

Exhibit 9

Arkansas State Plant Board
Minutes of the 408th
Meeting of the Board

December 12, 2016
10:00 am

Members present: Bruce Alford, Kyle Baltz, Russell Black, Russell Bragg, Robert Campbell, Marty Eaton, Danny Finch, Terry Fuller, Greg Hay, Otis Howe, Larry Jayroe, Thomas Post, Dr. Craig Rothrock, Denny Stokes, Jammy Turner (Mr. Turner was on conference call at the beginning of the meeting and came in later) and Ray Vester

Conference Call: Jerry Hyde

Excused Absence: Dr. Rick Cartwright

Others present: Terry Walker, Director; Grace Ellen Rice with the Attorney General's Office; and Plant Board staff were present.

408th Plant Board Quarterly Meeting

Chairman Otis Howe called the 408th quarterly Board meeting to order.

1. **Opening Comments and Introductions.** Chairman Howe welcomed all who were in attendance and asked the Board and all attendees to introduce themselves and state whom they represent.

Howe noted that Grace Ellen Rice has announced her upcoming retirement. Rice stated that it has been a superb opportunity to work with the finest people in Arkansas agriculture. She stated she appreciates all the staff of the Plant Board and its' leadership, the University of Arkansas and others.

Howe thanked Rice for all her hard work and support she has given the Plant Board staff and the Board.

At this time, Terry Walker informed the Board that the Plant Board's Christmas Family Committee is now accepting donations for families adopted by the Plant Board this year, and extended the opportunity to the Board to donate at this time.

2. **Minutes.** Moved by Finch, seconded by Hay to approve the minutes of the September 30, 2016 Board meeting as distributed.

Motion carried

Chairman Howe stated that before the minutes of the November 21, 2016 Plant Board Special Called Board meeting are presented to the Board for approval, the Board will need to approve comments received pertaining to each of the three public hearings held that day.

Howe turned the floor over to Walker. Walker stated that he will go through each one of the hearings, the comments that were received, and the agency response to those comments.

The first public hearing was to consider changes to **Plant Board Circulart 15, Official Standards for Seed Certification in Arkansas.**

This hearing was to consider allowing Foundation seed to be sold in new, flexible mini-bulk (superbag) containers.

The Board approved the proposed changes during the November 21, 2016 Special Called Board meeting.

Walker stated two comments were received:

Comment Summary and Agency Response - **ATTACHMENT I**

One telephone call seeking clarification of proposal to allow foundation seed be sold in larger mini-bulk containers (superbags).

Response: Provided clarification that the proposed regulation would allow Foundation seed to be sold in both superbags and traditional size bags.

One written comment was received from Scooter Hodges, Arkansas Seed Growers' Associaton. The letter was in support of the proposal to allow Foundation seed be sold in new, flexible mini bulk containers.

Walker asked the Board if anyone had any questions concerning the comments or the agency response. There were none.

Moved by Finch, seconded by Jayroe to officially receive the comments, as presented.

Motion carried.

Moved by Jayroe, seconded by Vester to approve the agency response to the comments, as presented.

Motion carried.

The second public hearing was to consider changes to the **Arkansas Regulations on Pesticide Classification and Use**.

Walker stated that following the November 21, 2016 Special Called Board meeting, staff met with Grace Ellen Rice and Meredith Rebsamen with the Attorney General's Office. The discussions resulted in some reorganization in the content of the proposed rule that was adopted by the Board on November 21, 2016. Walker stated that the regulations adopted on November 21, 2016 have not changed, but have been reorganized. The document reads much smoother and is more user friendly. Each Board Member has a copy of this document in front of them. Walker went through the document page by page, making the Board Members aware of the changes that have been made as a result of those discussions. The changes are shown in the document titled Arkansas Regulations on Pesticide Use, shown as **ATTACHMENT II**

Walker stated that most of the changes are simply relocating information within the document resulting in a smoother flow; using the scientific name of a product; and changes in numbering to allow for relocating information from one place to another within the document. These changes are not considered to be substantive changes.

Moved by Stokes, seconded by Eaton to approve the edits as presented on the Arkansas Regulations on Pesticide Use.

Howe again stated there were no substantive changes made, just attempting to make the document more clear.

