

**MINUTES
MIGRANT AND SEASONAL FARMWORKERS BOARD MEETING**

March 18, 2009

The Migrant and Seasonal Farmworkers Board Meeting was held at the Virginia Employment Commission Administrative Office in Richmond, Virginia.

The following Board Members were present: Kenneth Annis, Chairman; Mario Moreno, Vice-Chairman; Ruth Brown, Veronica Donahue, Richard Hall, Lou Hart, Sharon Saldarriaga, Teresa Velle, and Peter Von der Lippe.

The following Board Members were absent: Tupper Dorsey, Hart Hudson, Thomas Kellum, Kelly Robinson, and Christian Schweiger.

Staff in attendance from the Virginia Employment Commission were: Dolores Esser, Nicholas Kessler, Shelby Robinson, Jim Cocke, Joyce Fogg, Jack Turner, Michelle Abraham, and Evelyn Lewis.

The following guests were present: Micah Raub, Virginia Department of Agriculture, Office of Pesticides Services; Liza Fleesch, Virginia Department of Agriculture, Office of Pesticides Services; Megan Moore, Migrant Education Specialist, Virginia Department of Education; and Gary Hagy, Virginia Department of Health.

Call to Order

Chairman Kenneth Annis called the meeting to order at 10:08 a.m.

Welcome and Introduction

Chairman Annis welcomed all in attendance and extended greetings to the board members, guests, and all those present.

Approval of Agenda

A motion was made by Vice-Chairman Moreno to approve the agenda. It was seconded by Richard Hall, and approved by a unanimous vote.

Approval of Minutes

A motion was made by Richard Hall to approve the minutes of the September 11, 2008 meeting. It was seconded by Veronica Donahue, and approved by a unanimous vote.

Worker Protection Standards – Micah Raub, Department of Agriculture & Consumer Services

Micah Raub of the Office of Pesticides Services with the Department of Agriculture gave a presentation on Worker Protection Standards (WPS) and the Implementation, Outreach, and Enforcement of that Standard. That Office is divided into different sections to include:

- Certification, Licensure, Registration, and Training (CLRT)
- Enforcement and Field Operations
- Compliance
- Environmental Stewardship Programs, and
- Administration

The Office of Pesticides Services is responsible for enforcing and/or carrying out the provisions of the following state regulations:

- Virginia Pesticide Control Act, and
- Regulations Pursuant to the Virginia Pesticide Control Act (2 VAC 20)

As the state lead agency which regulates the use of pesticides, the Office of Pesticide Services also enforces or carries out certain provisions of the following federal laws and regulations:

- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and
- 40 Code of Federal Regulation (CFR)

WPS is a part of FIFRA and 40 CFR Part 170. It is the EPA regulation that covers pesticides used in the production of agricultural plants on farms, nurseries, greenhouses, and forests. The Environmental Protection Agency (EPA) implemented WPS in October 1995.

The label is the law. It is a violation of Federal Law to use this product in a manner inconsistent with its labeling. VPCA §3.2-3939(B) states “It is unlawful for any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or regulations of the Board...”

The WPS covers every agricultural employer, including livestock producers, who have employees that perform hand labor operations in fields, forests, nurseries, and greenhouses treated with pesticides. Unlike other laws and regulations affecting agricultural labor, the WPS does not exempt any employment in commercial agriculture involving hand labor in fields, but owners or operators and immediate family members are specifically exempt from most provisions.

The Worker Protection Standard also applies if:

- An employer hires or contracts for the services of agricultural workers to do tasks related to the production of agricultural plants, i.e. farm labor contractors.
- An employer or people they employ apply pesticides that are used in the production of agricultural plants, i.e. commercial applicators.

Employees are defined as:

- Agricultural workers:
 - does hand labor such as weeding, planting, cultivation, or harvesting
 - does related tasks, such as moving or operating irrigation equipment

- Handlers:
 - mix, load, or apply pesticides
 - does other tasks involving direct contact with pesticides

Owners of agricultural establishments and members of their immediate family are exempt from WPS requirements for training, decontamination, and display at the central area. WPS requires the employer on an agricultural establishment to provide his employees with: information about pesticide exposure; protections against exposure to pesticides; and ways to mitigate exposure to pesticides. An employer cannot retaliate against an employee who tries to comply with the WPS.

