

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2371

2005 SENATE AGRICULTURE

SB 2371

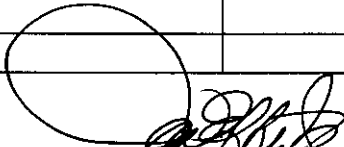
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2371

Senate Agriculture Committee

☐ Conference Committee

Hearing Date February 3, 2005

Tape Number	Side A	Side B	Meter #
1	x		133 - 3600
1		x	875 - 1570
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the hearing on SB 2371, relating to minimum-risk pesticides. All members were present.

Senator Andrist introduced the bill. (written testimony) He distributed a proposed amendment.

Senator Flakoll asked if the amendment would change the fiscal note. (meter 621)

Senator Andrist said currently there is a \$350 fee for each pesticide that is paid to the herb fund every 2 years.. There would be 115 pesticides where the fee would change to \$25. We don't know if all of them would choose to register in this manner and pay the lower fee.

Senator Klein asked if the product is registered now.

Senator Andrist said there are 121 registered now and hers is not one of them. There may be other products out there that are not registered. She has been selling for 5 years without registration. It is only recently that she was told of the necessity of registration.

Senator Klein asked if its okay not to be registered under EPA.

Senator Andrist said yes. He will let the Agriculture Department representative speak to this.

Senator Taylor said he knows the Gillunds from Pride of Dakota shows. Is the only product they are worried about the mosquito repellent.

Senator Andrist said yes.

Senator Taylor said if they are okay with the EPA on this, what is the most onerous part of the process.

Senator Andrist said part of the concern is the \$350. The other concern is she is in 9 states with this product. As soon as she registers it in North Dakota, the other states will also want it registered. Another concern is potential customers seeing it listed as a pesticide could hurt their business.

Senator Flakoll asked about hedge balls sold at the grocery stores, supposedly to repel spiders, is this a similar situation.

Senator Andrist said probably. He is not familiar with hedge balls.

Senator Klein noted that people buy hedge balls.

Jim Gray, North Dakota Agriculture Department Pesticide Registration Coordinator, testified in favor of the bill as amended. (written testimony) (meter 1150)

Senator Flakoll asked if the items listed in subsection 2 are on the label. (meter 1686)

Mr. Gray said yes, active ingredients are listed by name and %, inactive ingredients are listed by name.

Senator Flakoll asked about hedge balls, if they are registered is there an implication that they work.

Mr. Gray said no, they evaluate health and safety, not efficacy. Hedge balls are an interesting question. If you don't make a claim that a substance has a pesticidal property, regardless of the ingredients, it would not need to be registered. As soon as you make a claim, you need to register it.

Senator Taylor asked about the fiscal note. (meter 1926)

Mr. Gray said based on the registration fee at \$300 (the \$350 could sunset during this session), there will be a \$5750 loss to the general fund and a \$25,875 loss to the herb fund for a total loss of \$34,500.

Senator Klein asked if EPA is okay with this, why isn't North Dakota. EPA's rules should be the standard.

Mr. Gray said if you meet the criteria, you are assumed to be okay, you do not submit an application. EPA leaves it up to state and tribal pesticide regulators to find products that do not comply and are not registered. Currently 38 states require registration of these minimum risk products. For those that don't require it, it creates a real problem for the state regulators. When they are conducting an inspection and find unregistered products, it is very time consuming for them to determine if they are a minimum risk product and do not require registration or if they do require registration and a stop sale order should be issued. Toxicity is only one component of risk, we must also look at route of exposure. States have the responsibility with minimum risk products to develop use directions. (meter 2248)

Senator Klein said the consumers get a safety net. Without the amendments, are you concerned the consumers are at risk.

Mr. Gray said yes, the other issue is department resources. They have a limited field staff.

When they stop in at a retailer to inspect pesticide and they find products that do not show up as registered, it takes time to make the determination if they are a minimum risk pesticide.

Senator Flakoll asked if there is a registration number on the label.

Mr. Gray said it is against the law to do so. There is no requirement for a statement.

Senator Klein asked if every item, every flavor of Off, is registered individually, and a fee is paid on every item. If an item is no longer registered, it must come off the shelf. It is not suddenly a health hazard, its just that the fee hasn't been paid.

Mr. Gray said yes. When a registration is canceled, it is an unregistered pesticide.

Senator Klein said maybe we need an amendment to give the merchant some flexibility.

Mr. Gray said there is no flexibility. They do not differentiate between agricultural and nonagricultural pesticides.

Gary Knutson, North Dakota Agriculture Association testified in a neutral position. (meter 2993) How was the \$25 fee determined. He has a concern there could be an attempt later to have current registrants make up the fee difference.

Mr. Gray said it takes a lot of time to register a minimum risk pesticide. \$25 was a compromise between the Agriculture Department and Senator Andrist. He is completely flexible on the fee.

He can't speak to later action to change the fees of current registrants. That is up to the legislature. The Agriculture Department sees very little of the fee income. (meter 3250)

Senator Flakoll asked if the time saving will be a wash. Will you be coming back later for more money.

Mr. Gray said it will be a wash. They have more important things to regulate. This up front review process will allow their field staff to readily identify a minimum risk pesticide.

Senator Klein said the inspectors don't carry around a big book. Do they have an electronic readers.

Mr. Gray said yes, they have very good technology. If they just exempt these minimum risk products without this process of up front review...

Senator Klein asked if they couldn't be flagged in the system.

Mr. Gray said EPA doesn't maintain a data base of products that are minimum risk and exempt from regulation. They need them to be captured in some sort of list. The alternative is for a field inspector to go through the exemption qualifications each time with each product and its a long, drawn out process. (meter 3487)

Senator Klein said the fees have not been generated by the Agriculture Department, they have been generated by the legislature for such programs as salt cedar eradication.

Chairman Flakoll closed the hearing on SB 2371. (meter 3600)

Senator Klein moved a do pass on the hog house amendment 50812.0103. (meter 922, tape 1, side B)

Senator Taylor seconded the motion.

There is a concern about the \$25 among the agriculture chemical groups. This goes into the herb fund for use with noxious weeds.

Senator Urlacher asked if this is a widespread problem.

Senator Flakoll said no, about 120 products out of 9000.

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Senate Agriculture Committee

Bill/Resolution Number SB 2371

Hearing Date February 3, 2005

Senator Klein said he has a question about why we are even dabbling in this but it seems to help the Agriculture Department keep a handle on it.

The motion passed on a roll call vote 6-0-0.

Senator Klein moved a do pass as amended on SB 2371.

Senator Taylor seconded the motion.

The motion passed on a roll call vote 6-0-0.

Senator Taylor will carry the bill.

FISCAL NOTE
Requested by Legislative Council
03/28/2005

Amendment to: Engrossed
SB 2371

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

There is no fiscal impact from this legislation as currently drafted.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Jeff Weispfenning	Agency:	Agriculture
Phone Number:	328.4758	Date Prepared:	03/29/2005

FISCAL NOTE

Requested by Legislative Council
02/07/2005

Amendment to: SB 2371

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	(\$5,750)	(\$25,875)	(\$5,750)	(\$25,875)
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

There are currently 115 pesticide products that would not be registered as a pesticide as a result of this bill.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The registration fee for pesticides is \$300 per product per biennium. This legislation would reduce the fee to \$25 for certain products and reduce revenue by \$25,875 to the environment and rangeland protection fund (EARP) and \$5,750 to the general fund.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No additional expenditures are expected.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Jeff Weispfenning	Agency:	Agriculture
Phone Number:	328.4758	Date Prepared:	02/08/2005

FISCAL NOTE
Requested by Legislative Council
01/25/2005

Bill/Resolution No.: SB 2371

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	(\$5,750)	(\$28,750)	(\$5,750)	(\$28,750)
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

There are currently 115 pesticide products that would not be registered as a pesticide as a result of this bill.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The registration fee for pesticides is \$300 per product per biennium. This legislation would reduce revenue by \$28,750 to the environment and rangeland protection fund (EARP) and \$5,750 to the general fund.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No additional expenditures are expected.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Jeff Weispfenning	Agency:	Agriculture
Phone Number:	328.4758	Date Prepared:	01/28/2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2371

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 19-18 of the North Dakota Century Code, relating to minimum-risk pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-18 of the North Dakota Century Code is created and enacted as follows:

Minimum-risk pesticide - Certificate of exemption.

1. Section 19-18-03 does not apply to any person who distributes, sells, or offers for sale within this state or delivers for transportation or transports in intrastate commerce or between points within this state through any point outside this state a minimum-risk pesticide exempt from registration under the Insecticide, Fungicide, and Rodenticide Act [Pub. L 100532; 102 Stat. 2654; 7 U.S.C. 136 et seq.], provided the person has obtained a certificate of exemption from the commissioner.
2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
 - a. The name and address of the product's manufacturer or distributor;
 - b. The name and brand name of the product;
 - c. A current label for the product; and
 - d. A twenty-five dollar fee.
3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.
4. A certificate of exemption issued under this section is effective on the date of its issuance and expires on December thirty-first of an odd-numbered year."

Renumber accordingly

Date: 2/3/05
Roll Call Vote # 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2371

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50812.0103

Action Taken Do Pass Amendment

Motion Made By Sen. Klein Seconded By Sen. Taylor

Senators	Yes	No	Senators	Yes	No
Senator Flakoll	✓		Senator Seymour	✓	
Senator Erbele	✓		Senator Taylor	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/3/05
Roll Call Vote # 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2371

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass As Amended

Motion Made By Sen Klein Seconded By Sen Taylor

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Jaffer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2371: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2371 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 19-18 of the North Dakota Century Code, relating to minimum-risk pesticides.

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2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
 - a. The name and address of the product's manufacturer or distributor;
 - b. The name and brand name of the product;
 - c. A current label for the product; and
 - d. A twenty-five dollar fee.
3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.
4. A certificate of exemption issued under this section is effective on the date of its issuance and expires on December thirty-first of an odd-numbered year."

Renumber accordingly

2005 HOUSE AGRICULTURE

SB 2371

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2371

House Agriculture Committee

☐ Conference Committee

Hearing Date 3---03---05

Tape Number	Side A	Side B	Meter #
ONE	A		00.0 TO 18.6
Committee Clerk Signature			

Minutes:

CHAIRMAN NICHOLAS: Committee Members, we will open on SB 2371. SENATOR ANDRIST WILL START THE TESTIMONY.

SENATOR ANDRIST: Crosby, N.D. [[PLEASE READ SENATOR ANDRIST'S TESTIMONY]] I HOPE YOU PASS THE BILL. ANY QUESTIONS?

CHAIRMAN NICHOLAS: Other testimony in favor of bill.

JIM GRAY: PESTICIDE REGISTRATION COORDINATOR FOR THE DEPARTMENT OF ND AGRICULTURE. [[PLEASE READ JIM'S PRINTED TESTIMONY]] JIM URGED A DO PASS ON SB 2371. Chairman Nicholas asked Jim Gray to work with the House Ag. Intern On his amendments.