Motion carried.

Walker then presented the summary of comments received during the comment period, and the agency response to those comments for Board consideration and approval.

Walker referred the to the following documents :

- 1) Arkansas State Plant Board – Arkansas Regulations on Pesticide Classifications – November 21, 2016 Public Hearing Comments Summary and Board Response – ATTACHMENT II-A.
- 2) Arkansas State Plant Board – Public Hearing Comments Summary – ATTACHMENT II-B

Walker stated 223 comments were received in favor of the proposed regulations. The concerns expressed in the 223 comments in favor of the proposed regulations were considered during the lengthy period of debate during the development of the proposed regulations. The Board agreed with the comments and voted to approve the proposed regulations. The commentors, comment summaries and agency responses are shown in ATTACHMENT II-B.

The 9 comments against the proposed regulations are addressed individually, along with the agency response. (See comments numbered 26, 197, 204, 206, 236, 240, 252, 253 and 259 on the Summary Sheet – ATTACHMENT II-B). The numbered written comment and agency response on the Summary Sheet corresponds with the actual written comment, shown as ATTACHMENT II-C.

Moved by Black, seconded by Vester to officially receive the 223 comments in favor of the proposed regulation as presented.

Motion carried.

Moved by Stokes, seconded by Baltz to approve the agency responses to the 223 comments in favor of the proposed regulation as presented.

Motion carried.

Moved by Baltz, seconded by Alford to officially receive the 9 comments against the proposed regulation as presented.

Baltz questioned, if the company choosing not to allow University researchers to perform third party research, do we know if they allowed any third party research.

Walker stated, at the time the Board met, no one had seen any data, third party or otherwise. Subsequent to the Board meeting, even as recently as last night, documentation was provided pointing out some research work was performed by non-company personnel. However, the results of that research were analyzed or interpretation of the analysis was performed by company personnel. Therefore, depending on the definition used for “third party work”, the answer could vary. An e-mail was received (ATTACHMENT II-D) that lists entities having conducted work, that are non-company personnel that could conceivably qualify as third party.

Baltz stated, so as we understand it today there may have been some other work done outside Monsanto employees but that data was kind of aggregated, so it's not independent so it's not 3rd party.

Walker stated, to get back to the question of U of A research work, Dr. Norsworthy clarified the point that efficacy studies were carried out by U of A researchers, however, there have been no drift or volatility studies done by U of A researchers, or anybody else that we know of from Mississippi State or University of Missouri. But we cannot speak for them with certainty.

Walker stated, the Plant Board did not have any opportunity to review any data. On multiple occasions the companies were told the Plant Board would like to see third party data, preferably U of A data. There was one time when the company personnel stated there was data in existence but it would not be released out of fear of jeopardizing issuance of the label by EPA.

Motion carried.

Moved by Vester, seconded by Baltz to approve the agency responses to the 9 comments against the proposed regulation as presented.

Motion carried.

Walker stated, next are the 29 comments in favor of the proposed regulations but also requesting additional regulations, in essence banning all dicamba products. Walker referred to and read, as an example, comment summary number 199 along with the agency response. Shown in the Summary Sheet (ATTACHMENT II-B). The comment from Mr. Bryan McMasters is shown as ATTACHMENT II-E.

Moved by Finch, seconded by Stokes to officially receive the 29 comments in favor of the regulations but also requesting additional regulations as presented.

Following some discussion, Motion carried.

Moved by Hay, seconded by Black to approve the agency responses to the 29 comments in favor of the regulations but also requesting additional regulations as presented.

Motion carried.

Walker stated that during the public hearing when taking oral comments, a representative from Helena Chemical Co. read a prepared statement. The prepared statement is shown in ATTACHMENT II-C, comment number 204. The comment summary and agency response is shown as number 204 in the Summary Sheet - (ATTACHMENT II-B).

Moved by Jayroe, seconded by Vester to officially receive the comments from Helena Chemical Co. as presented.

Motion carried.

Moved by Vester, seconded by Hay to approve the agency response to Helena Chemical Co. as presented.

Motion carried.

