

Minutes

LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY
Louisiana Agricultural Commodities Commission
Veterans' Memorial Auditorium
5825 Florida Blvd.
Baton Rouge, LA 70806
August 30, 2019
9:30 a.m.

I. Call to Order

Mr. Robert Hanks called the meeting to order at 9:46 a.m.

II. Roll Call and Declaration of Quorum

Commission Members Present

Commissioner Dr. Mike Stain
Mr. Robert Hanks
Mr. Donald Schexnayder
Mr. Ronald Petree
Mr. Tom Russell
Mr. Donald Berken
Mr. Stephen Logan

Absent Members

Mr. Ryan Ellington
Mr. Kevin Webb
Mr. Elliott Ater

There was a quorum of seven (7) members present.

Staff Members Present

Louisiana Agricultural Commodities Commission Director, Kyra Fitzgerald
Louisiana Department of Agriculture & Forestry Auditor, John Hobgood
Louisiana Department of Agriculture & Forestry Auditor, Jeff Fabre
Louisiana Department of Agriculture & Forestry Auditor, Billy Benton
Louisiana Department of Agriculture & Forestry Auditor, Crystal Bobb
Louisiana Department of Agriculture & Forestry Attorney, Amy McInnis
Administrative Coordinator IV, Bridgette Ott
Louisiana Department of Agriculture & Forestry Assistant Commissioner, Steve Sessums

Guests Present

Suzanne Ater, Lakeland Cotton and Grain Co., Inc. owner
Elliot Ater, Lakeland Cotton and Grain Co., Inc. owner
Troy Villa, attorney for Concordia Bank and Trust
Patrick Biglane, CEO of Concordia Bank and Trust
Noble Ellington, Representative for the Ater Family
John O'Neill, Manager Lakeland Cotton and Grain, Co., Inc.

Carey Daste, attorney with Berrigan and Litchfield representing the Louisiana Agricultural Commodities Commission

III. Adoption of Minutes – June 26, 2019

A motion was made by Mr. Ronald Petree and seconded by Mr. Stephen Logan to approve the minutes. The motion carried unanimously.

IV. Public Comment

Mr. Hanks asked if there was any public comment. There was none.

V. CONSIDERATION OF LICENSEE:

A motion was made by Mr. Tom Russell and seconded by Mr. Donald Schexnayder to go into Executive Session in order to discuss the financial information of a licensee. The motion carried.

A motion was made by Mr. Tom Russell and seconded by Mr. Donald Berken to come out of Executive Session. The motion carried.

Commissioner Strain addressed the board regarding the possibility of placing Lakeland Cotton and Grain Company, LLC into Receivership. The Commissioner and Mrs. Kyra Fitzgerald read to the LACC the applicable law as to the parameters and legal requirements associated with a Receivership:

Title 3 of the Louisiana Revised Statutes

CHAPTER 21. AGRICULTURAL COMMODITY DEALER AND WAREHOUSE LAW

§3407. Seizure by commission

A. The commissioner, with the prior approval of the commission, may institute legal proceedings by petition in the district court for the district in which the licensee is located for an order authorizing the commissioner to effect a seizure of the facilities of the licensee and to act as receiver thereof whenever any of the following conditions occur:

(1) The licensee does not have sufficient commodities to cover the outstanding warehouse receipts and scale tickets marked for storage issued by the licensee.

(2) The licensee does not have sufficient funds to operate its business and is in imminent danger of being unable to continue to operate its business.

(3) The licensee is unable to fulfill its obligations to producers.

(4) The licensee refuses to submit to a lawful inspection or audit ordered by the commission.

B. Immediately upon the filing of the petition alleging the commission's approval and the existence of any condition set forth in Subsection A of this Section, the court shall issue an ex parte order authorizing the commissioner to effect a temporary seizure of the facilities of the licensee and to act as temporary receiver thereof. This order shall remain in effect until the conclusion of a hearing on the petition which hearing shall be held within ten days after the filing of the petition.

C. The commission may require, on an emergency basis without the necessity of court approval for a period of not more than five days, any licensee to operate under its supervision prior to or during any proceedings leading to the appointment of a receiver as provided under this Section.

