

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### CROP HARMONIZATION COMMITTEE

Wednesday, October 27, 1999  
State Fair Center Conference Room  
North Dakota State Fair Grounds  
2005 Burdick Expressway East  
Minot, North Dakota

Representative Eugene Nicholas, Chairman, called the meeting to order at 1:05 p.m.

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

**Others present:** See attached appendix

Chairman Nicholas said the idea for establishment of this committee arose out of discussion last session. He said there is a need for continued communication among the chemical industry, the Environmental Protection Agency (EPA), and other interested groups and individuals regarding harmonization of crop protection product standards. Although harmonization was promised in the General Agreement on Tariffs and Trade, he said, it has not been accomplished. He said he hopes this committee can assist in the movement toward harmonization.

Chairman Nicholas called on committee counsel to review a memorandum entitled *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*. He said although this committee was established through Senate Bill No. 2009, the committee operates under the same rules and procedures as other interim committees.

At the request of Chairman Nicholas, committee counsel reviewed a memorandum entitled *Crop Protection Labeling - Background Memorandum*.

Chairman Nicholas called on Mr. Kerrigan G. Clough, Assistant Regional Administrator for Partnerships and Regulatory Assistance, United States Environmental Protection Agency, Denver, Colorado. Mr. Clough submitted a written document, a copy of which is on file in the Legislative Council office. He said of the pesticides included on the priority list provided by the state, the EPA has registered or established tolerances for three of the compounds. Of the 10 chemicals included on the priority list which were not labeled in the United States or Canada, the EPA will be considering four for registration, he said. He said the EPA has not received registration requests for the other six pesticides included on the priority list. Of the priority list of chemical pesticides labeled in Canada, but not the United States, he said, two have been registered and four will be considered

this year. He said requests have been received for registration consideration of two other pesticides; a new tolerance has been set for one, and one registration will not be pursued.

Mr. Clough reviewed June 1999 correspondence to Mr. Roger Johnson, Agriculture Commissioner, regarding the state's authority under the federal Insecticide, Fungicide, and Rodenticide Act to register Canadian pesticides which are available in both the United States and Canada but which are not registered in the United States. He said the state does have authority under Section 24c of the federal Insecticide, Fungicide, and Rodenticide Act if a tolerance is set and the active ingredient is registered in this country. However, he said, registration would require cooperation from the Canadian manufacturers to obtain the necessary documentation that the pesticides were formulated with EPA-registered products. He said Canada does not have authority similar to the Section 24c registration process.

Mr. Clough said the United States-Canada record of understanding of December 4, 1998, was a commitment to harmonize labeling standards. Although there have been several joint registrations since the record of understanding, most of the products were for products not grown in this part of the country. He said there will be another high-level meeting in Canada sometime in February or March of 2000.

Mr. Clough said a meeting of the North American Free Trade Agreement (NAFTA) industry working group will be held in January 2000. At that meeting, he said, harmonization of testing requirements will likely be discussed. He said the objective is to establish uniform testing requirements in both the United States and Canada.

In response to a question from Representative Brandenburg, Mr. Clough said if the United States and Canada are able to establish uniform testing requirements, the cost and the time of registration will be reduced.

Mr. Clough said the EPA is addressing registration concerns raised by canola growers. With respect to the price differential study conducted by the United States Department of Agriculture, Economic

Research Service, and Agriculture and Agri-Food Canada, Ottawa, Ontario, Canada, he said some of the findings indicate that North Dakota farmers may be spending less on pesticides than Manitoba producers. However, he said, the study also shows that most major products cost more in North Dakota than in Canada.

Representative Nicholas said Canadian producers may be using more pesticides because the chemicals are cheaper in Canada.

In response to a question from Senator Kinnoin, Mr. Clough said because the EPA does not deal with product pricing, he cannot answer why chemicals that are essentially the same cost more in the United States than Canada.

Chairman Nicholas called on Mr. Johnson for comments regarding the activities of the commissioner with respect to harmonization issues. Mr. Johnson submitted copies of several documents which are on file in the Legislative Council office.

