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2
3 **Minutes of the Advisory Committee on Pesticides**
4
5

6 **I. CALL TO ORDER**
7

8 The meeting of the Advisory Committee on Pesticides was called to order on
9 September 6, 2018 at 9:08 A.M. by Hawaii Department of Agriculture (HDOA)
10 Pesticides Branch Manager John McHugh, at the Board of Agriculture Board Room,
11 1428 King S. Street, Honolulu, Hawaii 96814.
12

13 Members Present:

14
15 John McHugh, Pesticides Branch Manager, HDOA
16 Arnold Hara, Ph.D., Hawaii Farm Bureau Federation Representative
17 Reginald Hasegawa, Pesticide Industry Representative
18 Jeffrey Kermode, Pineapple Industry Representative
19 Cynthia Rezentes, Citizen Group Representative
20 Roger Brewer, Dept. of Health Representative
21 Tammy Murray, Structural Pest Control Industry Representative
22

23 (7 members, quorum met)
24

25 Members Absent:

26
27 Representative for DLNR
28 Representative for the sugar industry
29 Representative for the environmental sector
30 Representative for the landscape industry
31

32 Others Present:

33
34 Phyllis Shimabukuro-Geiser, Deputy Director, HDOA
35 Jennifer Waihee-Polk, Deputy Attorney General
36 Scott Nishimoto, Case Development, HDOA/Pesticides Branch
37 Janet Ashman, Hawaii Farm Bureau Federation
38 Victoria Matsumura, Case Development, HDOA/Pesticides Branch
39 Weston Yap, HDOA/Economic Development Specialist
40

41 **III. INTRODUCTIONS**
42

43 Introductions were made.
44

45 **II. APPROVAL OF MINUTES FROM JUNE 13, 2017 MEETING**
46

1 6/13/17 minutes not addressed at this time. Will address at next meeting.
2
3

4 **III. PROPOSED NEW PESTICIDE RULES TO ADDRESS ACT 45**

5
6 **A. PLANT INDUSTRY DIVISION**

7
8 **PESTICIDES BRANCH**

9
10 **1. Review of Proposed Amendments to Chapter 4-66-62, Hawaii**
11 **Administrative Rules, entitled “Certified pesticide applicator**
12 **recordkeeping”.**
13

14 Manager John McHugh (Manager McHugh) stated the purpose of the meeting was to
15 review proposed rule changes to Chapter 4-66, Hawaii Administrative Rules (HAR), and
16 how the changes will impact implementation of Act 45, formerly SB 3095. Committee
17 members received copies of proposed rule changes and Act 45 for the discussion.
18

19 Manager McHugh explained that the Board of Agriculture (BOA) approved, with
20 amendments, proposed pesticide rule revisions at the February 2018 BOA meeting.
21 Last session the legislature passed SB 3095 ~~and it's~~which is now law as Act 45.
22 Committee members were provided copies of the law and the bill that created the law.
23 The effort by Deputy Attorney General Delanie Prescott-Tate in putting together the new
24 rules was acknowledged.
25

26 This meeting focused on how the new rules apply specifically to reporting of restricted
27 use pesticide (RUP) applications, as well as buffer zones for schools. Other aspects of
28 Act 45 don't require rule changes. Manager McHugh directed committee to go through
29 Chapter 4-66-62 rules, focusing on yellow highlighted ~~sections, that~~sections that were
30 prepared in Ramseyer method. Rules primarily address enforcement.
31

32 Beginning 1/1/19, every user of an RUP is subject to providing reports to HDOA. DAG
33 ~~Prescott-Tate~~Waihee-Polk confirmed that the RUP use reporting period begins
34 1/1/2019, not in 2018. In addition to RUP use in agriculture, law also affects RUP use in
35 structural, utility poles and golf courses. The 1/1/19 start date gives HDOA time to
36 create a process for submission of the RUP use data, and RUP users time to prepare
37 their records.
38

39 **TAX MAP KEY OR GLOBAL POSITIONING SYSTEM**

40
41 Manager McHugh directed PAC to Chapter 4-66-62, sect. (c), item (10) regarding
42 addresses of RUP use locationssites. ~~At i~~ssue is the reporting of Tax Map Key or
43 Global Positioning System coordinates. HDOA ~~needs-requires the~~ ability to collect the
44 locations of RUP use for all ag land, termite treated homes and utility poles. GPS use

1 isn't listed in the Act 45 law, but it is ~~listed~~included in the proposed rules as a way for
2 HDOA to gather information.