REPRESENTATIVE FROELICH: Just for clarification . The product lines that these people have created. They are going to be minimal risks.

JIM GRAY: The way the formulations work when we found them did not meet the minimum risks. They were active ingredience that were not on the list that EPA has. We are working to reformulate there products and we are absoultely hoping that we can get to a point where They do meet the standards.

REPRESENTATIVE FROELICH: How many products are created actually produced in the state.

JIM GRAY: At least to my knowledge the only one's that I know of are these two products. Up in Wild Rose N.D.

REPRESENTATIVE FROELICH: The fiscal note on this is by reducing the \$25.00 dollars Is about a \$30,000.00 dollar hit. If we put this in there said well the products produced in the state is going to charge \$350.00 fee but we would give a reduction in ND down to \$25.00 dollars Is that feasable.

JIM GRAY: Are we talking minimum risk price. We do have conventional pesticides We could modify the law law to make it legal. I am not a lawyer, Commerce law. Is it fair to offer to offer an exemmption of \$25.00 to a ND citizen.

REPRESENTATIVE FROELICH: They are charaged the fee and then they can write in and get a refund of the payment they made as to license. This is according to ND law.

JIM: I don't know.

CHAIRMAN NICHOLAS: One question I have did this bill end up over in appropriations. Sen. Andrist did this bill go to appropriations on the Senate side.

SENATOR ANDRIST: We expected it to and we were going to put the amendments on In appropriations and they just ran it through without re-referral.

JIM The reason it did not go to appropriations is that the fiscal note is under \$50,000.00 dollars. That is why it never made it to appropriataions.

REPRESENTATIVE MUELLER: The amendments that you are suggesting. They do not clean up things for other perposes.

JIM All that would do is cleaarly define the odd numbers of the year that it they would expire. The proposed amendments to the engrossed bill is on page one, after line 21 insert '4' Each certificate of exemption from registration covers a designated ltwo-year period beginning on January first of every even -numbered year and expiring December thirty-first of the following year.

REPRESENTATIVE MUELLER: The amendments that you aare suggesting they aare not connected to senate bill. It is a clean up for other purposes.

JIM: All that would do is clearly define which odd numbers. See Above as to amendment.

REPRESENTATIVE MUELLER Will that be consistent with other registrations.

JIM: YES. That is the intent so that each pesticide that is offered for sale in ND Every two years would have to be registered.

CHAIRMAN NICHOLAS: Any other questions from Jim.

Any more testimony in favor of bill. Any opposition.

CHAIR CLOSED ON SB 2371.

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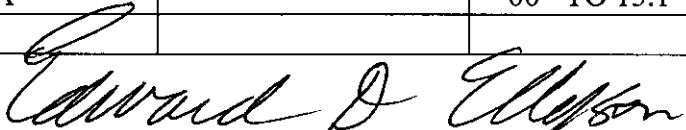
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2371 2ND HEARING

House Agriculture Committee

☐ Conference Committee

Hearing Date 3---03---05

Tape Number	Side A	Side B	Meter #
ONE		B	33 TO END
TWO	A		00 TO 13.1
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: "REOPENED THE HEARING ON SB 2371. Committee Members what are your wishes on SB 2371'S AMENDMENTS THAT WERE PROPOSED.

JIM GRAY FROM THE DEPARTMENT OF AGRICULTURE IS OFFERING THESE AMENDMENTS.

REPRESENTATIVE HEADLAND MOVED ON THE AMENDMENTS.

REPRESENTATIVE BOE SECONDED MOTION.

REPRESENTATIVE MUELLER: There were actually two variations on that amendment if I remember testimony and written stuff. Is this the one you prefer.

CHAIRMAN NICHOLAS: O.K. ALL THOSE IN FAVOR OF PROPOSED AMENDMENTS TO 2371 SIGNIFY BY SAYING YES. OPPOSED

O.K. THE CHAIR WILL ENTERTAIN A MOTION ON SB 2371 AS AMENDED.

REPRESENTATIVE HEADLAND MOVED FOR A DO PASS AS AMENDED.

REPRESENTATIVE BRANDENBURG: SECONDED THE MOTION.

Any further discussion Committee Members.

REPRESENTATIVE FROELICH: Mr Chairman, looking at this fiscal note on this bill.

The state is going to take a thirty thousand dollar hit for one individual. I have a hard time Swallowing it. I am not going to vote for the bill.

CHAIRMAN NICHOLAS: Representative Kingsbury. Where dose it show the chemicals.

CHAIRMAN NICHOLAS: Each one of those chemicals there is a registration fee that is paid on those chemicals. Obviously if you drop those chemicals from the registered chemicals That fee is going to go away. Does anyone have a different understanding of that.?

VICE CHAIR WOMAN KINGS BURY: Questions chemicals as to fees.

CHAIR MAN NICHOLAS: This is what it says. The registration fee for pesticideds is three hundred per product. This legislation will reduce that fee to twenty five dollars. Reduce revenue 25,000.00 -----\$875.00 to environment range land and which is know as EPA And fifty seven fifty to the general fund.

REPRESENTATIVE HEADLAND: There is no way around it. I don't know how we can pass this bill. There is no way. I can't vote for bill with fiscal note attached. We have one individual

REPRESENTATIVE BOE. If this was revenue neutral.

CHAIRMAN NICHOLAS: We can vote on the bill. We can hold the bill.

REPRESENTATIVE KINGSBURY: I have a problem with the fiscal note. If she was not making it. If there was a chemical in her product.

REPRESENTATIVE BOE: The way I understand it, we are dropping every chemical that is on the minimum risk now. So it is not just her it is everyone else who has been paying.

Is that right.

JEFF OLSON: The fiscal note was based on \$300.00 registration fee. Right now the registration fee is \$350.00 per product. There is a sunset in this biennium. In the Ag. Dept. Budget we have proposed and it has gone through the house and into the senate with extending that sunset for another biennium. So it keeps the \$350.00 per product. This exemption will effect 115 products that we are currently collecting registration fee's from. And we would collect \$25.00 instead of the \$350.00. Based on \$300.00 because the bill has not been approved. We are actually losing \$325.00 per product of 115 products. To the EPA FUND AND THE GENERAL FUND. Of the registration fee's \$50.00 goes to general fund and the remainder goes to ERP FUND. That is how the fiscal note was developed.

REPRESENTATIVE DAMSCHEN: Is there no way to separate the products from what she is making.?

JEFF: The definition of pesticides is a product that midgets a pest whether it is organic or Inorganic product. The product that Dakota -FREE-? Produces is formulated dose midget a pest. Under EPA 'S definition it is a pesticide. The ingredient that EPA has determined that our minimum risk both the major ingredient and the nur-----ingredient. They feel that it is not a risk to the human. At all, so they are not requiring it at all but they are leaving it up To the states to insure that these products meet there guidelines for exemption. It is still by definition a pesticide. The makers of Dakota Free are very adamant that it is not called a pesticide. She claims it will hurt her business. But there is really no way because it dose repel In definition of state and federal law. It is still classified as a pesticide. It is a minimum risk.

Minimum risk means that there has not been any laboratory tests done to determine whether the has been any impact done to eyes etc. That other products must do to get registered. By EPA And state of ND so you can't say that there are no risks. If you get this lotion in your eyes it is going to sting and burn and we don't know long term effects. We don't believe if it is used properly it will have long term effects. Getting around calling it a pesticide and we tackled that Idea and because of the Fed. Law in this definition there is no way to get about it but we would Hope if this bill passes thorough what we will do on our data base is that we will have a separate Category for minimal risk pesticides. It will not be in a pesticide data base but in a minimal risk data base. She is worried because of open records possibility that some of her clients Could come in and request information and we would tell them it is minimal risk pesticide And she is afraid we mention pesticide where it is minimal or not she will loose clients. And it is just one individual in the state that has an issue with this process which generated this particular bill. We have not had complaints from manufacturing from outside of the state.

CHAIRMAN NICHOLAS: Explain what this individual has.

JEFF: This lady from my understanding has not been out of her house for a long time and that is why she is adamant about the terms pesticide be attached to her product. That is the back ground on the person that makes the product. {{{clerk was changing tape when Jeff explained to committee what was wrong with the lady. In notes I recall her children have to take a bath When they get home before they can go into an area where there mother is because of her inability to cope with some of the gems etc. They would bring in.

REPRESENTATIVE MUELLER: We have a difference of \$25.00 dollars here and we have a minimum risk pesticide category for and we are going to start doing that now?

JEFF: That is correct.

REPRESENTATIVE MUELLER: So how did we arrive at \$25.00 dollars verses what we
We have generally been doing at \$350.00.

JEFF: The reason is this \$25.00 is initially because the individual from Dakota Free did not
want it be classified as a pesticide the initial bill drafted by Sen. Andrist was there would be no
registration of this product. On the \$25.00 actually covers our processing fee. And allows us
to review the data associated with that product to make sure that it meets the guidelines that EPA
has out front. We do have the front end as Jim was saying in his testimony instead of having
My inspectors, I have six of them around the state, we have train very intensively and on going
Each individual to identify and know all minimal risks ingredients. The \$25.00 dollars was
actually inserted. Because of our costs so we can review it in the office and we would issue an
exemption certificate instead of a registration. If they receive an exemption certificate then my
inspectors know that it has gone through review and has been approved by the department
As meeting the requirements of EPA as minimal risks. The 25 dollars is our cost for reviewing,
And actually be exempt from any registration fee. So you would not get the \$350.00 but they
would pay the \$25.00.

REPRESENTATIVE MUELLER: But it could be \$350.00

JEFF: You could vote to change the \$25.00 to \$350.00 or related to the registration fee or what
ever it is going to be. Right now it is \$350.00 it could change in our budget bill it could be
\$300.00. You can put language in like that. That they would still have to pay the same cost
As a registered product.

CHAIRMAN NICHOLAS: Rep. Uglem.

Are all the other products that would fit into this category coming from out of state?

Are there some other ND residents producing products.

JEFF: We had one other product that was being produced up in Tioga area. The ingredients of that product did not make the 25 D list. There is a person that is presently going through the EPA

To get a product registered.

She wants to sell it in other states also. The problem with Dakota Free Products even if we pass the legislation in front of you dose not guarantee that she can sell it in another state. Each state pesticides laws are different. Of 50 states 32 require registration of 25D products. Minimal risk products. So in order for her to sell her products in another state she still has to register in that State as a pesticide. Or just not market in those states. This bill would only allow her Exemption in the state of ND but have to fight those same battles in other states.

CHAIRMAN NICHOLAS: Jeff do you see any further amendments? That could bed attached that would allow her to do what she wants to do without costing the state \$30,000.00.

