

Introduced by

Senators Klein, Miller, Dotzenrod

Representatives Brandenburg, D. Johnson, Mueller

1 A concurrent resolution urging the United States Environmental Protection Agency to request an
2 additional 12-month stay of mandate for implementation of the Sixth Circuit Court of Appeals
3 ruling in the matter of *National Cotton Council of America et al., v. United States Environmental*
4 *Protection Agency.*

5 **WHEREAS**, the Clean Water Act regulates the discharge of pollutants into the nation's
6 waters by, among other things, requiring entities that emit pollutants obtain and comply with a
7 National Pollutant Discharge Elimination System permit; and

8 **WHEREAS**, the Environmental Protection Agency established a final rule in November
9 2006 that concluded that pesticides applied in accordance with the Federal Insecticide,
10 Fungicide, and Rodenticide Act are exempt from Clean Water Act National Pollutant Discharge
11 Elimination System permitting requirements; and

12 **WHEREAS**, the Sixth Circuit Court of Appeals ruled in the matter of *National Cotton*
13 *Council of America et al., v. United States Environmental Protection Agency* that pesticides
14 could be considered to be pollutants under the Clean Water Act when applied on, in, or near
15 water; and

16 **WHEREAS**, the court ordered the Environmental Protection Agency to vacate its 2006 final
17 rule; and

18 **WHEREAS**, the Environmental Protection Agency previously obtained a two-year stay of
19 mandate to extend the deadline for vacating its 2006 final rule to April 9, 2011; and

20 **WHEREAS**, 45 states with delegated National Pollutant Discharge Elimination System
21 permitting authority will need to develop and implement National Pollutant Discharge
22 Elimination System permits for pesticide users by April 9, 2011; and

23 **WHEREAS**, most states have not yet had their National Pollutant Discharge Elimination
24 System general permit documents approved by the Environmental Protection Agency and many
25 pesticide users are still unaware or unclear whether they will need to obtain a National Pollutant

1 Discharge Elimination System permit to comply with the Clean Water Act on or after April 9,
2 2011;

3 **NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE**
4 **HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

5 That the Sixty-second Legislative Assembly urges the United States Environmental
6 Protection Agency submit an additional 12-month stay of mandate request to the Sixth Circuit
7 Court of Appeals to extend the deadline for vacating the agency's final rule to April 9, 2012; and

8 **BE IT FURTHER RESOLVED**, that the Sixty-second Legislative Assembly supports a
9 federal legislative solution that exempts pesticides from the definition of pollutant under the
10 Clean Water Act provided those pesticides are used in a manner that complies with the Federal
11 Insecticide, Fungicide, and Rodenticide Act.