3
4 (10) Address or geographic location of treated site, listing, at a minimum, the tax
5 map key number or global positioning system (GPS) coordinates where the
6 pesticide was used.

7
8 Member Cynthia Rezentes (Member Rezentes) asked what legal power does PAC have
9 for expanding the law? The law only requires reporting of a TMK. She's seen TMK's
10 dissolved when the property was divided. As long as the state doesn't care about
11 historically following a property the TMK will suffice. She understands the accuracy of
12 GPS, but per the law, GPS marking is only an option and not a requirement.

13
14 Member Rezentes questioned PAC and BOA's ability to expand the rules to address
15 TMK vs. GPS? She added that she does not support anything that would expand the
16 law. Multiple other PAC members voiced agreement that they oppose expanding the
17 Act 45 law.

18
19 HDOA Pesticide Branch Case Developer Victoria Matsumura (HDOA Matsumura) said
20 GPS is supposed to be an alternative if TMK is not applicable to what the RUP user is
21 reporting.

22
23 DAG Waihee-Polk interprets the rules in a way that allows GPS to be reported where
24 TMK is unavailable. If a TMK does not exist HDOA cannot tell the grower they still have
25 to turn one in. It is not a violation if the TMK doesn't exist. But if land has a TMK, but the
26 user would rather turn in GPS info, they still have to submit that TMK to meet the law.

27
28 Member Rezentes read that in the law she doesn't see an "and/or" about what to
29 submit. She raises the fact that some individual TMK's cover 500 acres. If a specific
30 GPS is more useful location information, then the user should be able to give the GPS.

31
32 Member Reggie Hasegawa (Member Hasegawa) observed that ~~of~~if reporting the TMK
33 is the minimum, then you can just opt to provide the specific GPS, but this does not
34 have to be a standard in the rules.

35
36 Member Rezentes noted that at a minimum the TMK is required, period.

37
38 DAG Waihee-Polk added that GPS can be used where the TMK is unavailable to
39 provide, and meet the spirit of the bill.

40
41 Member Hasegawa raised the issue that TMK's are inefficient for reporting telephone
42 pole locations. GPS ought to be used for these.

1 Member Rezendes ~~raised example of~~cited Larry Jeff's Sugarland Farms and ~~his the~~
2 large (area in acres) TMK's he farms. Hypothetically, he could spray only 10 acres out
3 of a 500 acres TMK. If he reports one TMK for whole 500 acres it satisfies the law.

4
5 She asked if reporting the TMK is also intended to track the history of RUP application
6 on specific lands. She is concerned about situations where growers report data that will
7 be compared to prior years. She's come across TMK's dissolved with partitioning. She
8 wants to hear that this act does not intend to create a year-~~to-~~year comparison, or to
9 be used as a historical tracking method. She wants to prevent the risk to a farmer who
10 reports in compliance with this law, but then someone in authority comes back and
11 beats on them because reporting was not location-specific enough. GPS can specify
12 where spraying occurred, while the TMK may not.

13
14 Member Hasegawa said the law doesn't request specifics of the location, just a general
15 description of the location.

16
17 HDOA Matsumura recommended keeping the highlighted portion (10):

18
19 Address or geographic location of treated site...

20
21 HDOA Matsumura recommended removing the highlighted portion of (14) [(e)]
22 (d):

23
24 ~~Every user of restricted use pesticides shall submit to the Department, no~~
25 ~~later than January 30th of the following year, all restricted use application~~
26 ~~records for the preceding calendar year on forms provided by the Head.~~

27
28 Rule 4-66-62, item (14) changed to:

29
30 Any geographic location of a treated site; listing, at a minimum, the tax
31 map key number.

32
33 Add a new (15)

34
35 Any other information the head deems necessary.

36
37 Member Jeff Kermode noted that in the HDOA's public report the data would be
38 compiled by county. HDOA is not required to reveal all the location information, only
39 required to reveal how much RUP was used during that reporting year, by county.

40
41 Member Rezendes asked if a request was put to HDOA for a detailed summary of RUP
42 use, would HDOA have to provide it?