JEFF: This is the best we could do under the law's of EPA

No we don't expect more amendments.

CHAIRMAN NICHOLAS:

REP. BOE: What would happen if we went to the \$300.00 fee. What is that going to do for this gal. What is it going to cost her.

JEFF: She has to pay \$300.00 for each product that she markets. Minimal risk products.

CHAIRMAN NICHOLAS: How much business is she doing.

JEFF: No I do not. She goes to holiday show cases. Her husband goes she dose not attend.

VICE CHAIR WOMAN KINGSBURY: These other 115 pesticide products would automatically go off this list because of this bill. These folks making these products are going to have a great reduction then in there registration fee.

JEFF: Correct they will only have to pay the twenty five dollars. The same as Dakota Free

VICE CHAIR WOMAN KINGSBURY: Why the drop all the way down to \$25.00.

If these other people with these products were already paying \$300.00 for each of there products. Why?

JEFF: Our original draft had one hundred dollars administrative fee. Sen. Andrist was very irate and uncomfortable with that. His satisfaction was with the twenty five dollar fee.

REPRESENTATIVE ONSTAD: How many products dose she have.

JEFF: Two that I know of. Neither meets the minimum risk.

She is in process of reformulating. She had a product on the market that did not meet the requirements and it was taken off the shelf.

CHAIRMAN NICHOLAS: Everyone have questions answered.

O.K we have a motion for a DO PASS AS AMENDED

REP MUELLER Was the motion on the amendments. Have we voted on the amendments.

CHAIRMAN NICHOLAS: We moved the amendments and had a voice vote.

IF YOU WOULD LIKE ME TO HOLD THIS BILL. IF YOU WANT MORE TIME ON THIS I WILL. IF WE CAN DO A FIX ON IT I CERTAINLY WILL HOLD IT.

REPRESENTATIVE MUELLER: WE ARE KIND OF GIVING A WALK TO 114 PESTICIDE PRODUCERS OUT OF STATE. TO THE TUNE OF \$325.00 PER PERSON. DO WE WANT TO DO THAT.

Page 8

House Agriculture Committee

Bill/Resolution Number SB 2371

Hearing Date 3---03----05

**CHAIRMAN NICHOLAS: COMMITTEE MEMBERS WHAT I AM GOING TO DO IS
ASK THE AMENDMENT MOVERS TO WITH DRAW. AND I AM GING TO
APPOINT A SUB-COMMITTEE WITH VICE CHAIR WOMAN KINGSBURY AS
CHAIR WOMAN AND REP. WALL AND REP. MUELLER AND I HOPE YOU CAN
COME BACK WITH A SOLUTION FOR THE COMMITTEE. WE WILL SEE IF
WE CAN SAVE THE STATE TWENTY SOME THOUSAND DOLLARS.
WE WILL CLOSE ON SB 2371**

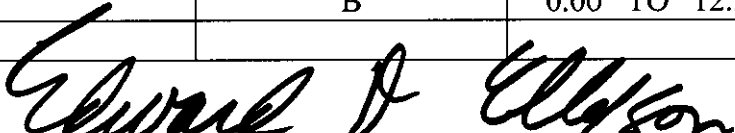
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2371

House Agriculture Committee

☐ Conference Committee

Hearing Date 3---17---05

Tape Number	Side A	Side B	Meter #
ONE	A		44.8 TO 53.1
ONE		B	0.00 TO 12.5
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: Committee Members, we will open on SB 2371.

SENATOR ANDRIST: PRIME SPONSOR OF SB 2371. RELATING TO MINIMUM-RISK PESTICIDES. [[[PLEASE SEE AMENDMENTS AS TO SENATOR ANDRISTS]]]

TESTIMONY.]]] This amendment will make revenue neutral and that is what this amendment will do. The amendment also clarifies registration.

REPRESENTATIVE KINGSBURY: When you think of 115 current registrants that include the minimum risk criteria. In minimum risk they still have some chemical in them, do they not.

SEN ANDRIST: Not really. Everything has a chemical I guess. This would have to have a formulation of chemicals that are considered harmless. In the case of the person that I presented this bill for, she estimates that a couple of minor changes to her formulation in order to make sure that every thing that is in it is on her statement. She asked all the customers to take it off the counter. It was not a real hard ship because the bug season was about over.

CHAIRMAN NIOCHOLAS: But if she had paid the fee, she would have been able to keep
Her product on the market, right?

SEN. ANDRIST: Yes

CHAIR: The fee is only \$300.00 bucks. Obviously she was not moving many products.

SEN ANDRIST: You pay \$350.00 for the license regardless of how much you move.

Her biggest concern was that she was going to be on a list that all the other states started picking
up on to. Her biggest concern is that she would have to register as a pesticide.

There are 115 out of state registrants. Really these 115 products should not be registered. That is
the point that I would like to make to you. As the bill stands it is only a \$37,000.00 dollar
impact. And that is if we keep the registration fee at \$350.00. There was a proposal to
To reduce the fee to \$300.00 at the end of this biennium. I think there is a bill in the Dept. Of
Agr. Appropriations bill there is a provision that I think will pass which would extend that dead
line. Keeping it at \$350.00 for at least another biennium. Then the intent is to reword the
whole thing and look at the fee schedule so you might have a totally different bill. One reason
this bill would be really important right now is that -----? Would be in the mix and
these people would not be receiving that income and they could look at from the total amount
the wanted to collect from this registration fee. You guys know better then me where all the
ERP funds go.

REPRESENTATIVE ONSTAD: If she had paid the fee, she would then be registered as a
pesticide. OK so if it registered as a pesticide. She did not think she could sell it or.

SENATOR ANDRIST: The fee was secondary for her, the big concern was being forced to
register as a pesticide. Most of this product was sold to people that where chemically sensitive

Or they are very strong environmental people. They want the assurance that it is not a pesticide.

The public looks at pesticides different then the Ag. Dept.

CHAIRMAN NICHOLAS: Jeff can you clarify that. Is it or isn't.

JEFF OLSON: Whether or not they pay the fee dose not make it a pesticide. If all the ingredient, the active and the inert, are on the EPA LIST of minimum risk ingredient then all they have to do is register with the state of North Dakota. If the ingredient Do not all fall in that list then it has to be registered with EPA prior to being registered in N.D. Then we have to go through legislation process with EPA if the ingredient do not fall with in that minimum risk category. This particular product in order to get registered in N.D. Must first be registered at EPA and then she applies for registration in N.D. At this particular time this product must first be registered with EPA and then you apply for registration in ND .

CHAIR: So in other words EPA is saying there are minimum risks products here but they could give the wavier the exemption and they could register it for her for \$350.00 bucks.

JEFF: That is correct. If EPA DOSE NOT LOOK AT PRODUCTS THAT CLAIM TO MINIMUM RISKS. THEY REFER THAT TO THE STATES .TO REVIEW. We look at it as to the list that the EPA has provided then the state registers it as a minimum risk product. It is assumed there is minimum risk but they have never been any test to see effect on eyes, etc.

HEADLAND: If we change on page 1 line 19 D. A twenty five dollar fee. To \$350.00 fee then this fiscal note goes away and she accomplishes everything she wants, right.

JEFF: She still has to reformulate her product cause right now it dose not meet the minimum risk requirements. Right now she has an unregistered pesticide because it is not minimum risk And it needs to be registered with the EPA.

SEN ANDRIST: She is in process of reformulating her product. She only estimates a couple of minor changes. Then she is exempt from EPA registration. Then these other 115 products are also exempt from EPA because they are minimum risk.

CHAIR: So then if she took these two ingredient out then it does not have to go to EPA. It can go to the Ag. Dept. And she can pay the \$325.00 fee and it will be all over.

JEFF: The fee is going down to \$300.00 with a sunset clause.

SEN. ANDRIST: She is not just concerned with the fee. She thinks her reputation will be hurt. She will probably just take it off the market.

She sells it as a mesquite repellent.

REPRESENTATIVE KINGSBURY: If it repels something, then it does fall under the category of a pesticide. Therefore being it is minimum risk pesticide seems to be ok. I would think if she wants to market a product that does repel insects.

SEN. ANDRIST: What the law addresses is not whether it repels or whether it, it is whether you make the claim that it repels.

CHAIRMAN NICHOLAS: What is really being said here -----? And is not registered then she can market the product.

SENATOR ANDRIST: There is no draft of the bill. If it is made out of ingredients that are on the EPA safe list it is exempt from registration. This seems like the fair solution to the resolution. But with the accommodation of the Dept. Of Agr. They wanted to still track these products. They hoghoused the bill in the senate to accommodate them they still have to register

Agriculture can get \$25.00 bucks for there work and they can tell they are all inspected. These 42 products are exempt from registration. The field inspectors have to have a chemical analysis kit when then go out to check hardware stores etc.

CHAIRMAN NICHOLAS: O.K. REPRESENTATIVE BELTER.

REPRESENTATIVE BELTER: You have probably told us this several times but I have to ask again what this law will do then this person will not have to send there product to EPA

It will only have to be registered with the department and they will get that for \$25.00 dollars

SEN ANDRIST: They will get the \$25.00 and then they will be classified as a minimum risk.

She really did not really like this but to accommodation to the department of Agriculture she want it to be known as a safe product.

REPRESENTATIVE BALTER: It is my understanding that that the Agriculture Department is comfortable with this.

SEN ANDRIST: I worked with very closely with the Ag Dept. And they were accommodating With this. They were supportive with it. Mr. Gray testified before the house and senate committees in support of the bill.

CHAIRMAN NICHOLAS: Rep. Damschen.

REPRESENTATIVE DAMSCHEN: It is my understanding that the only way that they Or will be a negative fiscal impact even with this engrossment is if the other companies chose to file for the exemption.

SEN. ANDRIST: Mr. Gray said that he thought compelled to tell them and explain the changes in the law. He did not where they would want to go to he trouble to file or not. He felt that a lot of these 115 would not even bother.

CHAIRMAN NICHOLAS: Rep. Wall.

REPRESENTATIVE WALL: Will this bill change in any way this persons ability to market other states or will she have to meet the EPA requirements in another state etc.

SEN ANDDRIST: She will still be exempt from EPA because all of her ingredients are minimum risk. She has concerns that other states might pick up on it. She thinks that the \$350.00 in N.D will trigger other states to raise there registration fee's. This would probably make it economically unfeasible for her. It is not the money so much but she wants to be able to tell people it is not a pesticide.

CHAIRMAN NICHOLAS: Committee Members, I think what I am going to do is hold this for another week. We have time and I am going to visit with our friends in the Agriculture Department. See if some way we can figure this out for you Senator. We will reconvene on this next Thursday. I am going to hold the bill. It may not be fixable. Our concern is we are spending \$27,000.00 and I don't know how much business this lady has.

CHAIRMAN NICHOLAS CLOSED ON SB 2371.

