

Minutes

May 15, 2019

N. C. Board of Agriculture

Ray Allen

Ben Shelton

Doug Boyd

Bob Sutter

Jose Calderon

Jeffrey Turner

John William Carter, III

Scott Tyson

Anne Faircloth

Faylene Whitaker

Jim Lambeth

Steve Troxler, Chairman

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Minutes

May 15, 2019

N.C. Board of Agriculture

The May 15, 2019 Board of Agriculture meeting was held in the Conference Room of the Donald W. Eaddy Building in Raleigh, North Carolina. Commissioner Troxler called the meeting to order at 1:32 pm and Zane Hedgecock gave the invocation. A roll call of members established that there was a quorum. The following Board members were in attendance: Ray Allen, Doug Boyd, Jose Calderon, Billy Carter, Anne Faircloth, Jim Lambeth, Ben Shelton, Bob Sutter, Scott Tyson, and Faylene Whitaker. Ben Shelton and Jeff Turner participated by phone.

Commissioner Troxler read the Ethics Reminder. No Board member had any conflict to report.

The first order of business was the approval of the minutes from the November 27, 2018 and February 5, 2019 meetings.

Faylene Whitaker made the MOTION to approve the minutes as presented. The motion was seconded by Ray Allen and carried by unanimous vote.

Commissioner Troxler called on Tina Hlabse to present the contract feeder exemption request from Performance Livestock and Feed Company. Under North Carolina's Commercial Feed Law, all material processed for animal or poultry feed must be registered with the Department and a 12 cents per ton inspection fee paid by the registrant. The law provides an exemption from the inspection fee for contract feeders and company owned operations. Performance Livestock and Feed Company has requested an exemption. The Department's External Auditor in Budget and Finance verified the information in the request and recommended the application for exemption be approved.

The MOTION was made by Jeff Turner to approve the exemption request by Performance Livestock and Feed Company. The MOTION was seconded by Anne Faircloth. Billy Carter asked if this was a normal process and if they applications were reviewed. This is a normal process and Department staff review each application before submitting the request to the Board. After no further questions, the MOTION passed unanimously.

Chief Deputy Commissioner David Smith noted that the auditor's office was undergoing a reorganization and there are currently two vacant positions.

Phil Wilson, Director of Plant Industry, was then called on to present a request to revise the imported fire ant quarantine. According to the Imported Fire Ant Regulations, newly infested areas shall be presented at least once annually to the Board of Agriculture, so they can confirm or rescind the areas. The Plant Industry Division issued a press release last November

with the details of the new areas, which were implemented on January 1, 2019. The revisions include all of Davidson, Orange, and Vance counties. Once the Board approves the request, the changes will be sent to USDA and they will add it to the Federal Register.

The MOTION was made by Ray Allen, and seconded by Jose Calderon, to approve the revisions to the imported fire ant quarantine as presented by Phil Wilson. The MOTION passed by an unanimous vote.

Commissioner Troxler then asked Kent Yelverton, N.C. State Fair Manager, to come forward and present the request to increase facility rental prices at the N.C. State Fair. Mr. Yelverton noted that he was seeking an increase for all N.C. State Fair facility buildings and grounds rented for year-round events. If approved, the new rates would be in effect for all contracts issued for events after July 1, 2019 and for all events effective January 1, 2020. The proposed increases range from \$100 to \$900.00 and the new rate table is attached to these minutes. In addition to the rate increases, Mr. Yelverton is seeking to eliminate the requirement that ticketed events pay base rent or 10% of ticket sales, whichever is higher.

The increased revenue is needed to help off-set rising costs like payroll, maintenance, and yearly capital improvements. Mr. Yelverton reminded the Board that the N.C. Stat Fair is an enterprise fund that is funded entirely through revenue from the Annual State Fair and year-round events. The rates were last increased in 2016.

There was some discussion about the length of rates (per day) and how you qualify for the ag rate (ag related non-profit).

The MOTION was made by Billy Carter to approve the rental rate increases for facility buildings and grounds rented for year-round events as presented by Mr. Yelverton. Doug Boyd seconded the MOTION, which then passed unanimously.