43
44 HDOA Matsumura said yes, HDOA would have to provide a government record.

1 Member Rezendes raised a hypothetical scenario, if an official comes to a grower with a
2 report and says, “You used X amount of RUP at Y location over 10 acres. I want to
3 know what 10 acres the RUP were applied on.” If the grower provides a TMK for 500
4 acres, I want assurance that the grower is still complying with the law.
5

6 Manager McHugh explained the ephemeral nature of field crop locations in terms of
7 area, size and location, because the planting is just for that crop year, just for a specific
8 crop. He did not think the legislature was asking for information more detailed than this.
9

10 DAG Waihee-Polk advised that PAC can go back to the legislature and say we need
11 you to specify land location in terms of TMK versus GPS. It was not clearly addressed in
12 this act and PAC is trying to follow the spirit of the law.
13

14 Manager McHugh proposed for 4-66-62, Section (C), item (10), keep it as it is.
15

16 (10) Address or geographic location of treated site, listing, at a minimum, the tax
17 map key number or global positioning system (GPS) coordinates where the
18 pesticide was used.
19

20 Manager McHugh reiterates that Item (14) should change to read:
21

22 Any geographic location of a treated site; listing, at a minimum, the tax map key
23 number.
24

25 DAG Waihee-Polk advised add an item (15):
26

27 Any other geographic information the head deems necessary.
28

29 Manager McHugh countered with his own proposal to integrate the language as an
30 expanded item (14), and deleting item (15):
31

32 (14) Any general description of geographic location, including, at a minimum, the
33 TMK, that the head deems necessary.
34

35 The head is defined in the rules as the Administrator of the Plant Industry Division.
36

37 **REPORTING RUP USE**

38

39 Manager McHugh concluded location issue and moved to the next item to addressed -
40 user reporting outlined in sect. (d)
41

42 Every user of restricted use pesticides shall submit to the Department...
43

44 Member Rezendes pointed out that the tracking of RUP use doesn't start till 2019.
45 DOA's first public report is due in year 2020.

1
2 Manager McHugh read aloud the bottom of section (i) item (3)

3
4 The Department shall summarize the information for public disclosure, by county,
5 and post the information on the department’s website...
6

7 HDOA Matsumura advised that section (i) item (3) should match the law. Changes are
8 needed to make the language match. Item (2) should be the amount of RUP used in the
9 County. Currently, item (2) reads:

10
11 (2) The total quantities used for each restricted use pesticide.
12

13 She recommends change the language to:

14
15 (2) The total quantities used for each restricted use pesticide, in each county;
16

17 **UTILITY POLES**

18
19 Manager McHugh segued the discussion into utility poles. He was not sure how HDOA
20 will add up all the areas of poles by county. Poles are not all the same size. HDOA
21 needs total quantities of RUP used and the quantity of these areas.
22

23 HDOA Matsumura explained that most of the telephone poles now use RUP fumigant to
24 treat for fungus and decay. Poles are encased for fumigation treatment.
25

26 **4-66-62 SUMMARY LANGUAGE AND PUBLIC REPORT DEADLINE**

27
28 HDOA Matsumura recommended that the summary at the bottom of rule 4-66-62 be
29 removed.
30

31 The Department shall summarize the information for public disclosure...
32

33 DAG Waihee-Polk raised the Act 45 law’s reporting requirement. She will take the law’s
34 language and slide it into these rules. HDOA’s summary to the public does not have a
35 specific deadline. She advised that HDOA should create its own reasonable deadline.
36

37 **BUFFER ZONES**

38
39 Manager McHugh addressed rules with buffer zones. The law states that beginning
40 1/1/2019, no RUP shall be applied within 100 feet of a school. What wasn’t in the law
41 was how buffer zones were determined. Buffer zones may be determined by TMK, or if
42 TMK is insufficient, determined by fence lines.
43

44 HDOA Matsumura explained that the boundaries of the buffer zone area cannot always
45 be defined by the tax map key. Ex. Hickam ~~Air Force Base~~Elementary School. She

1 recommended that HDOA could use a fence line as a backup designation of
2 boundaries.

3
4 Member Hasegawa asked what's the definition of a school?

5
6 HDOA Matsumura cited the definition of a "school" from the rules – any public or private
7 preschool, kindergarten, elementary, intermediate, middle, secondary, or H.S.