Pesticide safety training for workers and handlers includes:

- Basic pesticide safety information before entering a treated area
- Complete WPS training within five days
- Trained by a certified applicator or trained trainer
- Retrain every five years

One of the requirements for providing information is that the Central Location has to be where they work. Requirements include:

- WPS Safety Posters;
- In case of emergency, information is needed that would include name, address, and telephone number of the nearest medical facility;
- Records of pesticide applications to be displayed 30 days beyond REI expiration. Needs to be in a place that is accessible to employees.

For protections, the employers have to:

- Take steps to prevent heat illness, such as scheduled breaks during the day;
- Personal Protective Equipment; and
- Oral and/or Visual Notification when an area is treated.

Some of the mitigations to pesticide exposure would consist of:

- Decontamination Sites;
- Provide transportation to medical facilities when pesticide exposure occurs;
- Provide pesticide labels and related information to medical professional.

As for the implementation of the Office of Pesticide Services, the Certification, Licensure, Registration, and Training (CLRT) section does the WPS training and Outreach. They have a grant with Telamon that does a lot of the training for growers who have Spanish-speaking workers. The training is free. They have training agreements with other groups also. As for enforcement and field operations, they investigate tips and complaints, and inspect agricultural establishments to ensure compliance with WPS. When a violation is found, the compliance officer will review the case and determine what finds will be issued.

The outreach will distribute materials, do recertifications, have growers meetings, agricultural conferences, inspections, and upon request provide materials. Outreach also help growers find free resources available from the state and federal government such as:

- Pesticide Safety Posters (EPA/OPS)
- Recordkeeping Books (USDA/OPS)
- How to Comply Manual (EPA/OPS) or Summary Guide (VDACS/OPS)
- WPS training workbooks, videos, training verification cards, etc. (EPS/OPS)

As part of the education outreach, OPS partners with Telamon to provide free WPS training for farmworkers in Spanish and English. They provide “Train-the-Trainer” training for those who request it and enter into a training agreement with grower associations. They provide WPS presentations during recertification programs for Private and Commercial Agricultural applicators. The Cooperative Extension does play a major role in outreach education because for the majority of the time, they invite OPS to the meetings, and the Cooperative Extension staff does a lot of training also.

For enforcement, OPS has one supervisor who oversees 11 pesticide investigators across the state. They conduct inspections and investigations of certified individuals, licensed pesticide businesses, and registered technicians. In Virginia, the “Label is the Law.” Therefore, as the investigators are doing the inspections, they are making sure that the pesticides are being used in accordance with the labels, and that include the label rate application, making sure people are wearing the proper personal protective equipment, using sites permitted on the label, and the WPS would fall under the label. They also conduct outreach and education programs.

The number of routine WPS inspections is determined by the grant agreement with the EPA (35 in 2008 Agreement). A WPS targeting strategy has been developed to prioritize routine inspections. Several staff members have completed EPA’s “Breaking the Barriers Course” to enhance their ability to interview migrant and seasonal farmworkers. Staff uses the AT&T Language Line for interpreting services if an interpreter is unavailable on site.

During their inspections, pesticide inspectors check to see if there is a central information area, make sure workers are being notified of applications either orally or visually, make sure they receive their safety training, verify the training through a roster, make sure they have personal protective equipment, and make sure the decontamination supplies are available.

OPS do allow agricultural employers to contact them to request a VDACS OPS compliance assistance visit. They investigate all complaints related to WPS. They also issue civil penalties when violations are documented.

Migrant Education Program – Megan Moore, Department of Education

Ms. Moore is an Education Specialist who works with the Title 1 Part B Education Migratory Children. She distributed handouts that consisted of the Consolidated State Performance Report (CSPR) Part II data compiled by Virginia.

Ms. Moore reviewed the data collected on the Migrant Education Program (MEP) Title 1, Part C for the reporting period of September 1, 2007 through August 31, 2008. The data consisted of:

- Population data of eligible migrant children
- Academic data of eligible migrant students
- Participation data of migrant children served during either the regular school year, the summer intersession term, or program year
- School data
- Project data, and
- Personnel data

Ms. Moore's work with the MEP is only 30% of her time with the Department of Education. The other 70% of her time is spent with Title 3 Limited English Proficient and federal program monitoring.

In conclusion of Ms. Moore's presentation, she reviewed the Department of Education's website, www.doe.virginia.gov, particularly, the Superintendent's memorandums that are distributed every Friday regarding important information pertaining to the Migrant Education Program. She encouraged the MSFW Board to scroll through the Title 1 Part C website and review the manual.