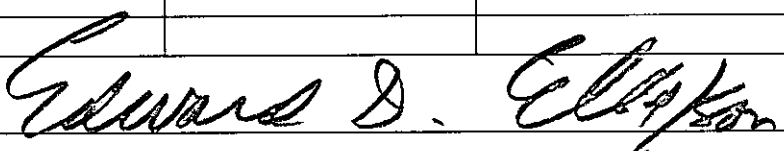
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2371

House Agriculture Committee

☐ Conference Committee

Hearing Date 3---24---05

Tape Number	Side A	Side B	Meter #
ONE		B	16.4 TO END
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: O.K. COMMITTEE MEMBERS WE WILL RE-OPEN ON SB 2371. SENATOR ANDRIST'S BILL. SB 2371 IS RELATING TO MINIMUM RISK PESTICIDES. WE VISITED ABOUT THIS BILL PREVIOUSLY. THERE ARE A COUPLE OF AVENUES WE CAN TAKE. ONE IS WE CAN INCREASE THE FEE TO \$355.00 DOLLARS AND ELIMINATE THOSE FEES ON THOSE CHEMICALS AND THEN WE COULD BASICALLY MAKE THE BILL REVENUE NATURAL. THE MANUFACTURER OF THE PRODUCTS TALKED ABOUT IN THIS BILL IS "DAKOTA FREE"

CHAIRMAN NICHOLAS: JIM: Explain those two avenues that we have discussed here
One is the fee and the other proposal that you put forward for us.

JIM GRAY: PESTICIDE REGISTRATION COORDINATOR. N.D. DEPT. OF AG.

[[[PLEASE READ JIM GRAYS PRINTED TESTIMONY]]].

For those of you who were not here at the last hearing of this bill. We were talking
What the EPA has classified as minimum risk pesticides. Section 25 of FIFRA
Exempts certain minimum risk pesticides from Federal Registration. They may contain
One or all of the 31 different ingredients that EPA deemed to be minimum risk. A whole
bunch of other pesticides, solublizers other products too. So what we are talking about is
one manufacture from Wild Rose, ND who makes a product. It is a pesticidal product
It repels insects. She is concerned about the impact to her market place of her product
Being registered as a pesticide under state law. We are talking about creating a system
Where by her products would not have to be registered under state law. The Engrossed
version we created it as an application system where by minimum risk manufactures
could submit an application into the Dept. Of Ag. And they could issue them an
exemption from registration. So right now, the engrossed bill basically says that all
Pesticides sold in N.D. Need to be registered or exempted from registration Pesticides that
are characterized as minimum risk pesticides under FIFRA 25 [B] can be exempted
Therefore, a "natural insect repellent" that met the criteria of FIFRA 25 [B] could be
exempted. If it did not meet the criteria of FIFRA 25 [B] it would still need to be
registered with EPA, regardless of us adding an exclusion to state pesticide restoration
Requirements.

If there is a fiscal note that is a legislative concern, not the Department concern. We talked
about several options. In the last version of the bill the fee for getting an exemption is only
\$25.00 dollars. The fee for getting a pesticide registration is \$350.00 dollars so the fiscal

Impact is roughly \$30,000.00 dollars. What if we raised that fee to get an exemption To \$350.00 dollars. So it is the same charge whether you get a exemption from registration or a full registration. The bill becomes fiscal neutral. The other option We have about 9,000 pesticides registered in N.D. What if we simply raise the registration fee on those 9,000 products five dollars and it will be enough to cover the fiscal impact. That is the way I understand it.

CHAIRMAN NICHOLAS: O.K. Explain, the product that the folks were making there were several different ingredients in that product. So they would just have to pay one \$350.00 dollar registration fee and all of those ingredients they would not have to pay a separate

fee for each product.

JIM GRAY: With minimum risk products the active ingredients that are allowed Is 31 ingredients that are allowed that are considered minimum risk. These are things like castor oil, hot pepper and soybean oil etc.

Things along those lines. The manufacture in Wild Rose had to separate formulations. One is a jell and one a liquid. The liquid had more water in it other wise the formulation is he same.

CHAIRMAN NICHOLAS: So for those two products they pay just the one registration.

JIM GRAY: No they pay \$350.00 per product. There are two separate products.

They are sold as two separate products. She, I think, has five ingredients that she classifies as active ingredients. So her products would be to different formulations. Made with five active ingredients.

CHAIRMAN NICHOLAS: I was of the assumption that one fee would be for both products.

CHAIRMAN NICHOLAS: Representative Onstad.

REPRESENTATIVE ONSTAD: That enterprise now is just selling a lotion but they are still selling proudest?

JIM GRAY: Lets back up a little. The first two formulations that she was marketing The jell and the liquid were not in compliance with the federal minimum risk standards. They did not meet the criteria from being exempt for EPA REGISTRATION. First it was a voluntary recall of her products. Which she did. The second option was to reformulate Those products with ingredients that do meet the criteria. Which she is working on. The third option we gave her was to remove all pesticidal claims from her lotions. If you are not claiming on the ingredients that there is a pesticide. It is not a pesticide. She is selling her product as a lotion. She has complied with pesticide law.

REPRESENTATIVE KINGSBURY: O.K. Now they contain the same ingredients She is selling them as a lotion. Is that legal?

JIM GRAY: It is legal. The reason she dose not have to meet that standard is they are not pesticides. She is making no claims on her advertising or her packaging that the Lotion repel insects. They don't have to be registered as pesticides.

REPRESENTATIVE BELTER: My question is, She is selling a lotion that is suppose to repel insects but she can't advertise it as a insect repellent so what dose she advertise it as.?

JIM GRAY: She is advertising it as a lotion. As soon as you claim it as a repellent it

Has to be registered as a pesticide.

CHAIRMAN NICHOLAS: So she will now be able to market this as a minimum risk Pesticide the way the bill says.

JIM GRAY: She could submit an application as soon as she gets here formulation.

REPRESENTATIVE BELTER: I am confused. She is just selling a lotion that dose nothing.

JIM GRAY: Correct, but as soon as she starts making claims on her advertising label That it repels insects it has to be registered as a pesticide.

DAMASCENE: Could she just register it as a pesticide alternative?

JIM GRAY: I would have to look and see what the labeling is.

I'd have to look at the Federal statues.

REPRESENTATIVE FROELICH: Is she selling in different states.

JIM GRAY: My understanding is that she was selling in nine different states.

Again, when we first made contact with her she was not compliant with Federal Laws.

And state laws. Her product did not meet that minimum risk standard. She was technically in violation of federal law and depending upon which state she sold in she would be in violation of state law. If she formulates her product with ingredients to meet this minimum risk standards and we pass this bill to exempt from other states Registration law. I think there is 38 states that still require registration from minimum risk products under state law. So she could be in violation depending on the state. She is selling it in.

REPRESENTATIVE MUELLER: Is it not true though that those 38 states uses the criteria are we doing in this state seeing how it is manufactured in this state.

JIM GRAY: No They would look at there standard as to what there state statue tells them that they have to follow. Even if we gave it a green light in North Dakota There is no relevance in South Dakota.

CHAIRMAN NICHOLAS: Committee Members, we are going to hear from Sen. Andrist and Representative Skarphol if they want to make any comments to address the committee on this because this is a problem from there district. We are certainly here to accommodate.

SENATOR ANDRIST: DIST. 2 I do appreciate your indulgence in trying to create this When you expressed making it revenue neutral I thought we could just add five dollars And exempt all 115 products that don't deserve to be registered. The question is could the person at Dakota Free pay the seven hundred dollars. She would say, don't kill the bill. If that has to be, leave it on the table. The concern has not been the money so much as the fact that being made to register a product that is safe enough to eat. From her aspect if she should pay seven hundred dollars for a safe product, others could pay a dollar a piece and make it up. If you exempt all 115 products of minimal risk would Simple by pay just an extra \$5.00 dollars. We have several alternatives.

CHAIRMAN NICHOLAS: We appreciate that Sen. Andrist. We will figure out a Solution.

REPRESENTATIVE BOB SKARPHOL: DIST 2. The real issue for Dakota Free is

The word pesticides. That is the real issue. When there are customers out there that are looking for an alternative and they see the word pesticide they immediately move on. That is the real issue. The dollars are not the issue like Sen. Andrist said. There is a unique market out there for people who want to have alternative pesticides. They don't give any consideration to things reference that so they just move on and try to find other things. I agree with Sen. Andrist that there seems to be something wrong when you have to register something when it could be eaten. I can't imagine there is not a way to resolve that issue.

CHAIRMAN NICHOLAS: Do you have answer as to how to resolve that issue.
We can make quick work of this bill.

JIM GRAY: First of all if meeting the minimum standard then EPA would not regulate that. What is happening here is state law. There are some states that that do have a sliding scale on registration fees based on written category of a product in the amount -----? But there fee is based on a -----?scale. We could do that.

Probably not in the time remaining in this legislative session but we could do that.

Like I said in my testimony we do have other things to regulate then products. I think what we are here today is how to resolve this fiscal impact so we don't have to take a \$30,000.00 hit on the ERP FUND. The last thing that I would say and I introduced Some language to the Chairman this morning. Sub Section 4. I would recommend that we clarify that to make it the designated two year period for the registration just like we do with our pesticide registration.

CHAIRMAN NICHOLAS: That amendment has been passed out.

REPRESENTATIVE SKARPHOL: If the only issue for the department is the fiscal impact and they can resolve the issue with regard to having her be classified in some other category I think it would be potentially profitable for the state to do this because the volume of business that can be created by this company and other companies may more then off set the \$30,000.00 dollars. I think it is a risk that we should consider. Like I said the developing market out there with pesticide and chemical free alternatives is going to become overwhelming.

CHAIRMAN NICHOLAS: What I think we will put these two amendments on 2371 It is the only bill we have left. It looks like we can come up with a way of making these minimum risks products out of the Ag. Dept. Will work with these people. They will pay approximately a \$350.00 registration fee and I think Sen. Andrist is smiling so I think we are close to what he wants. This way we will not take a \$30,000.00 hit to the ERP FUND. I think that is significant. I am going to pass out these amendments. Both.

The one amendment is from the Ag. Dept. And Jim, you have worked with both amendments would you explain them to the committee..

JIM GRAY: EXPLAINED THE AMENDMENTS [[[PLEASE READ THE ATTACHED AMENDMENTS]]]

CHAIRMAN NICHOLAS: Any questions committee members.

THE CHAIR WILL ENTERTAIN A MOTION ON AMENDMENTS

REPRESENTATIVE KINGSBURY MOVED ON THE AMENDMENTS. # 0204 & 0200

REPRESENTATIVE MUELLER: SECONDED THE MOTION.

IS THERE ANY FURTHER DISCUSSION? ALL THOSE IN FAVOR SAY YA'S

Page 9

House Agriculture Committee

Bill/Resolution Number **SB 2371**

DATE: 3--24--05

YA'S CARRIED.