8
9 Member Jeff Kermode (Member Kermode) explained how in his experience with
10 schools, locating schools was difficult because there are so many different types of
11 schools, public, private, charter. School locations are not organized on a consolidated
12 list. This need to seek out school locations puts a major burden on farmers. The state
13 should create a school locator website, with coordination handled by HDOA.

14
15 HDOA Matsumura explained that HDOA has created maps of all public and private
16 schools listed with DCCA. These maps feature marks for 100 feet borders, but HDOA
17 has not published the maps yet. Sometimes zone boundaries were hand drawn in.
18 HDOA went to DCCA and got a listing of all schools.

19
20 Member Kermode believed that HDOA should provide growers the list of schools.

21
22 HDOA Matsumura countered that at the end of the day it's up to the applicator to know
23 where the schools are. The law doesn't address if RUP use and buffer zones are
24 affected by a school's status as licensed or not.

25
26 DAG Waihee-Polk added that she didn't know if the law allows HDOA to differentiate
27 licensed vs. unlicensed school, or what is or isn't a school.

28
29 Janet Ashman, attendee (Attendee Ashman) advocated that farmers be provided a list
30 of schools nearby.

31
32 DAG Waihee-Polk countered that defining the list of schools is a challenge.

33
34 Member Rezendes observed that her Waianae area has a lot of basil growers. Non-
35 compliant farmers will get nailed for spraying near schools.

36
37 HDOA Matsumura agreed that the law and rules need to more clearly define a public or
38 private school.

39
40 Attendee Ashman advised that the rules should reflect how growers must make their
41 best effort to locate and notify all proximate schools. But this situation is fraught with
42 risk. The farmer will have to be able to obtain a school list. There as to be a database of
43 schools, so all RUP users can research school locations immediately before applying.
44 Applicators need a method by which that can identify where schools are. Schools are all

1 over the place. This research of schools location needs to be spelled out. In the Act
2 applicators really don't have a requirement to check locations.

3
4 She added that HDOA should go back to the legislature to request clarification about
5 school locations (TMK and fence lines) to identify buffer zone boundaries.

6
7 DAG Waihee-Polk raised concern that if a school pops up overnight and it's not on the
8 farmers list, it's unclear who keeps track of all the schools? ~~You We~~ don't want HDOA to
9 have to produce and track a list of schools in rural areas.school list.

10
11 She advised that next legislative session, HDOA ought to ask that another department,
12 like DCCA, be put in charge of tracking schools and producing a list.

13
14 Member Rezendes raised the risk that some school entrepreneur may start a school,
15 have conflict with an RUP user who was unaware of their location, and then say they
16 didn't know they had to register the school with DCCA.

17
18 Manager McHugh explained that this is why Act 45 contains funds for 2 positions to do
19 community outreach to inform people about this spray law.

20
21 Member Kermode advised that HDOA has to give a warning to the community. To put
22 burden on the farmer to research all these school databases, to identify locations, it's a
23 complicated task.

24
25 DAG Waihee-Polk and Manager McHugh agreed that PAC could not vote on buffer
26 zones determinations at that time, since clarification was needed on how to determine a
27 buffer zone. Guidance needed about how an applicator can determine they are in
28 school location compliance.

29
30 HDOA's Scott Nishimoto (HDOA Nishimoto) added that HDOA will issue a farmer a
31 warning before a penalty if found in violation of the law.

32
33 Attendee Ashman raised concern that if RUP compliance remains an unsettled issue, it
34 can be a road block to getting insurance and impact other business needs.

35
36 Member Rezendes lamented that it is too bad HDOA can't add language to the rules that
37 buffer zones will be identified by recognized boundaries. She would tell a farmer that if
38 you cannot identify the school boundaries, spray after 4 pm as outlined in Act 45.

39
40 Member Roger Brewer (Member Brewer) proposed language that, "school properties
41 are to be determined by available public records." This sentence would relieve HDOA
42 from having to define the clear school boundaries.

1 DAG Waihee-Polk added that to give a farmer room for error, HDOA needs to make it
2 not a violation if RUP is mistakenly applied near a school, when the grower initially did
3 not know a school was there.

4
5 Attendee Ashman added that a small farmer does not have the resources to hire an
6 attorney to defend against an alleged violation. A farmer needs assurance that he's
7 done all he can do to avoid a violation. BOA should know about this discussion to define
8 what's fair.

