

NATIONAL ORGANIC STANDARDS BOARD
MEETING MINUTES
October 19–20, 2002

The National Organic Standards Board meeting of October 19–20, 2002, was attended by 14 members:

Members Present:

Owusu Bandele	Rosalie Koenig
Kim Burton	Michael Lacy
Dave Carter	Goldie Caughlan
Kevin R. O'Rell	Nancy Ostiguy
Ann Cooper	Jim Riddle
Rebecca Goldberg	George Siemon
Dennis Holbrook	
Mark King	

National Organic Program (NOP) Staff:

Barbara C. Robinson, AMS/Deputy Administrator, Richard Mathews, Program Manager, Katherine Benham, and Robert Pooler.

CALL TO ORDER: October 19, 2002, 8:05 a.m., Presiding: David C. Carter, Chair, (pp. 5-13)

Mr. Carter opened with the introduction of the NOSB members and asked that public commenters sign up in advance.

AGENDA APPROVAL – (Discussion Document)

The chair asked for any comments, corrections or additions to the agenda, and the following changes were noted:

Materials Committee: Ms. Burton stated the following materials will not be reviewed: Crops: Potassium silicate; Livestock: Calcium propionate, Furosemide, and Proteinated chelates.

Processing Committee: Mr. King said there will be no ion exchange speaker.

International Committee: Ms. Goldberg said the committee will defer its recommendation regarding US/EU Equivalency.

PUBLIC COMMENTS – October 19, 2002. (pp. 12-114)

The following individuals presented public comment. Each person's comments were recorded and transcribed for the record. Some individuals also presented written comments. Transcribed comments and, where applicable, written comments can be found at the designated **ATTACHMENTS**.

SIGN-IN SHEETS (Attach. A)

Tom Harding, AgriSystems – (p. 13)

Ken Chambers, Colorado Sweet Gold (p. 17) – **(Attach. 1 & Attach. 2)**

Richard Siegel, Attorney representing Colorado Sweet Gold, (p. 24) – **(Attach. 3)**

Grace Marroquin, Marroquin International, (p. 35)

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Tom Hutchinson, (p. 41)

Jim Pierce, (p. 44)

Dan Leiterman, Crystal Creek Company, (p. 55)

Bill Donovan, Apple Grower, CCOF, (p. 58)

Jim Cranney, US Apple Certification, (p. 74) – **(Attach. 4)**

David Engle, Midwest Organic Services Association, (p. 87) – **(Attach. 5)**

Emily Brown–Rosen, Organic Materials Review Institute, (p. 92)

Marty Mesh, (p. 99)

Mark Keating, USDA/AMS, (p. 101)

Kim Burton, Proxy for Lauren Morbeta, Pure Foods, (p. 105) – **(Attach. 6)**

Kim Burton, Proxy for Joseph Stern, Organic Ingredients and (p.107) – **(Attach. 7)**

NOP UPDATE – Barbara Robinson and Richard Mathews (pp. 110-116)

Ms. Robinson discussed the following:

Website Overhaul (p. 114)

Everyone was invited to visit the revamped NOP website.

Petition to File Legal Action (p. 115)

The Center for Food Safety filed a petition for legal action with the Secretary, alleging that NOP consistently refused to establish a peer review panel. It is now with the USDA lawyers.

Implementation Event (p. 115)

NOP Implementation event will take place at the Whole Foods Market on P Street. It is on the Secretary's calendar.

Budget (p. 115)

NOP budget for FY03 is no bigger than for FY02.

Mr. Mathews discussed the following:

Accreditation (p. 116)

Six new certifying agents are in the process of being accredited. That will put us in the neighborhood of 66 accredited certifying agents at the start of the next phase.

Stream of Commerce (pp. 116-120)

The issue for a lot of people is what do you do about product that was not produced to the NOP? The answer is that all product produced to NOP standards must be labeled according to NOP standards. All product not produced to the NOP may continue to use the designation of organic until that product is used up, but cannot indicate it was produced to NOP standards. Mr. Siemon and Ms. Burton expressed confusion and dismay at this seeming recent change of policy.