O.K. THE CHAIR WILL ENTERTAIN A MOTION ON SB 2371 AS AMENDED.

REPRESENTATIVE BELTER MADE A MOTION FOR A DO PASS

REPRESENTATIVE BRANDENBURG: SECONDED THE MOTION.

THE ROLL WAS TAKEN: THERE WERE 12 YES 0 NO 1 ABSENT

REPRESENTATIVE WALL CARRIED THE BILL

CHAIRMAN NICHOLAS CLOSED ON SB 2371

March 9, 2005

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2371

Page 1, line 2, after "pesticides" insert "; to amend and reenact section 19-18-04 of the North Dakota Century Code, relating to pesticide registration fees; and to declare an emergency"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04. (Effective through June 30, ~~2005~~ 2007) Registration - Fees.

1. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:
 - a. Give the name and address of each manufacturer or distributor.
 - b. Give the name and brand of each product to be registered.
 - c. Be accompanied by a current label of each product to be registered.
 - d. Be accompanied by a registration fee of three hundred ~~fifty~~ fifty-five dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
 - e. Be accompanied by a material safety data sheet for each product to be registered.
2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.
3. Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

(Effective July 1, 2005 2007) Registration - Fees. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product to be registered.
3. Be accompanied by a current label of each product to be registered.
4. Be accompanied by a registration fee of three hundred five dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
5. Be accompanied by a material safety data sheet for each product to be registered.

The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.

Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section."

Page 1, line 22, replace "A" with "Each" and replace "is effective on the date of its" with "covers a designated two-year period beginning January first of each even-numbered year and ending"

Page 1, line 23, remove "issuance and expires" and replace "an odd-numbered" with "the following"

Page 1, after line 23, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2371

Page 1, replace lines 14 through 21 with:

- "2. The minimum risk certificate of exemption is available without fee for personal care products containing any of the following active ingredients:
- a. Clove oil;
 - b. Geranium oil;
 - c. Mint oil;
 - d. Rosemary oil; or
 - e. Soybean oil."

Page 1, line 22, replace "4." with "3."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2371

Page 1, line 19, remove "twenty-five dollar" and after "fee" insert "equal in amount to the fee set under section 19-18-04 for the registration of a pesticide"

Renumber accordingly

SB 2371

3-24-05

Date:

Roll Call Vote #:

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

House HOUSE AGRICULTURE COMMITTEE

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

MOVE Amendment

Action Taken

Motion Made By

Kingsbury

Seconded By

Mueller

Representatives	Yes	No	Representatives	Yes	No
REP. EUGENE NICHOLAS CHAIRMAN			REP. TRACY BOE		
REP. JOYCE KINGSBURY VICE CHAIRMAN			REP. ROD FROELICH		
REP. WESLEY BELTER			REP. PHILLIP MUELLER		
REP. M. BRANDENBURG			REP. KENTON ONSTAD		
REP. CHUCK DAMSCHEN					
REP. CHAIG HEADLAND					
REP. GARY KREIDT					
REP. GERALD UGLEM					
REP. JOHN WALL					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

SB 2371

3-24-05

Date:
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HOUSE AGRICULTURE COMMITTEE

Committee

☐ Check here for Conference Committee

0204

Legislative Council Amendment Number

As Amended 9200

Action Taken

DO PASS

Motion Made By

BELTER

Seconded By

BRANDENBURG

Representatives	Yes	No	Representatives	Yes	No
REP. EUGENE NICHOLAS CHAIRMAN	✓		REP. TRACY BOE	✓	
REP. JOYCE KINGSBURY VICE CHAIRMAN	✓		REP. ROD FROELICH	✓	
REP. WESLEY BELTER	✓		REP. PHILLIP MUELLER	✓	
REP. M. BRANDENBURG	✓		REP. KENTON ONSTAD	✓	
REP. CHUCK DAMSCHEN	✓				
REP. CHAIG HEADLAND	✓				
REP. GARY KREIDT					
REP. GERALD UGLEM	✓				
REP. JOHN WALL	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment WALL

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2371, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2371 was placed on the Sixth order on the calendar.

Page 1, line 19, remove "twenty-five dollar" and after "fee" insert "equal in amount to the fee set under section 19-18-04 for the registration of a pesticide"

Page 1, replace lines 22 and 23 with:

- "4. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year."

Renumber accordingly

2005 TESTIMONY

SB 2371

Same
given
to Howard

Senate Bill 2371 -- Senate Agriculture Committee -- February 3, 9:00 a.m.

I'm Senator John Andrist of Crosby.

In July, 1994, Chris Gillund of Wildrose opened a bag of decorative wood chips to sprinkle around her farm yard plantings. The odor struck her down immediately and her life was altered forever.

She was stricken with some kind of auto immune disease that left her in a state of near paralysis for more than a year. She still doesn't remember much about the first 18 months in which she was bedridden. It was 3 years before she could do any household chores.

"I always say that my body has a "hypersensitivity to neuro-toxic chemicals", that these chemicals trigger autoimmunity and other health problems for me. The real diagnosis list sounds scarier.

"If I am successful in avoiding the chemicals that trigger these reactions, I'm not sure about my prognosis. If I'm careless, I face increasing poor health with multiple organ failure from autoimmunity and continued damage to my brain. This health problem is shared by a growing number of people across the globe, but is poorly understood at the moment. There is a recognition that the problem is real. There is more research surfacing all the time, there is evidence of the damage done to the brain, immune system and liver, but little evidence of what may be the actual cause of the problem or an effective treatment. I have plenty of hope however, because of my faith in God and because of the history of medicine. Many mysterious appearing illnesses have eventually been identified and effective treatments (even a few cures) have been found. I guess I wait patiently until the science catches up with this problem of mine.

For nearly 15 years she has been confined to her farm home. All fragrances have been removed. The carpeting is gone. Her children have to shower when they come home from school, before she can have a hug. She has to keep safe distance from any visitors, and visiting vehicles must be parked down wind to protect her from exhaust fumes.

Unable to work as a registered nurse, she first did a lot of research on the disease, then later decided to try market what they had learned about chemical sensitivity. They started a company called "In the Potter's Hand" December 20, 2000, partly to help them cope. They have developed a line of products that are safe for people with extreme chemical sensitivity. The products, marketed under the trade name "Dakota Free" are now distributed in 9 states and are helping to put some bread on the family table -- with the promise of an even greater potential.

The roadblock that has gotten in their way is state law which requires any product designed to repel insects to be registered as a pesticide.

#2371, as drafted, simply says products that are judged to be perfectly safe by the EPA do not need to be registered as a pesticide.

This approach presented some mechanical problems for the Department of Agriculture, which now registers 115 products in the "minimum risk" category.

They have worked patiently with me to draft the attached hog house amendment. It's not perfect, from my perspective and from the viewpoint of Jerry and Chris Gillund, because their perfectly safe product will still be called a "Minimum Risk Pesticide". But it will work, and I'll let the department explain why they believe it is important.

Once in a while an opportunity comes along to do something very important and very good for somebody who is very deserving. Thank you for helping me to make this good piece of legislation become reality.

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

Testimony of Jim Gray
Pesticide Registration Coordinator
Senate Bill 2371
Senate Agriculture Committee
Roosevelt Park Room
February 3, 2005

Chairman Flakoll and members of the committee, I am Jim Gray, Pesticide Registration

Coordinator with the North Dakota Department of Agriculture. I am here to provide testimony in support of SB 2371 as amended, a bill that amends Chapter 19-18 of the North Dakota Century Code (N.D.C.C.) to exempt minimum risk pesticides from registration with the North Dakota Agriculture Commissioner.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires the registration of all pesticides with the U.S. Environmental Protection Agency (EPA) prior to their distribution, sale, or offering for sale in the United States. However, FIFRA Section 25(b) also exempts certain pesticides from registration, most notably those that are characterized as minimum risk pesticides.

Minimum risk pesticides exempt from EPA registration under FIFRA Section 25(b) contain minimum risk active ingredients such as citronella, mint oil, garlic, and similar substances.

These products can also contain inert ingredients which EPA has classified as minimal risk, commonly called List 4A inerts. Please refer to the enclosed EPA notice Pesticide Registration (PR) notice 2000-6 and the most current list of 4A minimal risk inerts for a complete listing of the ingredients allowed in Section 25(b) minimum risk pesticides. PR 2000-6 also discusses the labeling requirements for pesticides exempt from EPA registration under FIFRA Section 25(b). There are certain statements that can be found on labeling for Section 25(b) exempt pesticides, certain statements that cannot be included, and requirements for the formatting of certain types of label information.

Please note that a manufacturer of a minimum risk pesticide does not apply to EPA for an exemption. Instead, a product meeting the requirements of PR 2000-6 is automatically exempt from EPA registration, and the EPA depends on state and tribal pesticide lead agencies to identify unregistered pesticides that do not meet the minimum risk criteria.

Unlike FIFRA, N.D.C.C. 19-18 does not provide for the exemption of minimum risk pesticides. Instead, N.D.C.C. 19-18-03 requires the registration of all pesticides with the Agriculture Commissioner prior to their distribution, sale, offering for sale, or transport in the state, regardless of the pesticide's formulation. For reference, there are 115 pesticides currently registered with the Department that would meet the minimum risk criteria of FIFRA Section 25(b).

SB 2371 amends N.D.C.C. 19-18 by exempting those pesticides from state registration that meet the minimum risk criteria of FIFRA Section 25(b). In the amended bill, a minimum risk

pesticide manufacturer would submit to the Department an application for exemption from pesticide registration. Department staff would then review the composition and labeling for the product to ensure that the product has met the criteria of FIFRA Section 25(b). If the product meets the criteria of FIFRA Section 25(b), the Department will issue a certificate of exemption from registration to the applicant. The process and timelines to obtain an exemption from registration created by SB 2371 as amended are similar to what is currently done to obtain a pesticide registration.

The initial version of SB 2371 simply exempted FIFRA Section 25(b) minimum risk pesticides from the definition of "pesticide" in N.D.C.C. Such a statutory change would be problematic. First, changing the definition of "pesticide" in N.D.C.C. 19-18 would require similar changes to N.D.C.C. 4-35, the chapter of the Century Code that largely regulates pesticide use and storage. Second, Department staff routinely inspect pesticide retailers and distributors to ensure that all pesticides being offered for sale are compliant with N.D.C.C. 19-18 and FIFRA. The labeling and compositional criteria needed for a pesticide to be compliant with PR 2000-6 are extensive and complicated, requiring expertise in state and federal pesticide labeling law. Simply exempting these pesticides from the "pesticide" definition would require a significant amount of training for field staff so that they could readily determine whether an unregistered pesticide being offered for sale was truly an unregistered pesticide in violation of N.D.C.C. 19-18 or a minimum risk pesticide that met the FIFRA Section 25(b) exemption criteria.

