

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CROP HARMONIZATION COMMITTEE

Thursday, June 8, 2000
Northwood Airport Hangar
Northwood, North Dakota

Representative Eugene Nicholas, Chairman, called the meeting to order at 8:55 a.m.

Members present: Representatives Eugene Nicholas, Michael D. Brandenburg; Senators Meyer Kinnoin, Terry M. Wanzek; Citizen Member Brett Oemichen

Others present: See attached appendix

It was moved by Senator Kinnoin, seconded by Citizen Member Oemichen, and carried on a voice vote that the minutes of the March 9, 2000, meeting be approved as distributed.

Chairman Nicholas thanked the North Dakota Grain Growers Association for inviting the committee to meet in conjunction with the association's Environmental Protection Agency (EPA) tour. He welcomed Senator Duane Mutch and Representatives William R. Devlin and Jon O. Nelson to the meeting. He said members of the committee are concerned that farmers in Canada are permitted to use crop protection products that are prohibited in the United States, yet the products are allowed to enter the food chain in this country. He said the committee is also addressing concerns regarding the disparity in prices for similar crop protection products in the two countries. He said the committee has been monitoring the progress of the EPA and its Canadian equivalent, the Pest Management Regulatory Agency, in achieving harmonization. In doing so, he said, two members of the committee attended the second meeting of the North American Market for Pesticides held in April in Ottawa, Canada. He requested Representative Brandenburg and Citizen Member Oemichen to provide updates regarding the activities at that meeting.

Representative Brandenburg said the meeting in Ottawa was attended by representatives of the crop protection industry from the United States and Canada, the EPA, the Pest Management Regulatory Agency, the United States Department of Agriculture, Agriculture Canada, and producers from each country. He said discussions at the meeting clearly demonstrated Canadians desire harmonization as much as American producers do. He said the Canadian producers are experiencing the same problems as producers in North Dakota. Although representatives of industry and the regulatory agencies also want to achieve harmonization, he said, the problem is how to expedite the process because of turf battles.

He said it is important to bring everyone to the table to discuss the issues.

Representative Brandenburg said the EPA generally does not have stricter standards than the Pest Management Regulatory Agency with respect to the registration of crop protection products. He said the registration processes are very similar. He said the next step is to encourage the various commodity groups to become further involved and put pressure on the regulatory agencies to maintain a single registration process.

Citizen Member Oemichen said tremendous progress has been made by the EPA and Pest Management Regulatory Agency in streamlining the registration process. He said a system is developing to address new registrations and to provide for common data requirements, common submission processes, and joint reviews. He said it is important to harmonize or recognize tolerances in existing products in the marketplace. He said there appeared to be strong support for that movement at the Ottawa meeting. Although North Dakota has been at the forefront of the harmonization issue, he said, Canadian horticulturists are very active in pushing for harmonization as well.

Representative Brandenburg said the process to harmonize registrations of the thousands of chemicals that have identical or nearly identical compounds must be expedited. He said Canada and the United States have made good progress in addressing harmonization with respect to new registrations.

Chairman Nicholas called on Mr. Roger Johnson, Agriculture Commissioner, for an update regarding harmonization activities undertaken by Mr. Johnson. Mr. Johnson submitted a written summary of harmonization activities since October 1999 and copies of various documents relating to those activities, copies of which are on file in the Legislative Council office.

Mr. Johnson said in response to the United States Department of Agriculture price availability report in October 1999, he contacted four crop protection product manufacturers to request the manufacturers to address the price disparities. He said the response of the manufacturers clearly indicated they were not interested in harmonization. He said to register a product under a Section 24C authorization, there

must be support from the registrant. However, he said, that support is not present.

Mr. Johnson said he or representatives of his office attended the Northern Plain Producer Conference, which was held in Fargo in November 1999, and the second meeting of the North American Market for Pesticides in Ottawa. He said his office attempted to put a state label on a Canadian seed treatment product for dry beans. However, he said, it was determined the state label could not be done this year because certain toxicological tests were not completed on one of the ingredients. He said labeling of that product will be discussed at a meeting in Ottawa on June 13 and 14.