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The following arose from questions or comments by Board members:

Minor vs. Major Noncompliances (pp.120-124)

A discussion on the need for guidance on the definition of minor noncompliances was prompted by a comment from George Siemon.

Status of Materials Approved by the NOSB Since March 2000 (pp. 124-143)

In response to a question from Mr. Riddle, Mr. Mathews said that a list of materials recommended for inclusion on the NL would be posted to the website. However, he added that they are not sanctioned until they go through the rulemaking process. Certifying agents could treat use of these materials as a minor noncompliance until rulemaking is completed. Ms. Koenig said that producers distrust NOP and want something in writing. The NOP's struggle to handle the volume of work, questions, meetings, etc., was discussed by Mr. Mathews. Ms. Caughlan initiated another discussion on materials which brought up the point that USDA attorneys have not yet approved the idea of allowing prohibited substances, even if their use has been recommended by the Board. More discussion ensued on how to shorten the period from recommendation to entry on the National List.

Clarification of Status of Board Recommendations (pp. 144-154)

Mr. Mathews said that Board recommendations, for example, access to the outdoors, are not enforceable. They can be used as guidance—only the rule is enforceable. Ms. Koenig suggested that the NOSB policy manual contain administrative information on recommendations to help the Board and future Boards to understand the role recommendations play in the running of the NOP.

Legal Petition from Center for Food Safety (revisited) (pp. 154-158)

In response to Mr. Carter's question, Mr. Mathews and Ms. Robinson talked briefly about the legal petition filed to establish a peer review panel (on accreditation) and the efforts taken to that end already and the obstacles that are making that difficult.

Mutual Respect (p. 158-160)

Ms. Robinson stressed the need for mutual respect and courtesy between the Board and NOP staff.

MEETING RECESSED FOR LUNCH AT 11:56 a.m.

MEETING RECONVENED AT 1:30 P.M.

ADOPTION OF BOARD POLICY MANUAL (pp. 162-180) – (Discussion Document)

Mr. Riddle proposed adoption of board policy manual and Ms. Caughlan seconded. Mr. Riddle pointed out changes and these were discussed by the Board. An amendment to add the following language, "Individuals providing public comment to the NOSB may respond to questions from the Board beyond the allocated time limit." was carried.

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The Board then voted to adopt the policy manual.

Ms. Koenig proposed that a glossary of terms and an explanation of procedures be developed for use by the Board, and Ms. Caughlan seconded. The Board voted to adopt this proposal.

MATERIALS COMMITTEE DISCUSSION ITEMS (pp. 180-187)

Materials Task Forces (pp.180-181)

Ms. Burton reported that the Committee formed two task forces to look at materials review.

Task Force on EPA Lists 3 and 4 Inerts (pp. 181-184)

Ms Koenig reported that the task force had asked selected people from government and private industry to submit names of formulated products to EPA so that EPA could determine if they contained List 3 inerts. This information would ultimately be used to determine if these products should be used in organic production.

Presentation on Materials Review Process (pp. 185-187) – **(Discussion Documents 1 & 2)**

Ms. Burton gave a presentation on the materials review process.

PROCESSING COMMITTEE DISCUSSION ITEMS (pp.191-196)

Scope of the Review Process as It Relates to Materials Used in Processed Products

Mr. King said the Committee will recommend that all direct and secondary direct food additives are subject to NOSB review; indirect food additives are not subject to NOSB review.

When Does Handling Become Processing?

Rough drafts are finished on “post-harvest handling vs. processing” and on “on-farm processing.”

Guest Speaker (pp. 198-230)

Mark Itzkoff, attorney with Olsen, Frank and Weaver, Washington, DC, gave background information regarding FDA regulation of food packaging, food ingredients, food additives, and food contact substances and answered questions from Board members. A discussion followed on the nature of ion exchange.

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CROPS COMMITTEE DISCUSSION ITEMS (pp. 231-265)

Materials Reviewed (pp. 231- 247)

BHT

Mr. Bandele said the Committee reviewed three materials. For the first, BHT, the Committee agreed, 4-0, that it is a synthetic. The 3 TAP reviews recommended approval of BHT to be used as a pheromone for mating disruption. It appears that Committee agrees, with an annotation. Exact wording not clear from transcript.