In contrast, the system created by SB 2371 as amended would ensure that minimal Department staff be used to ensure that a minimum risk pesticide meets the necessary criteria for FIFRA

exemption. This is a more efficient use of Department resources and simply good government.

In addition, all pesticides receiving an exemption from registration could be captured in a database, just as the Department captures a list of all pesticides that are registered. Since all pesticides being offered for sale would need to be registered or exempted from registration, an inspector could readily determine which pesticides were compliant with N.D.C.C. 19-18.

The Department recognizes that minimum risk pesticides exempt under FIFRA Section 25(b) pose minimal risk to humans or the environment. The system created by SB 2371 as amended will allow the Department to quickly identify those minimum risk pesticides and focus its resources on those pesticides with greater risk for adverse effects.

Chairman Flakkoll and committee members, I urge a do pass on SB 2371 as amended. I would be happy to answer any questions you may have.

PESTICIDE REGISTRATION (PR) NOTICE 2000-6

NOTICE TO MANUFACTURERS, FORMULATORS, PRODUCERS AND REGISTRANTS OF PESTICIDE PRODUCTS

ATTENTION: Persons Responsible for Registration of Pesticide Products

SUBJECT: Minimum Risk Pesticides Exempted under FIFRA Section 25(b)
Clarification of Issues

I. PURPOSE

This notice clarifies several aspects of the exemption for minimum risk pesticides by the FIFRA Section 25(b) rule, including composition, labeling, food tolerances, and state regulation. It is being issued to answer questions frequently asked of EPA about such products.

II. BACKGROUND

Section 2(u) of FIFRA defines a "pesticide" as "(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer." Except in very limited circumstances, any substance falling within this definition of a pesticide must be registered by EPA before it can be legally sold or distributed. One such exception to the registration requirement is for those pesticides that the Administrator, under section 25(b) of FIFRA, has determined "to be of a character which is unnecessary to be subject to this Act," and that have been exempted from the requirements of FIFRA by regulation.

In 1996, EPA exempted certain minimum risk pesticides from FIFRA requirements if they satisfy certain conditions. EPA exempted the products described in 40 CFR section 152.25(g) in part to reduce the cost and regulatory burdens on businesses as well as the public for pesticides posing little or no risk, and to focus EPA's limited resources on pesticides which pose greater risk to humans and the environment. This exemption provision is located in section 152.25(g) of Title 40 of the Code of Federal Regulations.

To qualify for an exemption as a minimum risk pesticide, each active ingredient in the pesticide product must be listed in 40 CFR 152.25(g)(1). Appendix A is a list of these ingredients. Currently, this list contains more than 30 active ingredients. In addition, 40 CFR 152.25(g)(2) provides that these pesticide products may only contain minimal risk inert ingredients listed in the most current List 4A. Appendix B is the most current list of these inert ingredients. Additionally, to be exempted and remain exempted, products must also meet a series of exemption conditions described in 40 CFR 152.25(g)(3).

EPA does not review or issue notices of exemption for products which meet the conditions for exemption. Sale or distribution of a pesticide product meeting all the criteria in 40 CFR 152.25(g) without a federal registration is not a violation of FIFRA. However, if a product does not meet all of the exemption criteria, the product is not exempt from FIFRA and its sale or distribution if not registered would be a violation of FIFRA.

How to Determine if a Product Qualifies for Exemption as a Minimum Risk Pesticide Under 40 CFR 152.25(g).

QUESTION: How can I tell if my product qualifies for the minimum risk pesticide exemption?

ANSWER: To qualify as a minimum risk pesticide under 40 CFR 152.25(g) (and be exempt from pesticide registration), a product must meet certain conditions. These conditions fall into the following two categories.

1. Composition:

- active ingredients: may contain only those active ingredients that are listed in 40 CFR 152.25(g)(1) and shown in Appendix A.
- other (inert) ingredients: may contain only List 4A inerts, including commonly consumed foods. (See Appendix B).

2. Labeling:

- All ingredients in an exempted product must be listed on its label:
 - Active ingredients must be listed by name and percentage (by weight).
 - All other ingredients must be listed by name (see above for inerts).
- No false or misleading statements under 40 CFR 156.10 (a)(5)(i)-(viii) may appear on an exempted product's label.
- Labeled Uses:

The product may not bear any claims to control or mitigate microorganisms in a way that links the microorganism to a threat to human health (including but not limited to disease transmitting bacteria or viruses) or claims to control rodent or insect pests in a way that links the pest to *specific* diseases (for example, the label may not say "controls ticks that carry Lyme disease" or "controls mosquitoes that can transmit malaria or encephalitis," but can say "controls ticks," or, "controls mosquitoes," etc.).

It is important to note that even if a pesticide product meets the conditions for exemption from regulation under FIFRA, it is still subject to any applicable requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) if its use results in pesticide chemical residues on or in food commodities or animal feed. In addition, producers of pesticides must meet any applicable state registration or other regulatory requirements. Each state has its own statutes and regulations concerning pesticide registration and regulation, and the states are not required to permit the sale of an exempted product simply because it meets the 40 CFR 152.25(g) conditions for minimum risk exemption. An address and telephone list of the state agencies which regulate pesticides may be found at: <http://aapco.ceris.purdue.edu> and at <http://www.epa.gov/pesticides/biopesticides/otherdocs/statelist.htm>. You may also call (703) 305-7973 to obtain a paper copy.

III. COMPOSITION OF "MINIMUM RISK PESTICIDES"

1. Active Ingredients

QUESTION: What active ingredients may be used in an exempted pesticide product?

ANSWER: Only active ingredients listed in 40 CFR 152.25(g)(1) may be in exempt products. Appendix A to this PR Notice lists all of the active ingredients which are currently permissible ingredients in exempt products.

QUESTION: Can other active ingredients be added to this list? How?

ANSWER: The Agency may modify this list in the future, but any additions (or deletions) would have to be accomplished through rule making. Companies cannot obtain an exemption on an ad hoc basis as part of the application process. EPA cannot exempt an ingredient or product as part of the application process without having completed the required rule making.

2. Other Ingredients

QUESTION: What other ingredients may be used in exempted products?

ANSWER: The only other ingredients an exempt product may contain are listed in the most current List 4A inert ingredients, which the Agency last published in the *Federal Register* of September 28, 1994. List 4A inert ingredients are considered to be minimal risk inert ingredients, and are recognized as safe for use in pesticide products. The current List 4A minimal risk inerts are listed in Appendix B to this PR Notice.

QUESTION: Can common foods be used as inert ingredients in exempted products?

ANSWER: Yes. EPA's policy is that "commonly consumed foods" are considered List 4A inert ingredients of minimal concern, even if they are not already included on the list of minimal risk inert ingredients. (See 59 FR 49400, September 28, 1994) "Inert Ingredients in Pesticide Products; List of Minimal Risk Inert Ingredients."

QUESTION: Will additions to the List 4A be possible?

ANSWER: Yes. Additions to List 4A are being considered by the Agency. Any changes will be published in the *Federal Register*.

QUESTION: If a List 4A minimal risk inert has active, pesticidal properties, am I allowed to use it as the active ingredient in an exempt product?

ANSWER: No. The two lists are not interchangeable. In other words, you may not use a List 4A inert ingredient as an active ingredient, and you also may not use one of the active ingredients listed in 40 CFR part 152.25(g)(1) as an inert. Only if the ingredient is included on both lists can it be used without regard to its active or inert function. Even then, the ingredient must be designated on the label as either active or inert (See Labeling below).

IV. LABELING OF MINIMUM RISK PESTICIDES

QUESTION: What should I include on my product's label?

ANSWER: In order to qualify for the minimum risk pesticide exemption, the pesticide product must meet certain labeling conditions. These conditions, all of which must be met in order to qualify for exemption, are as follows:

1. The pesticide product containing permissible substances must bear a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient;
2. The product may not bear any claims to control or mitigate microorganisms in a way that links the microorganisms to a threat to human health (including but not limited to disease transmitting bacteria or viruses) or claims to control rodent or insect pests in a way that links the pest to *specific* diseases (for example, the label may not say "controls ticks that carry Lyme disease" or "controls mosquitoes that can transmit malaria or encephalitis," but can say "controls ticks," or, "controls mosquitoes," etc.);

and

3. The product must not include any false or misleading labeling statements prohibited by 40 CFR 156.10 (a)(5) (i)-(viii). To follow is a list of unacceptable types of statements that Agency regulations provide are false or misleading, along with some examples:
- a. A false or misleading statement concerning the composition of the product;
 - b. A false or misleading statement concerning the effectiveness of the product as a pesticide or device;
 - c. A false or misleading statement about the value of the product for purposes other than as a pesticide or device;
 - d. A false or misleading comparison with other pesticides or devices;
 - e. Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the Federal Government;

Example: "Recommended by EPA as safe and exempt." This kind of statement leads the consumer to believe that the Federal Government has made such a determination for a particular product. Because exempted products are not reviewed by EPA, this kind of statement is misleading.

Example: "It is a Violation of Federal Law to Use this Product in a Manner Inconsistent with its Labeling."

Example: "EPA Registration No." or "EPA Establishment No."

The latter two examples are false or misleading because they imply that the product is registered by EPA.

Example: An example of a statement that the Agency would likely consider acceptable would be: "This product has not been registered by the United States Environmental Protection Agency. [The name of the company] represents that this product qualifies for exemption from registration under the Federal Insecticide, Fungicide, and Rodenticide Act."

- f. The name of a pesticide which contains two or more principal active ingredients if the name suggests one or more, but not all such principal active ingredients, even though the names of the other ingredients are stated elsewhere in the labeling;
- g. A true statement used in such a way as to give a false or misleading impression to the purchaser;
- h. Label disclaimers which negate or detract from labeling statements required under the act and these regulations, including as conditions of exemption.

QUESTION: I have found mosquito and tick repellents on the market shelf that do not have EPA registration numbers. I thought that exempted pesticide products could not be labeled to control these kinds of pests?

ANSWER: Claims that the exempted pesticide controls these kinds of *pests* are allowed, but no claims may be made to make the consumer believe that they would be protected by using the product from a *disease* that these insects can carry, such as Lyme disease. ***Remember: the claim may only be for the pest, as a pest, and not as a disease vector.***

Example of an appropriate claim: "repels mosquitoes and ticks."

Examples of an inappropriate claim: "repels mosquitoes that can transmit malaria," or, "Will repel ticks that cause Lyme disease."

QUESTION: I have seen products that say they are "the natural way to control pests," or "safe for kids and pets." Aren't these considered by EPA to be false and misleading claims?

ANSWER: No, not for exempted minimum risk pesticides. Products that meet the criteria for exemption from regulation may make safety claims if true. On the other hand, claims cannot be worded in such a way that implies or states endorsement by EPA or another federal agency or department.