Mr. Johnson said he made Achieve 80 DG available for use by North Dakota producers on May 31, 2000. He said the product was registered in both countries but not labeled in the United States. He said the Canadian product is approximately 30 percent cheaper than the product registered and labeled in this country. He said the availability of Achieve 80 DG should save producers \$6 per acre. He said a state label is available for Achieve 80 DG on the Department of Agriculture website www.state.nd.us/agr. Although the producer of Achieve 80 DG, Zeneca, does not approve of the action taken by Mr. Johnson, he said, representatives of Zeneca would not discuss making the product available in North Dakota until after he took that action. He said representatives of Zeneca have requested a meeting with representatives of the EPA. He said he also has requested to be present at that meeting.

Mr. Johnson said there will not be true harmonization until the point is reached when a farmer can buy a product on either side of the border and use the product in either country. He said the current procedure allows manufacturers and distributors of crop protection products to segregate products by using the international border.

Representative Nicholas said he is disappointed that Mr. Johnson has circumvented the effort of the North Dakota Grain Growers Association to use funding from the minor use pesticide fund for harmonization efforts. Although the Attorney General issued an opinion indicating that funds could not be used for that purpose, he said, the intent of the 1999 Legislative Assembly was clear that funds from the minor use pesticide fund should be used to address harmonization issues.

Mr. Johnson said there is clearly a difference of opinion regarding the authority to use funds for harmonization efforts. However, he said, the Pesticide Control Board voted unanimously not to approve the applications for funding because state law limits the uses of the fund. He said the Legislative Assembly authorized a .5 FTE position for harmonization efforts. He said he has hired a person to address harmonization and developed a strategy. Although it

is difficult to hire a half-time position, he said, he has been able to provide full-time funding for the position through a grant provided by the EPA. He said he has received Emergency Commission approval to use the EPA grant money and has received approval for the full-time position. He said he has attempted to meet the legislative intent provided by the 1999 Legislative Assembly. Although there are substantial funds available in the minor use pesticide fund, he said, there are increased applications for minor use registrations.

In response to a question from Representative Brandenburg, Mr. Johnson said the Pesticide Control Board has no authority to spend money not specifically appropriated. He said he cannot use other dedicated funds to provide grants.

Representative Nicholas said he is disappointed there is no advocate in Mr. Johnson's office to work in the private sector to pursue harmonization. Although there was no action toward harmonization until 1999, he said, the actions of the Legislative Assembly got the process moving. However, he said, farmers are paying the price of inaction since the enactment of the North American Free Trade Agreement (NAFTA). He said it appears Mr. Johnson's office has taken an adversarial role in not moving the agenda in the private sector. He said he would like to see more support in the next biennium.

Mr. Johnson said current North Dakota law does not allow what Representative Nicholas wants his office to do. He said he is working with commodity groups and the private sector and will continue to do so to achieve harmonization.

Representative Nicholas said the Attorney General's opinion regarding use of minor use funds was wrong and was antifarmer. He said there was clear direction from the House and Senate Agriculture Committees.

Mr. Johnson said the conference committee that approved the budget for his office during the 1999 legislative session changed the original proposal that was approved by the Agriculture Committees. He said the ultimate decision was to provide \$15,000 for the Crop Harmonization Committee from the minor use pesticide fund, \$15,000 from the general fund, and \$150,000 from special funds. He said those special funds were expected to come from the crop protection industry. He said a representative of the American Crop Protection Association and its local lobbyist proposed a deal before the conference committee that suggested the industry would provide the \$150,000 in special funds. He said he agrees there must be a sensible approach to move the agenda forward, but if public funds are used, there must be specific legislative directive for use of those funds.

Representative Brandenburg said it was important that all parties be involved in the harmonization effort. He said he is concerned that the crop protection

product manufacturers will reduce their efforts if they are not involved in the decisions.

Mr. Johnson said he agrees everyone has to be involved in the discussions. He said North Dakota has been a leader in pushing harmonization, and he brought the issue to the National Association of State Departments of Agriculture when he was first elected. He said over the last few years, North Dakota has received more special labels and Section 18 authorizations than any other state. Although North Dakota officials must work within the law, he said, they must also push the envelope. He said officials and producers in other states have taken notice of what has occurred in this state. However, he said, if North Dakota officials keep requesting special labels and exemptions, the EPA will likely stop approving those requests.

Representative Nicholas said Mr. Johnson should push the envelope on applications for grants to be used in the harmonization effort.