Walker stated that during the public hearing when taking oral comments, a representative from Monsanto, Mr. Ty Whitten, stood to offer comment and passed out a document to the Board. Walker stated that as Mr. Whitten gave oral comment, he stated that his intention was to read the statement, however, Mr. Whitten did not read the statement, and continued by stating that Monsanto had received EPA registration for XtendiMax with Vapor Grip. The written statement he presented at that public hearing is shown as **ATTACHMENT II-F**.

Apparently, there were not enough copies to go around the table to all Board Members, therefore, some Board Members did not see the document. Walker stated that the written comment period ended at close of business on Friday, November 18, 2016, prior to the public hearing and Special Called Board meeting scheduled for November 21, 2016, therefore, this written comment did not come in during the written comment period.

Walker then read the agency response, shown on pages 2 and 3 of **ATTACHMENT II-A**.

Moved by Turner, seconded by Eaton to officially receive the written comment from Monsanto "Comment to Arkansas State Plant Board on Proposed Regulations – November 21, 2016" – **ATTACHMENT II-F**.

Motion carried.

Moved by Finch, seconded by Jayroe to approve the agency response to the written comment from Monsanto, as presented – shown on pages 2 and 3 of **ATTACHMENT II-A**.

Motion carried.

The third public hearing was to consider changes to the **Arkansas Pesticide Control Regulations**

The proposed changes for this regulation was to add the following:

Regulation No. 7. Registration of Pesticides

The Plant Board may request additional information, and stipulate the source of the information, such as knowledge as a result of but not limited to research findings, findings of other state and federal agencies or experience of the Arkansas State Plant Board before a pesticide is registered for use in the State. In such cases, the Plant Board may deny registration until information is reviewed and approved by the Plant Board.

The Board voted to adopt the proposed regulation at the November 21, 2016 Special Called Board meeting. Subsequently, during discussions held with Meredith Rebsamen, Attorney General's office, it was pointed out that the Plant Board, in a different statute, has the option of determining what information is used, therefore, this would then become redundant. Walker proposed that the Board vote not to proceed with the promulgation of the proposed regulation.

Howe stated in the Arkansas Pesticide Classification and Use Act, it states; In issuing regulations, the State Plant Board shall give consideration to pertinent research findings and recommendations from other agencies of this state, the federal government, or other reliable sources.

Moved by Jayroe, seconded by Vester that the proposed changes to the regulations adopted by the Board at the November 21, 2016 Special Called Board meeting, be recinded/withdrawn from further promulgation.

Motion carried.

Moved by Alford, seconded by Stokes to approve the minutes of the November 21, 2016 Special Called Board meeting, as distributed.

Motion carried.

3. **Examination Results**. Moved by Vester, seconded by Finch to approve the September 12, October 10 and November 14, 2016 pest control examination results as presented. **ATTACHMENT III**

Motion carried.

4. **Standing Committee Reports.**

Pest Control – November 4, 2016

In the absence of the Chairman, Dr. Rick Cartwright, Vester summarized the minutes of the November 4, 2016 Pest Control Committee meeting. **ATTACHMENT IV**

The first case involved American Southern Exterminating, owned and operated by Mr. Lonnie Tate, in which a letter of correction had been issued. The Committee recommended to revise the letter of correction removing items 1 and 5 shown on the current letter of repair requirements, and to allow items 2, 3 and 4 remain. Staff will issue a revised letter of correction.

The Committee reviewed 2 resolutions as follows:

The first resolution was in the matter of US Lawns of Jonesboro, engaging in pest control services of weed control without a license. The Committee recommended a civil penalty in the amount of \$700.

Moved by Vester, seconded by Turner to approve the Committee's recommendation.

Motion carried.

The second resolution was in the matter of DC Lawn Service, a violation of failure to secure a required pest control license. The Committee recommended a civil penalty in the amount of \$400.00.

Moved by Vester, seconded by Hyde to approve the Committee's recommendation as presented.

Motion carried.

Moved by Vester, seconded by Fuller to approve the committee report as presented.

Motion carried.

Public Grain Warehouse Committee – November 29, 2016

Chairman Marty Eaton summarized the minutes of the November 29, 2016 Public Grain Warehouse Committee meeting. **ATTACHMENT V**

Formal Hearing between the Arkansas State Plant Board and Grand Prairie Agri-Marketing, LLC., Chris Taylor – Case File 16-001.