V. FOOD TOLERANCES FOR "MINIMUM RISK PESTICIDES"

QUESTION: What are the requirements if my product is to be used on or around food, food crops, food contact surfaces, or animal feed?

ANSWER: Even if a product is exempt under FIFRA, it must have a tolerance or tolerance exemption under FFDCA, if the product is to be used on food, food crops, food contact

surfaces, or animal feed commodities.

The minimum risk pesticide exemption, 40 CFR 152.25(g), only exempts qualifying pesticide products from certain requirements of FIFRA. The use of pesticides on food, food crops, food contact surfaces, and animal feed can result in residues of pesticide products on or in treated foods or foods which come into contact with treated surfaces. Tolerances are maximum legally permissible levels of pesticide residues, including active and inert ingredients, which may be found in foods. In some instances, pesticides are exempted from the requirement of a tolerance, because the pesticide is considered to be safe enough for use at any level. Tolerances and exemptions from tolerance are established and regulated by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), not FIFRA. The pesticide label may bear only those food uses for which there are tolerances or exemptions from tolerances for the active and inert ingredients. If the tolerance exemption is for all food commodities, then any food crops, food surfaces, or animal feed can be listed on the label.

QUESTION: How can I find out if my active and inert ingredients have tolerances or are exempt from the requirement of a tolerance?

ANSWER: Tolerances and exemptions for foods are listed in Parts 180, 185, and 186 of Title 40 of the Code of Federal Regulations for each active ingredient and inert ingredient. Appendices A and B can be used to identify which actives and inerts are exempt from tolerances on all crops as of the date of this notice. In addition, tolerances and exemptions are published throughout the year in the Federal Register. This source is frequently more up-to-date than the latest version of 40 CFR and thus, needs to be checked to verify that no changes have occurred since the last printing of the 40 CFR.

QUESTION: How do I get a tolerance if I need one?

ANSWER: The first step to receive a tolerance is to petition the Agency by following the guidelines found in 40 CFR section 180.7 (see www.gpo.gov). Additional guidance can be found at www.epa.gov/PesticideApplication. The Agency will then announce the receipt of the petition in the Federal register. Tolerance fees are required, but may be waived on a case-by-case basis.

VI. STATE REGULATION OF "MINIMUM RISK PESTICIDE" PRODUCTS

QUESTION: What must I do to meet any applicable state registration requirements?

ANSWER: Even if a pesticide product is exempt from FIFRA requirements, the product may not be exempt from state registration or other regulatory requirements. Each state has its own statutes and regulations concerning pesticide registration and regulation. A pesticide product

exempted from federal regulation is not automatically exempt in a state. It is important that you contact the state agencies responsible for pesticide regulation in those states in which you would like to sell your product, so you can find out what you need to do in order to satisfy their requirements for pesticide registration if required. An address and telephone list of the state agencies which regulate pesticides is available online <http://www.epa.gov/pesticides/biopesticides/otherdocs/statelist.htm>. You may also call (703) 305-7973 to obtain a paper copy.

QUESTION: What happens if a state won't accept my product as an exempted pesticide?

ANSWER: You may:

1. Comply with the State's requirements in order to sell and distribute the product;
or
2. Not sell or distribute the product in that state; or
3. You may register the product with the EPA if EPA determines that your product meets all the health and safety standards and all other applicable requirements. You must also meet any applicable State requirements for your product.

If a pesticide product does not meet the conditions for minimum risk pesticide exemption, or if states will not accept the product without an EPA registration, a registration kit may be obtained by calling 703-305-6549. The kit is also available on our website, at www.epa.gov/pesticides/registrationkit.

Please note that the sale or distribution of a pesticide without an EPA registration that does not meet the conditions for a minimum risk pesticide and does not fall within any other exemption from FIFRA is a violation of FIFRA. (See, e.g., FIFRA section 12(a)(1).)

VII. FOR FURTHER INFORMATION

If you have any further questions, please contact Brian Steinwand at (703) 305-7973 (e-mail: steinwand.brian@epa.gov).

Marcia E. Mulkey, Director
Office of Pesticide Programs

Active Ingredients Which May Be in Minimum Risk Pesticide Products Exempted under section 25(b) of FIFRA

1. Castor Oil (U.S.P. or equivalent)
2. Cedar Oil
3. Cinnamon* and Cinnamon Oil *
4. Citric Acid*
5. Citronella and Citronella Oil
6. Cloves* and Clove Oil*
7. Corn Gluten Meal*
8. Corn Oil*
9. Cottonseed Oil*
10. Dried Blood
11. Eugenol
12. Garlic* and Garlic Oil*
13. Geraniol
14. Geranium Oil
15. Lauryl Sulfate
16. Lemon grass Oil*
17. Linseed Oil
18. Malic Acid*
19. Mint* and Mint Oil*
20. Peppermint* and Peppermint Oil*
21. 2-Phenethyl Propionate (2-phenylethyl propionate)
22. Potassium Sorbate
23. Putrescent Whole Egg Solids (See 180.1071)
24. Rosemary * and Rosemary Oil*
25. Sesame* (includes ground Sesame plant stalks) (See 180.1087) and Sesame Oil*
26. Sodium Chloride (common salt)*
27. Sodium Lauryl Sulfate
28. Soybean Oil
29. Thyme* and Thyme Oil*
30. White Pepper*
31. Zinc Metal Strips (consisting solely of zinc metal and impurities)

* These active ingredients are exempt for use on all food commodities from the requirement of a tolerance on all raw agricultural commodities at 40 CFR 180.1164(d).

LIST 4A Minimal Risk Inerts

Parentheses indicate exemption from tolerance as inerts if all the conditions set forth in the text and tables shown for the particular substance at 40 CFR 180.1001(c), (d) and/or (e) are met.

Acetic acid (c, d, e)	Cookies	Kaolinite-type clay (c, e)	Potatoes
Agar	Cork	Lactose (c)	Pumice
Alfalfa	Corn (d)	Lanolin (d)	Raisins
Alfalfa meal	Corn cobs (c)	Lard (c)	Red cedar chips
Almond hulls	Corn flour	Latex	Red dog flour
Almond shells (c)	Corn meal (c)	Lecithin (c)	Rice
Alpha cellulose (c)	Corn oil (c)	Lime	Rice hulls
Apple pomace (c)	Cornstarch(c)	Limestone	Rubber
Attapulgit-type clay (c, e)	Corn syrup (c, e)	Linseed oil	Rye Flour
Beef fat	Cotton	Malt flavor	Safflower oil
Beeswax (c)	Cottonseed meal	Meat meal	Sawdust
Beet powder	Cottonseed oil (c)	Meal scraps	Seaweed, edible
Bentonite (c)	Cracked oats	Medicated feed	Shale
Bone Meal	Cracked wheat	Mica (c)	Soapstone (c, e)
Bran	Dextrin (c, e)	Milk	Sodium
Bread crumbs	Dextrose (c, e)	Millet seed	bicarbonate (c)
Calcareous shale (c)	Dolomite (c)	Mineral oil, U.S.P. (c, e)	Sodium chloride (c)
Calcite (c)	Douglas-fir bark, ground (d)	Molasses (c)	Sorbitol (c, e)
Calcium carbonate (c,e)	Eggs	Montmorillonite-type clay (c, e)	Soybean hulls
Canary seed	Egg Shells	Nitrogen	Soybean meal
Cane syrup	Edible fish meal (c)	Nutria meat	Soybean oil (c, e)
Carbon dioxide	Edible fish oil (c)	Nylon	Soy flour (c)
Cardboard	Flour (wheat, d)	Oatmeal (c)	Soy protein (c, e)
Carrageenan (c, d, e)	Fuller's earth	Oats (c)	Sucrose (c, e)
Carrots	Gelatin	Olive oil	Sugarbeet meal
Casein (c)	Glue, as depolymerized	Onions	Sunflower seeds
Cheese	animal collagen	Orange pulp (as pomace c)	Tallow
Chlorophyll	Glycerin (glycerol; c, d, e)	Oyster shells	Vanillin (d)
Cinnamon (d)	Granite (c)	Paper (fiber; d)	Vermiculite (c)
Citric acid (c, e)	Grape pomace (c)	Paprika	Vitamin C
Citrus meal (c)	Graphite (c, d, e)	Paraffin wax	Vitamin E
Citrus pectin	Ground oats	Peanut butter	Walnut flour
Citrus pulp	Guar gum (c)	Peanut oil	Walnut shells (c)
Clam shells	Gum arabic (c)	Peanut shells (c)	Water
Cloves (d)	Gum tragacanth	Peanuts	Wheat (d)
Cocoa	Gypsum (c)	Peat moss	Wheat germ oil
Cocoa shells (c)	Hearts of corn flour	Pecan shell flour	Whey
Cocoa shell flour	Hydrogenated vegetable oils	Pectin	Wintergreen oil (c)
Cod liver oil (c)	Honey	Polyethylene film (c)	Wool
Coffee grounds (c)	Invert sugar (c)	Polyethylene pellets	Xanthan gum (c, e)
	Invert syrup (c)		Yeast

180.1001 (c) = exempt for both growing crops & crops after harvest

(d) = exempt for growing crops only

(e) = exempt for animal applications only

Inert Ingredients Ordered Alphabetically by Chemical Name - List 4A Updated August 2004

CAS	PREFIX NAME	List No.
62-54-4	Acetic acid, calcium salt	4A
127-08-2	Acetic acid, potassium salt	4A
127-09-3	Acetic acid, sodium salt	4A
8007-69-0	Almond oil	4A
1327-43-1	Aluminum magnesium silicate	4A
1327-44-2	Aluminum potassium silicate	4A
	Animal feed items conforming to 40 CFR 180.950(b)	4A
	Animal glue	4A
50-81-7	L- Ascorbic acid	4A
137-66-6	Ascorbyl palmitate	4A
8012-89-3	Beeswax	4A
1302-78-9	Bentonite	4A
85409-30-5	Bentonite, sodian	4A
1863-63-4	Benzoic acid, ammonium salt	4A
2090-05-3	Benzoic acid, calcium salt	4A
553-70-8	Benzoic acid, magnesium salt	4A
582-25-2	Benzoic acid, potassium salt	4A
532-32-1	Benzoic acid, sodium salt	4A
68409-75-6	Bone meal	4A
123-95-5	Butyl stearate	4A
5743-26-0	Calcium acetate, monohydrate	4A
471-34-1	Calcium carbonate	4A
6107-56-8	Calcium octanoate	4A
12168-85-3	Calcium oxide silicate (Ca3O(SiO4))	4A
10101-41-4	Calcium sulfate, dihydrate	4A
10034-76-1	Calcium sulfate, hemihydrate	4A
68476-78-8	Cane syrup	4A
120962-03-0	Canola oil	4A
7440-44-0	Carbon	4A
124-38-9	Carbon dioxide	4A
13397-26-7	Carbonic acid, calcium salt (calcite)	4A
546-93-0	Carbonic acid, magnesium salt (1:1)	4A
298-14-6	Carbonic acid, monopotassium salt	4A
144-55-8	Carbonic acid, monosodium salt	4A
	Cardboard	4A
8015-86-9	Carnauba wax	4A
9000-40-2	Carob gum (locust bean gum)	4A
9000-07-1	Carrageenan	4A
8001-79-4	Castor oil	4A
8001-78-3	Castor oil, hydrogenated	4A
	Cat food	4A
9004-34-6	Cellulose	4A
9004-35-7	Cellulose acetate	4A
9004-32-4	Cellulose carboxy methyl ether, sodium salt	4A
9004-62-0	Cellulose, 2-hydroxyethyl ether	4A
9004-64-2	Cellulose, 2-hydroxypropyl ether	4A
9004-65-3	Cellulose, 2-hydroxypropyl methyl ester	4A
9000-11-7	Cellulose, carboxymethyl ether	4A
9004-67-5	Cellulose, methyl ether	4A