9
10 HDOA Matsumura said the rule just clarifies what the buffer zone can consist of. HDOA
11 can't say the farmer tried really hard to be compliant.

12
13 DAG Waihee-Polk said that the risk is that someone (a neighbor) sues and includes
14 HDOA in the lawsuit because PAC and HDOA overstepped and inserted an
15 unenforceable rule in the law.

16
17 Member Rezendes reiterated her view that the safest bet for RUP users is to hold off on
18 RUP application till after 4 pm.

19
20 Member Kermode asked, can the rule offer anything that includes guidance to growers,
21 without having HDOA's liability on the hook?

22
23 Manager McHugh returned to Member Brewer's earlier view about school property
24 boundaries being defined by available public records.

25
26 Deputy Phyllis Shimabukuro-Geiser (Deputy Shimabukuro) stated that currently when
27 there's a warning or notice of violation, it goes to the head of the branch and then to the
28 Manager person.

29
30 She asked the HDOA pesticide staff, "Are the head or chair allowed to disapprove when
31 a letter of notice goes out because circumstances were difficult to enforce?" HDOA
32 already goes through that review of notices and approval process.

33
34 HDOA Matsumura clarified that they do a write up after reviewing violations to
35 determine what action they will take. Many eyes look at the write up. They would review
36 and write in notes if the incident was an aberration or the result of not being aware of a
37 sudden new school. If the situation did not warrant a violation, HDOA would write in the
38 report an explanation that this is why they took no enforcement action.

39
40 Member Kermode asked should the rules mention that a school database from HDOA
41 exists?

42
43 HDOA Matsumura took a long-term view about maintaining a database if staff leaves. If
44 she moved on and is no longer available to maintain the website and database, HDOA
45 would not want the lack of school list updates to be pinned on HDOA.

1
2 Member Rezendes advised that PAC should emphasize the necessity of knowing area
3 schools into its RUP outreach curriculum. HDOA certification training must emphasize
4 that RUP use of research tools online. She added that many growers may not read
5 these rules, especially if they speak English as a 2nd language.
6

7 Deputy Shimabukuro added that HDOA can work with the [University of Hawaii](#)
8 CTAHR's Dean on continuing education curriculum.
9

10 HDOA Matsumura offered that HDOA can create its own HDOA RUP compliance class.
11 And Act 45 includes 2 education positions to train applicators.
12

13 HDOA Nishimoto added that a lot of times the inspection and education staff goes out,
14 before the enforcement staff goes out, to give growers an alert about how to comply.
15

16 Member Rezendes sympathized with HDOA's reluctance to put a lot of language in the
17 rules that could potentially cause blame and liability after implementation. **Growers need**
18 **the RUP forms by 1/1/2019. The best way to help the farmers is to create a clear**
19 **process for taking the stack of papers and submitting it. The issue of how best to guide**
20 **the growers remains - she asked how do we get past a restriction about what can be put**
21 **in the law, to inform the grower what to do_[JM1]?**
22

23 **HDOA_[JM2] Matsumura pointed out that HDOA is working on an electronic reporting**
24 **process to compliment paper.**
25

26 Manager McHugh moved to conclude buffer zones discussion. Referred to sect. (d)
27 regarding boundary determination:
28

29 (d) Buffer zones may be determined by tax map key number, or if tax map key
30 number is not an appropriate means of establishing the buffer zone, by property
31 boundaries such as fence lines, landscaping, or other method that is reasonably
32 capable of determining the school's property.
33

34 Member Brewer and DAG Waihee-Polk both speculated that if the TMK is insufficient,
35 the rules ought to allow for use of a **fencelinefence line**. As an alternative, the buffer
36 zone should measure 100 feet from the **fencelinefence line**.
37

38 Manager McHugh, Member Brewer and Attendee Ashman suggested PAC change rule
39 4-66-64.2, section (e) to say:
40

41 (e) The schools' locations may be determined by readily available public records.
42

43 Add a new section (f) to read:
44

1 (f) The certified applicator shall be responsible for all violations of chapter 149A,
2 Hawaii Revised Statutes and this rule.

3
4 Member Rezendes advised that the applicator training curriculum and the community
5 outreach education campaign for the public must emphasize how the rules will define
6 school boundaries and school identification.