POTASSIUM SULFATE

For the second, potassium sulfate, the Committee agreed 4-0 that it is a synthetic, and voted, 4-0, not to add it to the National List.

DIMETHLYNAPHTHALENE 1,4 (DMN)

For the third, dimethlynaphthalene 1,4 (DMN), 2 TAP reviewers cited potential environmental concerns, while 1 TAP reviewer recommended adding it to the National List. The Committee agreed 4-0 that it is a synthetic, and voted not to add it to the National List.

Compost Tea (pp. 248-254)

Mr. Bandele will propose to reactivate the Compost Task Force, with the specific charge to look at the compost tea issue. Discussion ensued between NOP and Board.

Clarification of Regulations as Applied to Planting Stock (pp. 254-259)

Ms. Koenig will present guidance in the form of a Q&A.

20 Percent Rule re: Sodium Nitrate (pp. 259-265)

Document being drafted on what “20 percent” actually means.

ACCREDITATION COMMITTEE DISCUSSION ITEMS (pp.265-293)

Criteria for Certification of Grower Groups (pp.265-289) – (Discussion Document)

Mr. Riddle said a recommendation will be brought forward for a vote tomorrow which incorporates public comment. He proceeded to read from the recommendation. The Board discussed and took questions from the audience.

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Accreditation Committee as NOP Peer Review Panel (pp. 289-293) – (Discussion Document)

Mr. Riddle highlighted various points of the still-internal working document.

LIVESTOCK COMMITTEE DISCUSSION ITEMS (pp. 293-302)

Materials Reviewed (pp. 294-295)

Mr. Siemon said the Committee will be reviewing and making recommendations on flunixin, atropine, and mineral oil.

Dairy Replacement Animals (pp. 295-296)

Mr. Siemon said the Committee will take recent feedback into consideration when developing a recommendation for presentation tomorrow.

Excipients (pp. 296-302)

Mr. Siemon said the Committee will make a recommendation to allow “excipients in medications which are non-active.” Ms. Ostiguy went into more detail and took questions from the Board. Ms. Koenig solicited input from Ms. Brown-Rosen (**Discussion Document**).

INTERNATIONAL COMMITTEE DISCUSSION ITEMS (pp. 302-303)

Ms. Goldberg said the Committee is working on a recommendation on EU/US equivalency.

MEETING ADJOURNED AT 5 P.M.

CALL TO ORDER: October 20, 8:10 a.m., Presiding: Dave Carter, Chair

PUBLIC COMMENTS (pp. 300-415)

The following individuals presented public comment. Each person’s comments were recorded and transcribed for the record. Some individuals also presented written comments. Transcribed comments and, where applicable, written comments can be found at the designated **ATTACHMENTS**.

Grace Marroquin - (p. 300)

Mark Itzkoff - (p. 308)

Diane Joy Goodman - (p. 311) – (**Attach. 8**)

(From this point forward in the transcript, the speaker identified as Mr. Williams should have been identified as Mr. [Rick] Mathews.)

Janning Kennedy, California Certified Organic Farmers - (p. 316)

Jack Jenkins, Pacific Biocontrol - (p. 329) – (**Attach. 9**)

Dan Leiterman, Crystal Creek Company - (p. 331)

Urvashi Rangan, Consumers Union - (p. 334) – (**Attach. 10 – Attach. 10a**)

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Tina Ellor, proxy for Leslie Zook, Pennsylvania Certified Organic - (p.348) – **(Attach. 11)**
Tom Harding, AgriSystems International - (p. 354)
Kelly Shea, Horizon Organic - (p. 358) – **(Attach. 12)**
Emily Brown Rosen, Organic Materials Review Institute - (p. 367) – **(Attach. 13)**
Emily Brown Rosen, proxy for Russell Libby, Maine Organic Farmers and Gardeners Assoc. - (p. 373) – **(Attach. 14)**
Bill Denevan - (p. 375)
Jim Pierce - (p. 390)
David Engle - (p. 396)
Chris Tompkins, attorney for Mr. Schmidts of Organic Growers and Consumers - (p. 401)
Marty Mesh, Florida Organic Growers Quality Certification Services - (p. 406)
NOSB Chair Dave Carter read statement from Hubert Karreman into the record - (p. 409) – **(Attach. 15)**