Mr. Johnson said because harmonization is an international issue and regulation of the crop protection product industry evolved under two different sets of laws, there are many obstacles to overcome to achieve harmonization. However, he said, progress is being made, and he will do whatever he can to reduce costs to farmers. He said there may need to be legislative action next session to address the interpretations regarding use of minor use funds. He said his action in approving Achieve 80 DG brought Zeneca to the table. He said he does not expect legal action from Zeneca, because it is not in the company's best interest. He said Zeneca could have put a NAFTA label on Achieve 80 DG, but it made a business decision to use the border to allow a pricing difference.

Representative Brandenburg said he is concerned the United States is allowing the importation of commodities from Third World countries that are using chemicals that have been prohibited from use in this country for many years.

Senator Wanzek said harmonization is a complicated issue that will likely require our country to give up some sovereignty regarding health and environmental issues.

In response to a question from Senator Wanzek, Mr. Johnson said his action to approve Zeneca is legally defensible and appropriate. He said the action was taken in response to the directive to move aggressively toward harmonization. He said he could have tried to get a third-party labeler for Zeneca, but that third party would likely have been sued by Zeneca. He said his action has not interfered with Zeneca's rights in that it has only made a product available which Zeneca has registered. He said he has been told there has been a large amount of Achieve 80 DG brought into the United States in the last week and farmers are saving \$2,000 to \$3,000 per trip.

Citizen Member Oemichen said the Section 18 and Section 24C processes are viewed by Canadians as unfair because the Canadians do not have similar processes.

Representative Jon O. Nelson, Wolford, said the issue of harmonization is larger than just price harmonization. He said the North Dakota Grain Growers Association has taken the lead on the issue and should be recognized for its efforts. Although the approval of Achieve 80 DG is a great step forward, he said, it may be too late for many producers this year.

In response to a question from Representative Nelson, Mr. Johnson said the approval of Achieve 80 DG was not accomplished until now because the manufacturers keep the exact composition of crop protection products confidential. He said the formula is known only to the manufacturer and the regulatory agencies. However, he said, he discovered the formulations of Achieve 80 DG and Achieve 40 DG were identical two days before his announcement. He said Zeneca would not disclose the composition when asked. Because the Department of Agriculture had a potential enforcement case against a farmer, he said, representatives of Zeneca disclosed that the product was registered in the United States. He said he used that information to move forward with the North Dakota label. He said the EPA was not aware that Achieve 80 DG was registered. He said it is very difficult to know which Canadian and American products have the same formula. He said products with the same names may have different formulas in each country.

Representative Brandenburg said grants to private entities are important in providing assistance for research so products with the same formulas can be identified.

Senator Wanzek said he is sensitive to the public image of this committee and would like to make it clear no one is asking anyone to undermine safe food standards. He said harmonization issues must be addressed through sound rational science so safe products can be made available at a lower cost.

Mr. Johnson said he will not jeopardize North Dakota's reputation for producing safe food. However, he said, it is also important foreign products that have been produced with prohibited crop protection products not be allowed into our food chain. He said the United States trade representatives will not address this issue because of fears of repercussions from other countries.

Vice Chairman Wanzek invited any interested person to make comments regarding harmonization.

Mr. Bruce McLean, Ostlund Chemical, Fargo, said he is concerned that harmonization efforts do not expand to address other areas where there may be disparities such as fuel and fertilizer.

Mr. Johnson said fertilizer and fuel are not products with legal barriers that would prevent a purchaser from purchasing the product in Canada. He said the

registration and labeling of crop protection products create a legal barrier with respect to importation.

Ms. Beth Nelson, BCW & Associates, St. Paul, Minnesota, said if the registrants of crop protection products are not included in the discussions, there is a danger they will change the formulations of products in a subtle manner so as to prevent actions such as that taken by Mr. Johnson with respect to Achieve 80 DG.

Mr. Richard Groven, Northwood, said there should be a simple test that says if a Canadian producer or any other producer in another country is allowed to use a particular crop protection product on a commodity and sell that commodity in this country, farmers in this country should be able to use this same product.

Senator Wanzek said what seems to make common sense is not always that easy. He said this committee and the other parties involved are working to address the disparities.

There being no further business, Vice Chairman Wanzek adjourned the meeting at 10:40 a.m.

John D. Bjornson
Committee Counsel

ATTACH:1