7
8 HDOA Matsumura pointed out that DCCA has a database of private school and DOE
9 lists public schools.

10
11 DAG Waihee-Polk advised that HDOA advocate to the legislature that we press DCCA
12 to provide a readily available list of schools. Listing schools shouldn't be HDOA's duty.
13 She added that office of AG needs to check if DCCA can make such a list readily
14 available.

15
16 **VOTE**

17
18 Manager McHugh called for a vote on new language for rule 4-66-64.2's section (e):

19
20 (e) **"School locations may be identified by readily available public records."**

21
22 He also proposed a vote for HDOA conducting training for RUP users and the public
23 regarding school location boundaries and school lists.

24
25 Member Rezendes moved to accept the following modifications of rules 4-66-62 and 4-
26 66-64.2:

27
28 Rule 4-66-62, item (14) changed to:

29
30 Any geographic location of a treated site; listing, at a minimum, the tax
31 map key number.

32
33 Add a new item (15)

34
35 (15) Any other information the head deems necessary.

36
37 Rule 4-66-62, section (C), item (10), keep it as it is.

38
39 (10) Address or geographic location of treated site, listing, at a minimum,
40 the tax map key number or global positioning system (GPS) coordinates
41 where the pesticide was used.

42
43 Rule 4-66-62, section (C), item (14), change to:
44

1 Any general description of geographic location, including, at a minimum,
2 the TMK, that the head deems necessary.

3
4 Rule 4-66-62, section (i) item (2), change to:

5
6 (2) The total quantities used for each restricted use pesticide, in each
7 county;

8
9 The summary section at the bottom of Rule 4-66-62 shall be removed.

10
11 The Department shall summarize the information for public disclosure...

12
13 Change rule 4-66-64.2, section (e) to say:

14
15 (e) The schools' locations may be determined by readily available public
16 records.

17
18 In rule 4-66-64.2, add a new section (f) to read:

19
20 (f) The certified applicator shall be responsible for all violations of chapter
21 149A, Hawaii Revised Statutes and this rule.

22
23 Member Hasegawa 2nded the motion.

24
25 DAG Waihee-Polk cautioned not to continue discussions of the modifications in order to
26 comply with sunshine law.

27
28 Vote: 7/0 ayes in favor. Motion carried.

29
30 **VI. OLD BUSINESS**

31
32 **CHLORPYRIFOS**

33
34 Attendee Ashman offered that use of chlorpyrifos, with a permit, become part of the law.
35 It's banned for those without a permit. Growers will need the permit to continue use
36 come January 2019.

37
38 HDOA Matsumura explained that HDOA has created a draft permit, a temporary permit.
39 A rule change isn't needed. None of the legislation prohibits the sale of chlorpyrifos to a
40 ~~permitted user, who is a~~ certified applicator. Grower will fill out the application and
41 HDOA will issue the permit. Chemical must be used up before December 31, 2022. On
42 January 1, 2023 Chlorpyrifos is banned for use in Hawaii. The HDOA web link will
43 explain to growers how they can apply for the permit. This is just a temporary permit
44 HDOA created to fulfill the statute.

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ADDITIONAL PESTICIDES IN LINE FOR APPROVAL AS RUP

Attendee Ashman asked for a discussion of any new active chemicals added to the state’s restricted chemicals list. HDOA Matsumura explained that PAC cannot discuss any new active chemicals because it is not on the agenda, and that PAC has already reviewed the current proposed new active ingredients and that these ingredients have been approved by the BOA. After the rule changes, BOA can vote to finalize placing these active chemicals on the state’s restricted list.

Attendee Ashman observed that some growers have waited years for some pesticides to be approved.

VII. NEW BUSINESS

Deputy Shimabukuro offered to connect PAC with UH CTAHR to develop reporting curriculum training.

Member Rezendes asked for more alert time regarding PAC meetings, so committee members can better plan to attend. This meeting had short notice. She prefers the plant quarantine board room. This location lacks free parking.

VIII. ADJOURNMENT OF REGULAR MEETING

Having no further business before the Advisory Committee on Pesticides, Manager McHugh thanked everyone for their efforts and participation.

Meeting adjourned at 10:48 A.M.

Respectfully submitted,

Acting secretary for the Advisory Committee on Pesticides