CROPS COMMITTEE ACTION ITEMS (pp. 415-491)

MATERIALS

PHEROMONES (pp. 415-437) – **(Discussion Document)**

Motion: Mr. Bandele proposed that the following changes and annotations be made regarding 205.601(f), “Pheromones—includes only EPA-exempt pheromone products, EPA registered pheromone products with no additional synthetic toxicants unless listed in this section and any inert ingredients used in such pheromone formulations that are not on EPA List 1, that is inerts of toxicological concern or EPA List 2, that is potentially toxic inerts, provided the pheromone products are limited to passive polymer dispensers, pheromone products containing only pheromone active ingredients listed in this section and List 4 inerts may be applied without restriction.”

Second: Ms. Koenig seconded.

Amendment 1: Ms. Goldberg motions to strike the word “polymer.” Ms. Ostiguy seconds. The Board votes unanimously to pass the amendment.

Amendment 2: Mr. Siemon motions that original motion also be included in the National List for Livestock as well as Crops. Ms. Ostiguy seconds. The Board votes 10-0 with 4 abstentions to pass the amendment.

Motion as amended: “Pheromones—includes only EPA-exempt pheromone products, EPA registered pheromone products with no additional synthetic toxicants unless listed in this section and any inert ingredients used in such pheromone formulations that are not on EPA List 1, that is inerts of toxicological concern or EPA List 2, that is potentially toxic inerts, provided the pheromone products are limited to passive dispensers, pheromone products containing only pheromone active ingredients listed in this section and List 4 inerts may be applied without restriction.”

Vote: The motion passes unanimously.

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POTASSIUM SULFATE (pp. 437-439) – (Discussion Document)

Motion: Mr. Bandele motions that potassium sulfate be considered a prohibited synthetic.

Second: Mr. Holbrook seconds.

Vote: The motion passes 13-0, with one absent.

1,4 DIMETHYLNAPHTHALENE (pp. 439-444) – (Discussion Document)

Motion: Mr. Bandele motions that 1,4 dimethylnaphthalene be considered a prohibited synthetic.

Second: Ms. Koenig seconds.

Vote: The motion passes 12-0, with one abstention and one absent.

LIST 3 INERTS (pp. 444-476)

Motion 1: Mr. Siemon motions “to allow Class 3 inerts that have tolerance in food products to be used in crop pesticides if pesticides are not commercially available using materials on the National List.”

Second: Mr. Bandele seconds.

A long discussion involving Board members, NOP staff, an EPA staff member and audience members ensued. Mr. Carter said he was going to ask for a reading of the motion unless there was a motion made to continue the discussion.

Motion 2: Mr. King motioned to continue the discussion.

Second: Mr. Riddle seconds.

Vote: Motion passes unanimously with a simultaneous voice vote.

Motion 3: Ms. Koenig motions to table discussion until after lunch.

Second: Mr. King seconds.

Vote: Motion passes 13-0 with one absent.

BREAK FOR LUNCH – 12:15 p.m.

RECONVENED, 1:30 P.M. on October 20, 2002

LIST 3 INERTS (cont'd) (pp. 477-491)

Substitute Motion (for Motion 1): Ms. Burton proposes a substitute motion, "The NOSB recommends that any list 3 inert material forwarded for a technical review be allowed for use until that material is approved or prohibited by the Secretary of Agriculture."

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Second: Mr. King seconds.

Chair to assign task force to work with EPA.

Vote: Motion passes 12-1, with one absent.

LIVESTOCK COMMITTEE ACTION ITEMS (pp. 491-511)

MATERIALS

MINERAL OIL – (Discussion Document)

Due to dissatisfaction with supplementary information, Mr. Siemon says the Committee defers the vote on mineral oil.

CALCIUM PROPIONATE

Due to lack of supplementary information, Mr. Siemon says the Committee defers the vote on calcium propionate.