Mr. Yelverton remained in front of the Board to request the Board to initiate the rulemaking process on Rule 02 NCAC 20B .0104 Admission Prices. The proposed changes remove the operating hours from the Code so that management may make decisions regarding operating hours without rulemaking. Currently, the Fair opens at 3:00 pm on the first Thursday of the Fair. They have received requests from vendors and the carnival operator to open at noon. In addition, there may be times that modifications may need to be made to operating hours for the benefit of the Fair, vendors, and its visitors, on shorter notice. In addition, the N.C. State Fair is now exempt from rulemaking for setting admission prices, so that section is proposed to be deleted as well.

Doug Boyd made the MOTION to initiate the rulemaking process on 02 NCAC 20B .0104. The MOTION was seconded by Ray Allen and passed unanimously.

Commissioner Troxler then called on Tien Cheng, an attorney, to present the request to initiate the rulemaking process on 02 NCAC 09E .0116, Current Good Manufacturing Practice of the North Carolina Commercial Animal Feed and Pet Food Program. This new adoption will fill a gap in the Administrative Code and give inspectors specific rules to cite when making

observations. This will help businesses see how they can remedy a situation when they observe pest activity, unsanitary facilities, or unclean equipment. Mr. Cheng explained that the Food and Drug Protection Division expect that most businesses already follow in some form the good manufacturing practices, and having this rule in place will provide transparency and uniformity. The rule adopts by reference the federal regulation 21 CFR Part 507.

Bob Sutter asked if this rule would be open for public comment. The rule will be published in the North Carolina Register for a 60-day comment period.

The MOTION to initiate rulemaking on 02 NCAC 09E .0116 was made by Bob Sutter and seconded by Doug Boyd. The MOTION carried by unanimous vote.

Mr. Cheng then presented six Veterinary Division rules up for final adoption. These rules were first heard in February and have gone through the 60-day comment period. No comments were received for any rule.

02 NCAC 52B .0204, Importation Requirements: Brucellosis, is being readopted with changes to be renamed for consistency with our rules and combines all cattle importation requirements into one rule. The rule is also updated to meet USDA APHIS Animal Disease Traceability requirements.

02 NCAC 52B .0205, Importation Requirements: Cattle Fever Tick and Scabies, is being repealed since the requirements have been consolidated into rule 52B .0204.

02 NCAC 52B .0207, Importation Requirements: Swine, is being readopted with changes to clarify special permits mean an interstate commercial swine movement permit, clarify the definition of health certificate, and defines feral swine and prohibits the importation of any feral swine or the release of any swine to live as feral swine in North Carolina.

02 NCAC 52B .0213, Importation Requirements: Cervidae, is being readopted without changes. This rule was just amended in 2018.

02 NCAC 52E .0402, Style and Location of Brand, and 02 NCAC 52G .0303, Protection of Confidential Information, are being readopted without any changes to the way they are currently written in the Administrative Code.

Jose Calderon made the MOTION to adopt all 6 rules as presented by Tien Cheng. The MOTION, seconded by Bob Sutter, passed unanimously.

Steve Benjamin, Director of the Standards Division, then asked the Board for final adoption of 02 NCAC 38 .0401, Adoptions by Reference. The rule was published in the North Carolina Register, went through a 60-day comment period, and no comments were received. The amendment to the rule allows retailers to sell loose potatoes – either individually, or by count. This language is consistent with the language in the handbook that is adopted by reference. Mr. Benjamin noted that this proposal was presented at the national level but did not get any traction.

There was some discussion of why the idea failed at the national level to which Mr. Benjamin described that most did not see the point since you can already sell potatoes by the

each, although they are wrapped. This amendment would allow for the sale of unwrapped potatoes.

Billy Carter made the MOTION to adopt 02 NCAC 38 .0401 as presented. The MOTION was seconded by Jim Lambeth and passed with an unanimous vote.

Commissioner Troxler then called on Laura Kilian, Legislative Liaison, to give the Board a legislative Update. Ms. Kilian noted that the General Assembly is in their long session and is working on the budget. She explained that the Department is watching several items in the budget including Forest Service equipment and money for the NC Agriculture Sciences Center. Crossover was last week and several lawmakers from the Ag Committee went on a farm tour in Eastern NC. The NC Farm Act, which primarily focuses on hemp, has not yet been heard. Commissioner Troxler noted that the Department is trying to get more help, via additional positions, in Plant Industry, Emergency Programs and Agronomics.