D. Whenever the commissioner is appointed to act as receiver he shall continue to act as receiver until all of the assets of the licensee have been distributed to the creditors of the licensee or until ordered by the district court to surrender possession of the assets of the licensee.

E. As part of the receivership, the commissioner may recover from the assets of the licensee the costs of administering the receivership, including the cost of liability insurance for the commission, the commissioner, and employees who are engaged in the administration of the receivership.

§3412. Self-insurance fund

A. The commission may operate a program of self-insurance for warehouses, grain dealers, and cotton merchants licensed under this Chapter for the sole purpose of ensuring the availability of funds necessary to meet a licensee's obligations with respect to the reimbursement of any person who stored agricultural commodities in the warehouse or reimbursement of a producer who sold agricultural commodities to a licensee, and who was not fully compensated.

B. The insurance coverage claims against a licensee related to insolvency shall be limited to the amount of security required of the licensee by R.S. 3:3409.

C. The commission shall adopt rules and regulations, in accordance with the Administrative Procedure Act, necessary for the efficient administration of the self-insurance program. Such rules shall include:

(1) Procedures for claims on the self-insurance program.

(2) Reimbursement limitations.

(3) Administration of the self-insurance program.

(4) The establishment of civil penalties for violations of the provisions of the self-insurance program.

D. A person or producer shall be eligible to receive indemnity payments from the self-insurance program if the licensee becomes insolvent and, as a result of the insolvency, is not fully compensated for sums owed to him by the licensee pursuant to any contract between the person or producer and the licensee involving agricultural commodities.

E. Upon a determination of the insolvency of a licensee, the commission shall make the proceeds of the self-insurance program available for use in meeting the licensee's obligations specified in Subsection F of this Section.

F. If claims for indemnity payments from the self-insurance program exceed the amount of available proceeds, the commission shall prorate the claims as provided for in the Administrative Procedure Act and pay the prorated amounts. As future proceeds are collected, the commission shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this Section.

G. Notwithstanding any other provision of law to the contrary, if the commission pays a claim using self-insurance program funds, all payments shall be made jointly payable to the claimant and to all secured parties and lienholders that, ten days before the payment date, hold a security interest in or a lien on the crops, farm products, or agricultural commodities, perfected by the filing of a financing statement that:

(1) Identified those crops, farm products, or agricultural commodities as collateral.

(2) Was indexed under that producer's name as debtor.

(3) Was filed in the office designated for filing a financing statement against the producer covering that collateral.

H. Expenses incurred by the commission in administering the self-insurance program shall be reimbursable from the funds collected under the program. Administrative expenses shall be paid in priority to all other payments.

I. A licensee who knowingly or intentionally refuses or fails to pay into the self-insurance program any funds due pursuant to this Chapter shall be subject to civil penalties.

J. Money paid from the self-insurance program in satisfaction of a valid claim shall constitute a debt obligation of the licensee against whom the claim was made. The commission may take action on behalf of the self-insurance program against such person to recover the amount of payment made plus reasonable costs, including court costs, incurred by the commission in obtaining recovery, legal interest from the date of payment of any claim, and reasonable attorney fees. As a condition of payment of a claim from the self-insurance program, the claimant shall subrogate his interest, if any, to the commission in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the self-insurance program.

K. The commission may charge fees for participation in the program established in this Section. The amount of the fees shall be fixed by rule adopted in accordance with the Administrative Procedure Act.

L. The fees charged under this Section shall be subject to the following provisions:

(1) All fees shall be deposited immediately upon receipt in the state treasury.

(2) After compliance with the requirements of Article VII, Section 9 of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited as required by Paragraph (1) of this Subsection shall be credited to a special fund hereby created in the state treasury to be known as the Agricultural Commodity Commission Self-Insurance Fund. The monies in this fund shall be used solely as provided in Paragraph (3) of this Subsection and only in the amounts appropriated by the legislature. All unexpended and unencumbered monies in this fund at the end of each fiscal year shall remain in this fund. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies shall be credited to this fund, again, following compliance with the requirement of Article VII, Section 9 relative to the Bond Security and Redemption Fund.

(3) The monies in the Agricultural Commodity Commission Self-Insurance Fund shall be used solely for the administration and operation of the program of self insurance provided for in this Section.