FUROSEMIDE

Mr. Siemon stated “we don’t have ready the next one, which is furosemide.”

ATROPINE – (Discussion Document)

The Committee will send back [to TAP reviewer].

FLUNIXIN (pp. 495-508) – (Discussion Document)

Motion 1: Mr. Siemon motions that Flunixin be added to 205.603, synthetic substances allowed for use in organic livestock production, with the following restrictions: withhold time shall be double the FDA requirement.

Second: Ms. Ostiguy seconds.

Motion 2: Ms. Koenig motions to defer flunixin until a telephone meeting can take place.

Second:: Mr. Bandele seconds.

Vote, Motion 2: The motion fails 3-10, with one absent.

Vote, Motion 1: The motion passes, 11-2, with one absent.

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ACCREDITATION COMMITTEE ACTION ITEMS (pp. 512-517)

GROWER GROUP CERTIFICATION CRITERIA (pp. 512-517) – **(Discussion Document)**

Motion: Mr. Riddle motions that the Grower Group Certification Criteria Recommendation as reviewed and changed be adopted. (Final document is posted on NOSB web site under Accreditation Committee recommendations.)

Second: Mr. Siemon seconds.

Vote: The motion passes, 13-0, with 1 abstention.

LIVESTOCK COMMITTEE ACTION ITEMS (pp. 517-551)

DAIRY ANIMAL REPLACEMENT (pp. 517-535) – **(Discussion Document)**

Motion: Mr. Siemon motions: On existing organic dairy farms all replacement or expansion dairy animals shall be under continuous organic management from the last third of gestation. It is recommend that until 10/21/05, animals shall be under continuous organic management beginning no later than 1 year prior to production of the milk or milk products that are to be sold, labeled, or represented as organic.

Second: Ms. Ostiguy seconds.

Discussion: Board members questioned whether this recommendation would be considered guidance or clarification (policy statement) of the rule. Mr. Mathews said that implementation of this recommendation may require rulemaking. After considering the NOSB recommendation together with OTA input, NOP will analyze them in the context of the existing regulations and present the analysis to the Office of General Counsel. NOP will then report the findings to the NOSB.

Substitute motion: Mr. Siemon makes a substitute motion that reads: On existing organic dairy farms, all replacement or expansion dairy animals shall be under continuous organic management from the last third of gestation.

Second: Mr. King seconds.

Vote: The motions passes, 10-2, with 2 abstentions.

EXCIPIENTS (pp. 535-550) – **(Discussion Document)**

Motion: Ms Ostiguy motions that the following recommendation be adopted: The NOSB recommends the addition of a new 205.603(h) to read as follows: Excipients used in the manufacturing or found in the finished product of drugs used in livestock treatments are allowed unless specifically prohibited.

Second: Mr. Siemon seconds.

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Substitute motion: Mr. Riddle makes a substitute motion, but Ms. Ostiguy speaks the actual motion. In the interest of clarity, the transcript of this part of the meeting has been excerpted as follows:

“205.603(e) would begin with—this would be in addition, ‘as non-active substances for use with disinfectants, medications, and pesticides,’ so this is the non-active material.

Now we move to a portion that’s already in the law, so 205.603(e) actually starts with ‘As synthetic inert ingredient is classified by the Environmental Protection Agency for use with non-synthetic substances or a synthetic substance listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances. EPA List 4 inerts are of minimal concern.’

All that is already in there. Going back then to the addition. This again applies to non-active substances for use with disinfectants, medications and pesticides. The first item, ‘synthetic excipients, as classified by the Food and Drug Administration for use with non-synthetic substances or synthetic substances listed in this section and used as an active animal drug in accordance with the limitations on the use of any such substance that one, has been determined by FDA that the substance is generally recognized as safe, grass, pursuant to Title 21 US Code of Federal Regulations, Part 182, 184, or 186.’

Second part, ‘is approved as a food additive by a petition set forth in 21 CFR 171 or is reviewed and included with the list of active ingredients in this part.’ “

Second: Ms. Caughlan seconds.

Substitute motion withdrawn: Mr. Riddle and Ms. Caughlan withdraw substitute motion.