Mr. Johnson summarized the activities of representatives of his office, including attendance at several meetings involving federal government and Canadian officials which addressed harmonization issues. He said chemical companies are able to charge higher prices in the United States because farmers are prohibited from purchasing similar products in Canada and importing those products to the United States. To address American producers' concerns regarding products that are available in Canada and not in the United States, he said, the governments must either accomplish harmonization or the United States must prohibit importation of commodities that have been treated with chemicals not registered for use in this country. He said a joint label on a product would effectively accomplish harmonization.

Mr. Johnson said the United States trade representative has not shown an interest in harmonization because of concerns regarding the impact on trade with other countries. He said the laws of our country should be enforced so that producers can play on a level field and not compete with producers in other countries that are permitted to use chemicals not registered here and export these commodities to this country.

In response to a question from Representative Brandenburg, Mr. Johnson said the state could put its own label on a Canadian product if the product is substantially similar to a registered American product. However, he said, the manufacturer of the product must allow the state label.

Citizen Member Oemichen said there also must be a tolerance available in the United States for that particular product.

Mr. Johnson said he sent letters to Canadian chemical companies that produce certain products, and those letters were referred to the division or counterpart of the Canadian company in the United States.

He said he received no official response from the companies authorizing North Dakota to register any product under a Section 24c authorization. He said North Dakota has met or exceeded its neighboring states in getting Section 18 crisis exemptions. However, he said, other countries are critical of the United States when those exemptions are permitted. In addition, he said, the process of reviewing Section 18 applications takes resources away from full-labeling registration procedures.

Mr. Johnson said he requested an Attorney General's opinion regarding the authority to use funds from the minor use pesticide fund to fund a half-time position in his office to address harmonization issues. He said the Attorney General concluded the Pesticide Control Board had no authority to use moneys from the minor use pesticide fund for such a use.

Mr. Johnson said the pricing study that was recently released does not support the conclusion that some chemical products are higher priced in Canada than the United States and some are priced about the same. He said the study shows that there are significant price differences between the United States and Canada, and there is only one case where prices were lower in North Dakota. He said news reports concluded that Canadian producers spent more on chemicals than American producers because American producers likely purchased cheaper and less reliable pesticides than their Canadian counterparts.

Senator Wanzek said American producers would likely use more and better chemical products if those products were available and were available at prices similar to those paid by Canadian producers. He said the pricing differential is creating barriers to free trade and should be addressed by the United States trade representative.

In response to a question from Representative Brandenburg, Mr. Johnson said the Attorney General's opinion stated that the Legislative Assembly did not intend that the one-half FTE position that was authorized to the Agriculture Commissioner be used for working on harmonization issues. He said the opinion stated that the work was delegated to the Crop Harmonization Committee only to be "augmented" by the board and that the one-half FTE position was authorized for minor use pesticide registration activities.

In response to a question from Representative Nicholas, Mr. Johnson said the request for the Attorney General's opinion was to determine if the Pesticide Control Board had the authority to fund a position to work on pesticide harmonization issues. He said the opinion did not address whether the board could contract with an individual or business to address harmonization issues.

Mr. Curt Trulson, Ross, said Canadian farmers are able to use more chemicals because of lower prices. He said the problem is chemical companies are

protecting prices with patents. He said Canadian farmers should not be able to export products that have been treated with chemicals that are not registered for use in this country. However, he said, federal laws regarding importation of commodities are not being enforced. Because chemical companies do not have to ask for registration of a product, he said, the companies are able to protect their predatory pricing and are causing farmers to lose all their profit to the chemical companies.

Mr. Ivan Williams, North Dakota Agricultural Association, Mandan, submitted written testimony on behalf of the American Crop Protection Association, a copy of which is on file in the Legislative Council office. Mr. Williams said the American Crop Protection Association represents manufacturers, distributors, and formulators of crop protection products used in the United States. He said the association and its member companies have worked closely with the NAFTA technical working group as it attempts to develop a coordinated pesticide regulatory framework. With respect to the pesticide price differential study, he said, the availability of pesticide products is not a problem except in the case of products registered for canola. However, he said, the situation for canola is improving rapidly. He said the study shows that North Dakota growers spend less on weed control products than their Canadian counterparts, and the overall cost per treated acre in North Dakota is significantly lower than in the Canadian provinces. He said the North Dakota growers have a higher cost of production, but those costs are generally due to nonchemical issues such as land, labor, and management costs.