Eaton read the allegations, as follows:

1. Operating as a Grain Dealer without first being licensed by the Plant Board.
2. Operating as a Grain Dealer without having a renewal application by the June 30, 2016 deadline.
3. Knowingly presenting a settlement for corn as purchased when it was still an open obligation.
4. Failing to increase bond for assets not meeting the minimum standards under Section IX Financial Requirements.

Eaton stated the Committee reviewed 23 Allegations of Fact. The Committee found that all 23 Allegations of Fact were substantiated. The Committee also found that all 4 charges were substantiated.

The Public Grain Warehouse Committee recommended the following:

First charge – the Committee assessed a civil penalty at the first level of enforcement in the amount of \$400.00 for operating without a license.

Moved by Eaton, seconded by Black to approved the Committee's recommendation.

Motion carried.

Second charge – the Committee assessed a civil penalty at the second level of enforcement in the amount of \$600.00 for operating without a license.

Moved by Eaton, seconded by Vester to approved the Committee's recommendation.

Motion carried.

Third charge – the Committee assessed a civil penalty at the first level of enforcement in the amount of \$500.00, along with revocation of the Grain Dealer's license, for knowingly falsifying records.

Moved by Eaton, seconded by Bragg to approved the Committee's recommendation.

Motion carried.

Fourth charge – the Committee assessed a civil penalty at the third level of enforcement in the amount of \$900.00 for operating without a license.

Moved by Eaton, seconded by Vester to approved the Committee's recommendation.

Motion carried.

Eaton stated the Committee voted in favor of a motion that these fees will not be due and payable until the farmer is paid in full.

Moved by Eaton, seconded by Jayroe to approve the Committee's recommendation.

Motion failed, therefore, the penalty fees will be due within the normal procedural timeframe.

Moved by Eaton, seconded by Finch, to approve the committee report as presented.

Motion carried.

Bureau of Standards Committee – December 9, 2016

Chairman Larry Jayroe summarized the minutes of the December 9, 2016 Bureau of Standards Committee meeting. **ATTACHMENT VI**

The Committee reviewed violations and penalties charged against the following facilities:

1. Sunshine Big D, Ft. Smith, AR -- water contained in the regular unleaded with ethanol storage tank exceeded allowable tolerance. The Committee assessed a first offense civil penalty in the amount of \$200.00.

Moved by Jayroe, seconded by Finch to approve the Committee's recommendation.

Motion carried.

2. Jordan's Kwik Stop #38, Melbourne, AR – water detected in the super unleaded tank with non-ethanol. The Committee assessed a second offense civil penalty in the amount of \$500.00.

Moved by Jayroe, seconded by Baltz to approve the Committee's recommendation.

Motion carried.

3. West 65th I-30 Valero, Little Rock, AR – assessed a second offense civil penalty in the amount of \$500.00.

Moved by Jayroe, seconded by Vester to approve the Committee's recommendation.

Motion carried.

4. Kum & Go #393, Jonesboro, AR – illegal flashpoint of 93 degree Fahrenheit. The Committee assessed first offense a civil penalty in the amount of \$200.00.

Moved by Jayroe, seconded by Alford to approve the Committee's recommendation.

Motion carried.

The Committee reviewed a Quarterly Violations report, (September – November 2016) in which Warning Letters were issued. The Committee recommendation is to approve the Warning Letters issued, as presented.

ATTACHMENT VI-A

Moved by Jayroe, seconded by Vester to approve the Committee's recommendation.

Motion carried.

Moved by Jayroe, seconded by Finch to approve the Committee report as presented.

Motion carried.

5. **Other Business.** No other business was brought before the Board.
6. **Date for the Next Quarterly Board Meeting.** Tuesday, March 28, 2017 @ 1:30 pm was chosen for the next quarterly Board meeting.

In order to commemorate the centennial year of the Arkansas State Plant Board, it was suggested to hold the next quarterly Board meeting on the date the Plant Act was enacted, which was passed on March 28, 1917.

Moved by Baltz, seconded by Alford to adjourn.

Motion carried.

Meeting was adjourned.



Otis Howe, Chairman



Larry Jayroe, Secretary