. Board of Agriculture

The February 15, 2017 Board of Agriculture meeting was held in Raleigh, NC at the Martin Building on the NC State Fairgrounds. Commissioner of Agriculture, Steve Troxler, called the meeting to order at 2:00 p.m. and asked Zane Hedgecock to open the meeting with prayer. The Commissioner read the Ethics Reminder and a roll call by Chrissy Waggett established there was a quorum. Board members present were: Maurice Berry, Tommy Burleson, Billy Carter, Jim Lambeth, Mark Peters, Ben Shelton, Jeff Turner, and Faylene Whitaker.



The first order of business was the approval of minutes from the November 10th and November 16th Board of Agriculture meetings.

Jeff Turner made the MOTION to approve both sets of minutes as provided. The MOTION was seconded by Mark Peters. There were no questions or further discussion and the MOTION passed unanimously.



The next item on the agenda was a petition for rule-making being brought before the Board by NC Child and Tom Vitaglione. Commissioner Troxler called on Tina Hlabse, General Counsel and Secretary of the Board, to explain the petition process. Ms. Hlabse explained that the Board received the formal petition for rule-making on January 4th, 2017. By statute, the Board has 180 days to respond to the petition, either by granting the petition, or denying the petition. The Board has until May 4th, 2017 to respond. The petition for rulemaking does fall under the Board's authority as it deals with Sleep Products, which was transferred to the Department in 2011. Ms. Hlabse then introduced Anne Brown, who provides legal representation to the Board of Agriculture from the NC Attorney General's office. It was explained that Mr. Vitaglione would present his petition, then members of the public would have five minutes to address the Board as well.

Mr. Vitaglione informed the Board that there were currently two legislative studies looking at the effects of toxic materials in bedding products on children and families. He also explained that there is currently no rule in place in North Carolina that specifically defines "toxic materials," especially to the extent that it includes flame retardants. Mr. Vitaglione, and NC Child, is proposing a rule that would specifically address "toxic" with regards to flame retardants in bedding. In his rationale, he explained that 75% of companies are currently being certified by a company called "CertiPUR-US" which tests for the chemical and certifies that it is free from the toxic flame retardants he identifies in his proposal (the petition is attached to the minutes).

After his presentation, there were several questions from the Board, including a question from Tommy Burleson regarding the flame spread rating that would be used on children's bedding. This question could not be answered at the time by Mr. Vitaglione. Board member Jeff Turner asked if NC Child had taken their concerns to the NC General Assembly, and where they were in that process. Mr. Vitaglione responded that the General Assembly did not move forward with any legislation. Mr. Vitaglione also addressed a question from Tommy Burleson letting him know that the list of materials in his proposal is the most prevalent today and a question from Jeff Turner regarding children's clothing, including pajamas and Halloween costumes. Some of those products have been removed from the market place, but were done so federally.

With no further questions, Commissioner Troxler called on Jim Burnette, Division Director for the Structural Pest Control and Pesticides Division. This Division houses the "Sleep Products" section where these regulations fall. Mr. Burnette and his staff have spent months researching this issue, including how the Department could accommodate the request with regards to testing and enforcement. The Division has also researched what other states are doing in regards to this issue. Mr. Burnette noted that eleven states have enacted legislation to require some type of testing and certification. He also noted that the proposal from NC Child uses the program standards from CertiPUR-US which over 500 companies already use as a powerful marketing tool. Mr. Burnette also spoke to the burdens on industry as there is currently no national standard, which means that using any third-party lab would not ensure that everyone is held to the same standards. In addition, the cost for lab testing could be up to \$20,000/year, something that would hurt smaller manufacturers. The cost for the Department to conduct this type of testing would be half a million dollars for equipment, supplies and personnel. Mr. Burnette also noted that consumers can already make informed choices by reading the labels and calling the manufacturer.

There was some discussion by Board members and Mr. Burnette regarding the broad scope of the terms used in the proposal and its ability to pass the Rules Review Commission. It was also noted that the definitions for the sleep products section is located in statute and not in rule.