Chief Deputy Commissioner David Smith provided an update on the 2018 Agricultural Disaster Program. He thanked Dewitt Hardee and his team for their hard work on doing the impossible and getting payments out the door as soon as they did. Mr. Smith noted that we are helping folks stay in business and relayed notes of thanks the Department has received from producers who have been able to get some help from our program. We received 7,485 applications, but the legislature is considering adding 3 or 4 more counties in Western North Carolina. Although they may add additional counties, no more money will be added to the program.

Billy Carter commended the Commissioner and his staff for implementing this program. He would like to see those people at a future Board meeting when the program is completed.

Commissioner Troxler thanked Assistant Commissioner Sandy Stewart and Chief Deputy Commissioner David Smith for their work on the program as well.

Kent Yelverton then came back before the Board to invite everyone to the upcoming Got to be NC Festival starting on Friday. Kent explained that the event was Friday through Sunday with free admission and parking. There is also a new marketplace this year, a carnival, and the Pig Jig.

Assistant Commissioner Joe Reardon then updated everyone on the progress of the new co-located lab being built. Construction on the NC Agriculture Sciences Center is 14% complete. He introduced Ron Willett, the new Complex Manager and Robert Marshall, the Project Manager with Dunn Loving. The lab will be 225,000 square feet and will house 200 employees.

The Board members then each gave a crop report from their area. The members discussed current plantings, the weather, and any issues they were seeing for this coming year.

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Completing agenda items, Commissioner Troxler asked for any other business to be discussed. Jeff Turner brought up for discussion the general permitting for the livestock industry. The industry has to have nondischarge permits which are brought up for renewal periodically. The NC Department of Environmental Quality made significant changes to the permits with new groundwater monitoring requirements, reporting requirements, and equipment requirements. Mr. Turner mentioned that NC Farm Bureau has filed a petition with the NC Office of Administrative Hearings since NCDEQ did not go through the rulemaking process to make these significant changes. Mr. Turner feels that the Board of Agriculture should be involved in the process as well.

Commissioner Troxler asked Mitch Peele with NC Farm Bureau if he wanted to talk about what they have done. Mr. Peele explained that last Friday, the NC Farm Bureau appealed the new permits with NC OAH claiming NCDEQ violated the Administrative Procedures Act in their issuance of the permits. They are not challenging the characteristics of the permit at this time, only about the process.

Joe Hudyncia, the Department's Environmental Specialist, spoke to some of the issues that producers may have with the new requirements in the permit and the potential for double jeopardy.

Ben Shelton noted that he went to the hearing NCDEQ held in Statesville and is concerned that they are pushing out regulation without justification.

There was discussion among the Board members about the course of action that the Board should take. Commissioner Troxler noted that one option is filing an amicus brief in support of the NC Farm Bureau.

Jeff Turner made the MOTION to have the Board's attorney investigate the viability of the Board intervening to support the agriculture industry and challenge NCDEQ. The MOTION was seconded by Doug Boyd.

Anne Brown, the attorney for the Board, clarified that the motion directed the attorneys to look into viability of the Board intervening and filing an amicus brief. There was some additional discussion about having the attorneys report their findings back to the Board.

The MOTION was amended by Jeff Turner to add that the attorneys will report back to the Board. The amended motion was seconded by Doug Boyd. After no further discussion, the amended MOTION to have the attorneys investigate the viability of the Board intervening to support the agriculture industry and challenge NCDEQ and report back to the Board passed unanimously.

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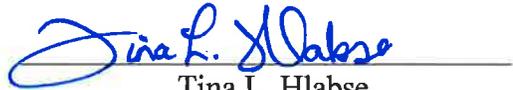
There being no further business to discuss, Bob Sutter made a MOTION to adjourn the meeting. The MOTION, seconded by Jeff Turner, passed unanimously. The meeting of the N.C. Board of Agriculture adjourned at 2:56 p.m.

Recorded and Prepared by:
Christina L. Waggett

Adopted by the Board this 6th day
of June 2019.



Steven W. Troxler
Commissioner of Agriculture
Chairman



Tina L. Hlabse
Secretary