H-2A Program Updates – Michelle Abraham, Virginia Employment Commission

Michelle Abraham reported on the most recent changes to the H-2A Program. The new regulations went into effect on January 17, 2009. On March 13, she received a news release that indicated that the U. S. Department of Labor (USDOL) was proposing to suspend H-2A Program regulations and return to the old regulations. USDOL will be suspending those regulations nine months after a comment period if that is decided upon. There will be a 10-day comment period in which USDOL will receive comments related to the proposed suspension. They will not accept comments related to specifics in the regulations. The comment period runs through March 27, 2009. After the comment period ends, the USDOL will decide on whether to suspend the H-2A Program regulations for nine months. The suspension period is proposed to evaluate the effects that the new regulations actually had on the processing of H-2A applications.

Ms. Abraham distributed three handouts for the MSFW Board to review for more detailed information on the H-2A updates:

- USDOL News Release – March 13, 2009
- Regulations published March 17, 2009 regarding the suspension proposal
- Federal Register Notice published on March 17, 2009 regarding the Department of Agriculture's request to again formulate the Adverse Effect Wage Rate (AEWR)

Responsibilities of the Board – Nick Kessler, Virginia Employment Commission

Deputy Commissioner Kessler reviewed the governing law and responsibilities regarding the MSFW Board. A handout was distributed, and the following information was relayed from § 2.2-2407:

- A. The Virginia Employment Commission (VEC) provides staff support to the MSFW Board and serves as fiscal agent for any funds received. The VEC does not receive general revenue to fund the activities of the MSFW Board.
- B. The VEC shall submit a Biennial Report to the Governor and General Assembly on or before October 1 of each even-numbered year. The last Biennial Report was completed on September 8, 2008, and is now available on the VEC's website. As for staff support, the VEC can help with some things; however, there are some things that cannot be done by the Board, the VEC Commissioner, and Deputy Commissioner. The VEC is not able to engage in opposing or supporting specific legislation. The MSFW Board can advise the Governor, but the VEC cannot engage in that process.
- C. Members of the Board shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.
- D. A majority of the members of the Board shall constitute a quorum.
- E. The Board shall consist of 15 members who shall be appointed by the Governor to serve at his pleasure. The Board shall include representatives of grower communities, migrant and seasonal farmworkers and crew leaders, if practical, and government, public and private agencies, and interest groups or citizens concerned with migrant and seasonal farmworkers.
- F. The purpose of the MSFW Board is to:
 - 1. provide for the coordination and evaluation of state and federal services and to the degree feasible, other governmental, public, and private agency services to migrant and seasonal farmworkers within the Commonwealth;
 - 2. identify and evaluate the needs of migrant and seasonal farmworkers and needs of employers of such workers;
 - 3. study problems of the target population, provide background information, and recommend options for solutions along with impact projections of such recommendations to the General Assembly, governmental, public and private agencies; and
 - 4. encourage and foster the development of area migrant and seasonal farmworkers councils for the purpose of seeking problem resolution and communication at the local level.

Items of Interest from the Board Members

Chairman Annis informed the Board that a former crew leader and former MSFW Board member, Don Valerio, now has three restaurants, and has become extremely successful in his career.

Veronica Donahue circulated a handout and stated that the Author/Artist, Simon Silva, contacted the Board via e-mail to share information about her art and being a speaker in educational settings. The information was being shared in the Commonwealth and parts of Maryland to help the people who need to renew their Mexican passport, and/or matriculas. When this was

previously done in Nelson County, there were at least 300 to 400 people; however, there are now 1,000 to 2,000 in one weekend. These are not walk-ins. These are people who have already made an appointment, and the Community Leader has verified that all the documentation is in order. There was a presentation from the Comprehensive Immigration Report (CIR) on March 14, 2009. Ms. Donahue provided her notes as well, to inform the Board of the Author/Artist's tone and where the information was obtained.

Ms. Donahue extended accolades to the fact that the Department of Homeland Security finally clarified the application for citizenship to state, "If you would like your name changed when you become a citizen, it can be changed, and what would you like for it to be?" It appears that Homeland Security did listen to the feedback of the naturalization changes. However, what they did not do, that would have been helpful to all the schools and clinics, is provide guidelines for foreigners who have two last names. Unfortunately, because of this, there might be several files created on one person because the files might be set up by both names, and/or a hyphenated last name, thereby possibly creating three files.

Sharon Saldarriaga stated that during the week of March 9, she was in Washington, DC, attending a reception in which the Secretary of Labor was present. She felt the Secretary of Labor had strong roots with the farmworkers programs and advocacy communities. The National Farmworkers Jobs Program will receive a slight increase in funding.