Vote: Original motion passes, 12-2, with 2 abstentions.

CROPS COMMITTEE ACTION ITEMS (pp. 551-567)

HYDROPONICS (not action item) (pp. 551-557) – (Discussion Document)

Mr. Bandele handed out background information on hydroponics.

PLANTING STOCK (pp. 557-565) – (Discussion Document)

Motion: Mr. Riddle motions that 3 Q’s and A’s **(Discussion Document)** developed by Crops Committee be forwarded to NOP for approval and subsequent posting on NOP website as planting stock clarification for producers.

Second: Ms. Koenig seconds.

Vote: Motion passes 11-0, with 3 abstentions.

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COMPOST TASK FORCE (pp. 565-567)

Motion: Mr. Bandele motions to re-establish the Compost Task Force, to be co-chaired by Dennis Holbrook and Eric Sideman.

Second: Ms. Koenig seconds.

Vote: Motion passes 14-0.

PROCESSING COMMITTEE ACTION ITEMS (pp. 567-597)

PROCESSING TASK FORCE (pp. 567-592) – **(Discussion Document)**

Motion: Mr. King motioned that the Processing Task Force Recommendation be accepted by the Board with the addendum as proposed. The recommendation will then be posted on the NOP website for comment. The recommendation reads: Direct and secondary direct food additives are subject to NOSB review. Indirect food additives are not subject to NOSB review.

Second: Mr. O'Rell seconds.

Vote: Motion passes 14-0.

WHEN HANDLING BECOMES PROCESSING FOR PRODUCERS & RETAILERS
(Discussion Document) (pp. 593-597)

Mr. King discussed sources and very rough draft he is working on to clarify handling vs. processing for producers and retailers. (Not an action item)

COMMITTEE WORK PLANS (pp. 598-602)

PROCESSING COMMITTEE (p .598)

Mr. King reported that the Processing Committee will: develop final Processing Task Force recommendation; continue work on handling vs. processing for retailers and producers; work on cultures; and work on materials review.

ACCREDITATION COMMITTEE (pp. 598-599)

Mr. Riddle reported that the Accreditation Committee will: continue review of NOP Accreditation Program; monitor certifying agent issues; monitor website; and solicit glossary items and complete Board Policy Manual Glossary.

MATERIALS COMMITTEE (pp. 599-600)

Ms. Burton reported that the Material Committee will: develop prioritization criteria for re-review of materials; manage EPA List 3 inerts task force; look at new petitions and forward for review; and monitor contractors.

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CROPS COMMITTEE (p. 600)

Mr. Bandele reported that the Crops Committee will: re-establish compost task force; develop sodium nitrate clarification; develop hydroponics guidance; work on List 3 inerts issue; review TAP reviews; and develop a Q and A on potassium sulfate.

LIVESTOCK COMMITTEE (pp. 600-601)

Mr. Siemon reported that the Livestock Committee will: discuss breeder stock issue; investigate need for differentiation between livestock and crops when it comes to materials review; identify calf-hood drugs to see if any need to go through TAP reviews; and revisit standards on production stock (e.g., wool).

INTERNATIONAL COMMITTEE (pp. 601-602)

Ms. Goldberg reported that the International Committee will: look at recommendations on equivalency; and discuss relevancy and work plan of International Committee.

ELECTION OF BOARD OFFICERS (pp. 603-609)

CHAIR

Dave Carter was nominated by Ms. Burton; seconded by Ms. Koenig. Mr. Carter elected unanimously by voice vote.

VICE CHAIR

Jim Riddle was nominated by Ms. Ostiguy; seconded by Ms. Goldberg.

Mark King was nominated by Ms. Burton; seconded by Ms. Koenig. Mr. King elected by paper ballot. 9-5.

SECRETARY

Jim Riddle was nominated by Ms. Caughlan; seconded by Mr. Siemon. Mr. Riddle elected unanimously by voice vote

STATUS OF FILLING BOARD VACANCY (pp. 610-611)

Mr. Mathews reported that there were 6 inquiries, 3 of whom were qualified. NOP is making initial screening.

ADJOURNED – Sunday, October 20, 2002 – 5:00 p.m.