With no further questions, a member from the public, Chris Hudgens, with the International Sleep Products Association, was called forward for comments. The association Mr. Hudgens represents was created 100 years ago to start standardizing strong bedding laws. Their association supports uniform standards that create a level playing field. He noted that there are currently 35 different bedding laws across the nation. One of the concerns they have with the proposed rule is making a voluntary program like CertiPUR-US a mandatory one. Other concerns include reporting requirements, and lab access since there are only 4 accredited labs currently doing this type of testing. There was one question regarding flame spread from Tommy Burleson.

Next to comment from the public was Stephanie Lormand. Ms. Lormand explained that these issues affect moms and children who want toxic flame retardants out of the infant mattresses. Ms. Lormand cited a Duke University study that found flame retardants cause issues in children, including ADHD. She mentioned the fact that the materials break down and turn to

dust, becoming an issue throughout the entire house. She also noted that she believed there was a difference in EPA saying something is non-toxic and saying something is safe. Ms. Lormand also asked the Board to consider the cost to children rather than the cost to the manufacturers. She noted that the proposal was not asking for anything manufacturers are not already doing, they just want it to be required for all infant mattresses. Ms. Lormand said that we are currently placing the cost and burden on the lives of children.

Continuing with public comment, Michael Power with the American Chemistry Council, a group representing 150 different chemical companies, came forward. Mr. Power explained that he represents the companies in North Carolina that create these products, and they are the leading group supporting the TOSCA act to modernize the program. Mr. Powers mentioned that flame retardants are needed as children under 5 are more likely to die in a fire than any other age, a statistic that is 1.3 % higher in NC than in other states. Mr. Powers also noted that there are some flame retardants listed and some that aren't. He suggested that North Carolina needed to wait and see what the EPA, who is currently in the middle of a study, decides on the issue. Tommy Burleson asked about formaldehyde and the possibility of residue remaining. This could not be answered by Mr. Powers. Jeff Turner asked if there was a mandate on flame retardants. Mr. Powers responded that there was no mandate, only that it has to smolder for 30 minutes.

The last public comment came from Elizabeth Robinson with the Retail Merchants Association in NC. Mrs. Robinson explained that their association was a part of the stakeholder process that went forward last year at the General Assembly. Nothing ended up happening in the legislature. Ms. Robinson stated that State action in what is a federally-regulated arena creates interstate confusion, and noted that the proposal is more stringent than any federal regulation. Their association prefers that the federal government take the lead in this issue. Ben Shelton asked how she would respond to the Duke University research. Ms. Robinson stated that she would have to take a look at it and would think that the EPA would take all research into consideration. After a question from Tommy Burleson on the EPA timeline, Ms. Robinson said she anticipates that it will take about 2 years per chemical and will take some time.

With no further comments from the public, or questions from the Board, Maurice Berry made the MOTION that the Board move into executive session to consult with their attorney, Anne Brown. The MOTION was seconded by Jeff Turner and approved unanimously. The Board went into executive session at 2:57 pm.

The Board came back from executive session at 3:41 pm. Faylene Whitaker made the MOTION to deny the rule-making petition. The MOTION was seconded by Jeff Turner.

Discussion of the petition, and their concerns then took place. Jeff Turner mentioned the concern that a state law could be more stringent than the federal law. Faylene Whitaker, who mentioned she used to serve on the Rules Review Commission, had several other concerns about what was in the proposal and how those things were defined. For example, she was interested in knowing who did the studies and if they were national or local; and knowing more about the death rates cited and if they were just from flame retardants in mattresses, or included other

things. Mark Peters cited the on-going studies within EPA and the Consumer Protection Agencies and concerns about taking action before those are complete.

With no further discussion, the Board passed the MOTION to deny the rule-making petition by a vote of 7 to 1. Tommy Burleson voted no.



The next item on the agenda was the Imported Fire Ant Quarantine Approval. Vernon Cox, Division Director of the Plant Industry Division, made the request. Mr. Cox explained that the Board is required to approve or deny the expansion once annually. The Division was requesting that the four counties where there was a partial quarantine, be expanded to the whole county, and added one additional county where a portion of the county needs to be included. This brings a total of 74 counties included in the quarantine.

A MOTION was made by Billy Carter, and seconded by Mark Peters, to approve the imported fire ant quarantine as presented. There were no questions or discussion, and the MOTION carried by unanimous vote.