Ms. Saldarriaga further stated that Telamon Corporation received a small amount of funding through the Association of Farmwork Opportunities Program to do some pesticides safety training of families. This would give them limiting exposure around families.

Telamon is also beginning to try to start tracking safety training. The first one will be in April at the Kluge Estates Vineyards.

VEC Update

Commissioner Esser reported that an Interagency Migrant Worker Policy Committee meeting was held on February 10, and Chairman Annis was in attendance. There was a very good attendance from all the agencies. She informed the Board that in their meeting folders, there were two brochures: 1) Department of Medical Assistance Services (DMAS) FAMIS Program, in English and Spanish; and 2) Earned Income Tax Credit from the Department of Social Services (DSS). DSS has stated that a lot of people are not taking advantage of the Earned Income Tax Credit. This may not specifically apply to migrant workers, but to anyone that is low-income.

The VEC received contingency money in November 2008, reflective of the number of people unemployed.

Six temporary unemployment insurance express offices are being placed around the state. The first office will open in Richmond on March 23 located at 4150 Meadowdale Boulevard off of the Hopkins Road exit, serving Richmond and Petersburg. The other offices will be located in

Newport News, Danville, Bedford, Centreville, and Portsmouth. The locations were identified by zip code from the number of people receiving unemployment benefits.

As for the stimulus funding related to unemployment insurance, Congress previously gave the VEC an extension of 13 weeks of unemployment benefits, which was called the Emergency Unemployment Compensation (EUC). Congress then extended the benefits again with an additional 7 weeks. Therefore, at this time, the maximum number of weeks consists of 46 weeks. Originally, the program was scheduled to end in March 2009. It has now been extended to December 2009. The stimulus package also stated that everyone would get an additional \$25 in unemployment benefits each week, paid by the federal government. Because of the antiquated computer system the VEC has, it will take six to eight weeks to program that system for the \$25 stimulus. Once the system has been programmed, the \$25 stimulus payment will be retroactive back to the date of February 28, when it became effective.

The VEC also received about \$8,000,000 from the stimulus funds to:

- Enhance the Job Service Program; and
- 60% of the funds have to be spent on re-employment for unemployment insurance claimants. Proposals are being worked on to open temporary re-employment services centers around the state. New staff are also being trained in job services.

This money must be used within 18 months or be returned to the federal government.

In conclusion, Commissioner Esser informed the Board that the idea of having an MSFW Board meeting on the road could be entertained.

Old Business

Ruth Brown stated that she would like for the topic of Reciprocity to be discussed at a future Board meeting. In response, Commissioner Esser stated that the topic was discussed at a previous Interagency Migrant Worker Policy Committee meeting by an employee from DMAS, and he could be asked to attend a future Board meeting. In follow-up, Ms. Brown said she was aware of a woman in Maryland who did a presentation on Reciprocity at a meeting she attended. Ms. Brown will provide the woman's name and contact information to Commissioner Esser for inviting her to give a presentation at one of the Interagency Migrant Worker Policy Committee meetings.

Ms. Fogg stated that some of the Board members had not filed their Conflict of Interest forms, and she asked that those forms be forwarded to her as soon as possible. Also, for those who had not completed the training on-line, they should do so as soon as possible.

New Business

There was no new business to report.

Public Comments

Mr. Gary Hagy, Virginia Department of Health (VDOH), reported that on March 10 a videoconference was held with all the district health departments throughout the state. Michelle Abraham was also in attendance. The videoconference discussions pertained to the migrant labor program, migrant labor camps, and changes to the H-2A Program. Mr. Hagy stated that a memorandum to owners and operators of farm labor housing that was signed by VEC Commissioner Esser and VDH Commissioner Remley, would be sent to all the growers across the state.

Election of Officers

Chairman Annis asked for nominations for the positions of Board Chair and Vice-Chair.

Mr. Mario Moreno nominated Mr. Annis for Board Chair. Mr. Richard Hall nominated Mr. Moreno for Vice-Chair. Sharon Saldarriago seconded the nominations. There were no oppositions, and the nominations were closed. By unanimous vote, both positions were approved.

Next Meeting

The next MSFW Board meeting will be set up in conjunction with the growers' harvests, such as tomatoes or apples. After discussion, the location and date selected was the Eastern Shore, on July 22, 2009. Lodging will be arranged by the VEC.

Adjournment

There being no further business to bring before the Board, the Migrant and Seasonal Farmworkers Board meeting adjourned at 12:40 p.m.