Mr. Williams said the association has serious reservations regarding Section 24c registration of Canadian products in North Dakota. He said EPA guidelines clearly state that states may not consider a price differential between products as a candidate for a special local need which justifies a Section 24c registration.

Mr. Williams said the association and its member companies are committed to assisting grower organizations and this committee on the harmonization issue. He said the industry agreed to significantly increased registration fees during the 1999 legislative session to assist in crop protection research and activities to support expedited harmonization. In addition, he said, the association is proposing a forum in Washington, D.C., to discuss harmonization and aid in the dialogue between North Dakota growers, legislative leaders, congressional members, and the relevant federal agencies.

Mr. Williams said the North Dakota Agricultural Association has put pressure on the EPA to establish a timeline for harmonization. He said progress is being made toward that end.

Representative Brandenburg said an opportunity to meet with high officials from the chemical

companies would be a good opportunity for members of the committee. He said a forum to discuss the issues with chemical company executives and federal officials may be the answer to solving the harmonization problem.

Citizen Member Oemichen said if the members of the committee are interested in attending a forum such as the one suggested by Mr. Williams, the American Crop Protection Association should send a formal proposal to the committee and the Legislative Council chairman.

In response to a question from Representative Brandenburg, Mr. Williams said there are more issues involved than just price differences between Canada and the United States. He said there are many factors in the registration process that affect the price of a product, as well as the differences in production costs in the two countries.

Senator Wanzek said there does not seem to be any incentive for a chemical company to place a joint label on a product if the company is not required to do so and can make more money by not doing so.

Mr. Williams said similar prices in Canada and the United States would likely be the result if the cost and the time of registering a product became uniform.

In response to a question from Representative Brandenburg, Mr. Williams said when a study such as the pricing differential study is requested, you do not always get exactly what you were seeking. He said the report does not go into great detail.

Representative Brandenburg said when the report is viewed by the general public as minimizing the harmonization concerns of producers, the result of the report is skewed and the actual facts are not presented.

Mr. Brad Haugeberg, North Dakota Grain Dealers Association, Minot, said the harmonization issue affects grain elevators and retail dealers, particularly when farm chemicals are illegally imported. He said the association favors a meaningful solution to address the harmonization problem but does not want state laws that are in conflict with federal law and which will cause problems for retailers.

Chairman Nicholas called on Mr. Bruce Feustel, National Conference of State Legislatures (NCSL), Denver, Colorado, for comments regarding methods through which other states' agricultural committees may be contacted to become involved with harmonization. Mr. Feustel distributed documents summarizing services provided to the North Dakota Legislative Assembly in 1998 by NCSL and a list of issue specialists at NCSL, copies of which are on file in the Legislative Council office. He also distributed a list of names of agricultural committee chairmen in other states. He said NCSL will be sponsoring a special program entitled *Farming for the Future* in coordination with the Assembly on State Issues spring meeting on March 30-31, 2000, in Denver. He said

NCSL could assist in setting up a meeting to discuss harmonization in conjunction with that event.

Mr. Lance Gaebe, North Dakota Grain Growers Association, Bismarck, said he is encouraged by the progress of the EPA and the Canadian Pest Management Regulatory Agency regarding harmonization of new registrations. However, he said, that does not help with current registration and patent issues. He said the NAFTA technical working group accelerated its work because of activity undertaken during the 1999 legislative session in North Dakota. With respect to the price differential study, he said, the study used low acreages and four-year use data when it should have more closely examined comparative products. As a result, he said, the study did not fairly assess the situation and there is a serious competitive issue with Canadian farmers. He said comparing North Dakota to Manitoba is not comparing apples to apples.