Administrative Procedure Act

Title 7 Agriculture and Animals

Part XXVII. Agricultural Commodity Dealer and Warehouse Law

§201. Claim Provisions

A. The monies in the Grain and Cotton Indemnity Fund shall be used solely for the administration and operation of the fund.

B. Any claimant who wishes to assert a claim shall provide, under oath, written and notarized proof of a loss covered by this fund within 60 days of the loss.

C. A written claim shall include all of the following information:

1. name and address of claimant;
2. name of the licensee against whom claimant is asserting a loss;

3. nature of the relationship and transaction between claimant and licensee;
 4. the date of the loss which shall be defined as the date on which the claimant knew or should have known that a loss had occurred;
 5. the amount of the loss and how calculated;
 6. a concise explanation of the circumstances that precipitated the loss;
 7. copies of those documents relied upon by claimant as proof of said loss.
- D. Failure to furnish such proof of loss within the required time shall not invalidate nor reduce the claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.
- E. Upon receipt of a proof of loss, the commission shall review the claim to determine whether it is covered under the program. The burden of proof to establish the loss shall be upon the claimant.
- F. Once proof of loss has been filed against a licensee, the commission may make a complete inspection of the licensee's physical facilities and the contents thereof, as well as an examination of all books and records of the licensee and/or claimant, subject to the confidentiality requirements of R.S. 3:3421.
- G. Once proof of loss has been filed against a licensee, any other claimants alleging a loss caused by said licensee shall have a period of 60 days within which to post and thereby file a written claim.
- H. The said 60 day period shall begin to run upon publication by the commission of the notice of claim in the official local journal for legal notices, or the print publication with the highest circulation in the area serviced by the licensee.
- I. If claims for indemnity payments from the fund exceed the amount in the fund, the commission shall prorate the claims and pay the prorated amounts. As future assessments are collected, the commission shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this Subchapter.
- J. Distributions from the fund shall be made on a periodic basis as deemed necessary by the commission.

Commissioner Strain discussed with the commission the process of the Receivership, if it came to that, how the farmers were to be paid by the Grain and Cotton Indemnity Fund and Self Insurance Fund and that the goal of the commission was to make the farmers whole within a reasonable amount of time. Commissioner Strain stated that he was in negotiations with the Aters', owners of Lakeland Cotton and Grain Company, Inc. as well as their lawyer, and Concordia Bank and its lawyers, for the purpose of establishing the best outcome for everyone involved.

A motion was made by Mr. Stephen Logan and seconded by Mr. Donald Schexnayder to approve and grant the Commissioner of Agriculture and Forestry permission to temporarily seize Lakeland Cotton and Grain Company, Inc. under the provisions set out in Louisiana R.S. 3:3407 et. Seq. until such time as a judge grants permanent receivership.

A motion was made by Mr. Ronald Petree and seconded by Mr. Tom Russell to grant the Commissioner of Agriculture and Forestry the authority to access both the Grain and Cotton Indemnity Fund and the Self Insurance Fund in order to make the farmers who had contracted grain with Lakeland Cotton and Grain Company, LLC whole.

VI. Public Comment

Mr. Hanks asked if there was any public comment. There was none.

VII. Date for the Next Meeting

The date of the next meeting is scheduled for September 18, 2019.

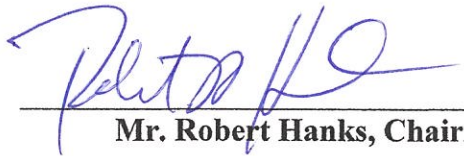
VIII. Old Business

A motion was made by Mr. Ronald Petree and seconded by Mr. Tom Russell to amend the agenda to reflect the addition of old business. The motion carried.

Mrs. Fitzgerald stated that Tyson Foods, Inc. will be applying for a license with review of the application to be at the next meeting.

IX. Adjournment

A motion was made by Mr. Donald Berken and seconded by Mr. Tom Russell to adjourn the meeting. The motion carried.

A handwritten signature in blue ink, appearing to read "Robert Hanks", is written over a horizontal line. The signature is stylized and cursive.

Mr. Robert Hanks, Chairman