Commissioner Troxler then called on Colleen Hudak-Wise, Director of the Agronomics Division, to present a request to start the rule-making process to make amendments on 02 NCAC 37 .0203 Nematode Assay Service. Ms. Hudak-Wise is proposing changes to the rule that would bring it in line with the current statute that lists the current fee schedule. The change was made in 1990, but rule-making was never initiated to update the rule. There is no increase in fees, only updating the rule to reflect the fees they currently charge as set forth in statute. They are also including additional services.

A MOTION to approve the start of the rulemaking process for 02 NCAC 37 .0203 as presented was made by Faylene Whitaker. There was a second by Jeff Turner, and no further questions or discussion. The MOTION carried by unanimous vote.



Commissioner Troxler then called on Chrissy Waggett to go over the next order of business: the initial agency determinations of several rule reports. Ms. Waggett explained that these reports are in the first step with the agency determining the necessity of the rules. Once approved today, the reports will be published for a 60-day comment period. The Board will need to give final approval to the final agency determinations.

The following rule reports were presented: 02 NCAC 31: Agricultural Hall Fame; 02 NCAC 39: State Organic Program; 02 NCAC 43A: Markets: Structure and Policy; 02 NCAC 43B: Market News Section; 02 NCAC 43C: Inspection of Farm: Horticultural Crops and Animal Products; 02 NCAC 43D: Standards and Fees; 02 NCAC 43E: Unfair Practices of Handlers of Fruits and Vegetables; 02 NCAC 43G: Agricultural Fairs; 02 NCAC 43L: Markets; 02 NCAC 43M: Processing of Eggs; 02 NCAC 53: Aquaculture; and 02 NCAC 58: Agricultural Development and Farmland Preservation.

The reports were presented by the staff responsible for overseeing each section: Chrissy Waggett, Ron Fish, Kevin Hardison, Ron Moore, and Dewitt Hardee. There was one question regarding pets on the farmers markets.

The MOTION was made by Jeff Turner and seconded by Maurice Berry to approve the reports with the initial agency determinations as presented. There were no questions or discussion. The MOTION passed unanimously.

~~~~~

Joy Hicks, Legislative Liaison for the Department, then came before the Board to give a brief legislative preview. She announced that she would be taking a promotional opportunity with the NC Department of Transportation and would be leaving the Department of Agriculture. It was explained that Jon Lanier, Assistant General Counsel, would take over in the interim until a new legislative liaison is hired.

Ms. Hicks noted that she was currently meeting with committee chairs and that the Department did not have many policy items to bring up this legislative session. She explained that the Department submitted a \$96 million disaster assistance request to Governor Cooper's office that would assist with unmet needs after Hurricane Matthew. In addition, the Department will seek federal match dollars where necessary. She also mentioned that the Department had a normal operating request where we will focus on existing programs and needs instead of new program areas. Commissioner Troxler added that we will be seeking at least one additional forester.

Mark Peters asked that the Board give Joy a round of applause for her work and service to the Department of Agriculture over the years.

~~~~~

Vernon Cox was then called back up to give a brief update on Industrial Hemp. Mr. Cox noted that the temporary rules were approved by the Industrial Hemp Commission on Monday and will go before the Rules Review Commission on Thursday. Once they are approved and effective, they will begin taking applications. He noted that the Plant Industry division will be in charge of sampling. Faylene Whitaker brought up a concern regarding farmers with other crops being ruled ineligible for federal crop insurance by RMA if they also grow industrial hemp. Vernon noted that they had not heard any concerns but would follow up with RMA.

~~~~~

Commissioner Troxler noted that Ag Day at the legislature was March 15<sup>th</sup> and encouraged everyone to come to Raleigh to remind the legislature about the number one industry in North Carolina.

There being no further business to discuss, Jeff Turner made a MOTION to adjourn the meeting. The MOTION, seconded by Billy Carter, passed unanimously. The meeting of the Board of Agriculture adjourned at 4:27 p.m.

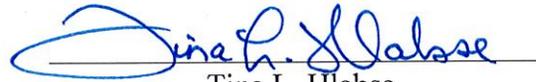
Recorded and Prepared by:

Chrissy Waggett

Adopted by the Board this 24<sup>th</sup> day  
of May, 2017.



Steven W. Troxler  
Commissioner of Agriculture  
Chairman



Tina L. Hlabse  
Secretary