Mr. Gaebe said the Northern Crops Network has prioritized crop protection labeling needs. He submitted a written summary of commodity priorities, a copy of which is on file in the Legislative Council office.

Mr. Gaebe said he applied for a grant for the Northern Crops Network from the American Crop Protection Association to address harmonization issues, but the request was rejected. He said he also applied to the Pesticide Control Board for funding, but the application was tabled based upon the Attorney General's opinion that indicated the Agriculture Commissioner could not use funds from the minor use pesticide fund to fund a half-time FTE position.

Chairman Nicholas requested the Legislative Council staff to request clarification from the Attorney General regarding whether funds may be used from the minor use pesticide fund to contract with private individuals or groups to address harmonization issues.

In response to a question from Representative Brandenburg, Mr. Gaebe said the grant application to the American Crop Protection Association was not rejected in writing, but he was told that the proposal was rejected because the association had already agreed to pay higher pesticide registration fees in North Dakota.

Representative Brandenburg said the increase in registration fees is \$25 per year and does not represent an increase of \$400,000 as suggested by the testimony presented on behalf of the American Crop Protection Association.

Mr. Cole Gustafson, Associate Dean for Research, North Dakota State University, said the College of Agriculture has been heavily involved in addressing crop protection needs in the state. He said he is comfortable with the role commodity groups played in labeling priorities. However, he said, he was somewhat concerned that flax and safflower needs were not addressed. He said if uniform testing procedures

could be developed between the United States and Canada, harmonization could occur. He said there is some exchange of data between the two countries, but most of the data sharing is one way in that the United States is not sharing much information with Canada.

Mr. Barry Coleman, Northern Canola Growers, Bismarck, distributed a list of canola pesticide harmonization priorities, a copy of which is on file in the Legislative Council office. Mr. Coleman said the list of priorities has been submitted to the EPA. He said canola growers are continuing to look for new products, but currently only one product is available to control disease. He said the cost of that product is about \$34 per acre.

In response to a question from Representative Brandenburg, Mr. Coleman said there must be more effort on harmonizing registration procedures and accepting common submissions.

Mr. Cal Thorson, North Dakota Agricultural Association, Bismarck, submitted written testimony, a copy of which is on file in the Legislative Council office. Mr. Thorson said the association first proposed a study of pesticide prices in Canada and the United States at a meeting in Washington, D.C., approximately 15 months ago. However, he said, the primary question requested by the association was not included in the study. He said that question is, Why are North Dakota farmers being asked to pay more for crop protection products than Canadian farmers? He said the extreme cost of registering and regulating crop protection products by the EPA mandates increased sale costs in the United States. Although the study did not directly address what the association sought to have addressed, he said, the study did show that Manitoba wheat farmers spent over double the pesticide dollars to grow a wheat crop as North Dakota farmers.

Mr. Thorson said the increasing regulatory costs faced by the crop protection industry threatens the viability of the industry and as a result could jeopardize North Dakota retailers. He said increased prices are either passed on to consumers or the products are removed from the marketplace due to the cost of research and registration. He said there should be one standardized requirement for product acceptability to protect the commodity and the consumer.

In response to a question from Representative Brandenburg, Mr. Neal Fisher, North Dakota Wheat Commission, said the amounts of wheat production mentioned in the price differential study are incorrect.

Mr. Clough said the EPA may have funding available to assist the Agriculture Commissioner in providing a position to address harmonization issues. Chairman Nicholas requested the Legislative Council to work with Mr. Clough and the Agriculture Commissioner to look at the possibility of obtaining federal funds for a harmonization position.

Chairman Nicholas said the committee will likely meet sometime early next year and will continue to seek information and promote discourse regarding harmonization.

Senator Wanzek said the committee should seek to involve Canadian farmers and representatives of the Canadian Pest Management Regulatory Agency at future meetings of this committee.

Representative Brandenburg requested the Legislative Council staff to correspond with chairmen of agriculture committees in other border states to inform

them of the efforts of this committee and to seek input.

There being no further business, Chairman Nicholas adjourned the meeting at 5:00 p.m.

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John D. Bjornson  
Committee Counsel

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