Inert Ingredients Ordered Alphabetically by Chemical Name - List 4A Updated August 2004

51395-75-6	Cellulose, mixture with cellulose carboxymethyl ether, sodium salt	4A
65996-61-4	Cellulose, pulp	4A
68442-85-3	Cellulose, regenerated	4A
77-92-9	Citric acid	4A
813-94-5	Citric acid, calcium salt (2:3)	4A
7693-13-2	Citric acid, calcium salt (2:3)	4A
3609-96-9	Citric acid, dipotassium salt	4A
144-33-2	Citric acid, disodium salt	4A
5949-29-1	Citric acid, monohydrate	4A
866-83-1	Citric acid, monopotassium salt	4A
18996-35-5	Citric acid, monosodium salt	4A
7778-49-6	Citric acid, potassium salt	4A
994-36-5	Citric acid, sodium salt	4A
866-84-2	Citric acid, tripotassium salt	4A
6100-05-6	Citric acid, tripotassium salt, monohydrate	4A
68-04-2	Citric acid, trisodium salt	4A
6132-04-3	Citric acid, trisodium salt, dihydrate	4A
6858-44-2	Citric acid, trisodium salt, pentahydrate	4A
68514-76-1	Citrus pulp, orange	4A
	Clam shells	4A
8002-31-1	Cocoa	4A
8001-31-8	Coconut oil	4A
68916-18-7	Coffee grounds	4A
	Commonly consumed food commodities conforming to 40 CFR 180.950(a)	4A
61789-98-8	Cork	4A
68525-86-0	Corn flour	4A
8001-30-7	Corn oil	4A
8029-43-4	Corn syrup	4A
68131-37-3	Corn syrup solids	4A
9005-25-8	Cornstarch	4A
	Cotton	4A
68424-10-2	Cottonseed meal	4A
8001-29-4	Cottonseed oil	4A
53988-07-1	Decanoic acid, diester with 1,2,3-propanetriol (9CI)	4A
26402-22-2	Decanoic acid, monoester with 1,2,3-propanetriol	4A
9004-53-9	Dextrins	4A
50-99-7	Dextrose	4A
61790-53-2	Diatomaceous earth (less than 1% crystalline silica)	4A
143-07-7	Dodecanoic acid	4A
142-18-7	Dodecanoic acid, 2,3-dihydroxypropyl ester	4A
27638-00-2	Dodecanoic acid, diester with 1,2,3-propanetriol (9CI)	4A
27215-38-9	Dodecanoic acid, monoester with 1,2,3-propanetriol (9CI)	4A
16389-88-1	Dolomite (CaMg(CO ₃) ₂)	4A
	Douglas fir bark	4A
	Edible fats and oils conforming to 40 CFR 180.950(c)	4A
	Egg shells	4A
68476-25-5	Feldspar group minerals	4A
8016-13-5	Fish oil	4A
8031-18-3	Fuller's earth	4A
110-17-8	Fumaric acid	4A

Inert Ingredients Ordered Alphabetically by Chemical Name - List 4A Updated August 2004

71010-52-1	Gellan gum (tolerance pending approval)	4A
68476-37-9	Glue (as depolymerized animal collagen)	4A
56-81-5	Glycerol (glycerin) 1,2,3 propanetriol	4A
7782-42-5	Graphite	4A
9000-30-0	Guar gum	4A
13397-24-5	Gypsum	4A
1317-60-8	Hematite (Fe ₂ O ₃)	4A
57-10-3	Hexadecanoic acid	4A
26657-95-4	Hexadecanoic acid, diester with 1,2,3-propanetriol (9CI)	4A
26657-96-5	Hexadecanoic acid, monoester with 1,2,3-propanetriol	4A
8028-66-8	Honey	4A
68514-28-3	Humic acid, potassium salt	4A
68131-04-4	Humic acid, sodium salt	4A
68334-00-9	Hydrogenated cottonseed oil	4A
68514-74-9	Hydrogenated palm oils	4A
84681-71-0	Hydrogenated rapeseed oil	4A
8016-70-4	Hydrogenated soybean oil	4A
8013-17-0	Invert sugar	4A
12068-86-9	Iron magnesium oxide (Fe ₂ MgO ₄)	4A
1317-61-9	Iron oxide (Fe ₃ O ₄)	4A
1309-37-1	iron oxide (Fe ₂ O ₃)	4A
12259-21-1	Iron oxide (Fe ₂ O ₃), hydrate	4A
1345-25-1	Iron oxide (FeO)	4A
110-27-0	Isopropyl myristate	4A
1332-58-7	Kaolin	4A
97-64-3	Lactic acid, ethyl ester	4A
138-22-7	Lactic acid, n-butyl ester	4A
D-		
63-42-3	(+)- Lactose	4A
64044-51-5	Lactose, monohydrate	4A
8006-54-0	Lanolin	4A
61789-99-9	Lard	4A
8002-43-5	Lecithins	4A
8030-76-0	Lecithins, soya	4A
68916-91-6	Licorice extract	4A
12001-27-3	Lime (chemical) dolomitic	4A
1317-65-3	Limestone	4A
8001-26-1	Linseed oil (unboiled)	4A
1309-48-4	Magnesium oxide	4A
12207-97-5	Magnesium oxide silicate (Mg ₃ O(Si ₂ O ₅) ₂), monohydrate	4A
1343-90-4	Magnesium silicate, hydrate	4A
14987-04-3	Magnesium silicon oxide (Mg ₂ Si ₃ O ₈)	4A
10034-99-8	Magnesium sulfate heptahydrate	4A
6915-15-7	Malic acid	4A
8002-48-0	Malt extract	4A
9050-36-6	Maltodextrin	4A
68131-12-4	Meat meal	4A
12003-38-2	Mica	4A
12001-26-2	Mica group minerals	4A
8052-35-5	Molasses	4A
1318-93-0	Montmorillonite	4A

Inert Ingredients Ordered Alphabetically by Chemical Name - List 4A Updated August 2004

1327-36-2	Mullite	4A
37244-96-5	Nepheline syenite	4A
7727-37-9	Nitrogen	4A
134134-87-5	Oat protein	4A
25496-72-4	9- Octadecanoic acid (9Z)-,monoester with 1,2,3 propanetriol	4A
1002-89-7	Octadecanoic acid, ammonium salt	4A
1592-23-0	Octadecanoic acid, calcium salt	4A
557-04-0	Octadecanoic acid, magnesium salt	4A
12694-22-3	9- Octadecanoic acid, monoester with oxybis (propanediol)	4A
593-29-3	Octadecanoic acid, potassium salt	4A
822-16-2	Octadecanoic acid, sodium salt	4A
557-05-1	Octadecanoic acid, zinc salt	4A
111-03-5	9- Octadecenoic acid (Z)-, 2,3-dihydroxypropyl ester (9CI)	4A
143-18-0	9- Octadecenoic acid (9Z)-, potassium salt	4A
143-19-1	9- Octadecenoic acid (9Z)-, sodium salt	4A
7492-30-0	9- Octadecenoic acid, 12-hydroxy-, monopotassium salt, (9Z, 12Z)	4A
5323-95-5	9- Octadecenoic acid, 12-hydroxy-, monosodium salt, (9Z, 12Z)	4A
49553-76-6	9- Octadecenoic acid, ester with 1,2,3-propanetriol	4A
71012-10-7	9- Octadecenoic acid, monoester with tetraglycerol	4A
36354-80-0	Octanoic acid, diester iwht 1,2,3-propanetriol (9CI)	4A
26402-26-6	Octanoic acid, monoester with 1,2,3-propanetriol	4A
1984-06-1	Octanoic acid, sodium salt	4A
1323-83-7	Octodecanoic acid, diester with 1,2,3-propanetriol (9CI)	4A
11099-07-3	Octodecanoic acid, ester with 1,2,3-propanetriol (9CI)	4A
31566-31-1	Octodecanoic acid, monoester with 1,2,3-propanetriol (9CI)	4A
25637-84-7	9- Octodecenoic acid (9Z)-, diester with 1,2,3-propanetriol (9CI)	4A
68917-73-7	Oils, wheat	4A
112-80-1	Oleic acid	4A
8001-25-0	Olive oil	4A
8002-75-3	Oyster shells	4A
8002-75-3	Palm oil	4A
8002-75-3	Paper	4A
68991-42-4	Paprika	4A
8002-74-2	Paraffin wax	4A
8002-03-7	Peanut oil	4A
130885-09-5	Peat moss	4A
93763-70-3	Perlite	4A
26499-65-0	Perlite, expanded	4A
9002-88-4	Plaster of Paris	4A
7646-93-7	Polyethylene	4A
7447-40-7	Potassium bisulfate	4A
764-71-6	Potassium chloride	4A
24634-61-5	Potassium octoate	4A
9007-48-1	Potassium sorbate	4A
9009-32-9	1,2,3- Propanetriol, homopolymer (9Z)-9-octadecenoate	4A
1332-09-8	1,2,3- Propanetriol, homopolymer, octadecanoate	4A
68553-81-1	Pumice	4A
9006-04-6	Rice bran oil	4A
	Rubber	4A

Inert Ingredients Ordered Alphabetically by Chemical Name - List 4A Updated August 2004

8001-23-8	Safflower oil	4A
	Sawdust	4A
8008-74-0	Sesame seed oil	4A
63231-67-4	Silica Gel	4A
112926-00-8	Silica gel, precipitated, crystalline-free	4A
112945-52-5	Silica, amorphous, fumed (crystalline free)	4A
7699-41-4	Silica, amorphous, precipitated and gel	4A
10279-57-9	Silica, hydrate	4A
60676-86-0	Silica, vitreous	4A
13776-74-4	Silicic acid (H ₂ SiO ₃), magnesium salt (1:1)	4A
12003-51-9	Silicic acid (H ₄ SiO ₄), aluminum sodium salt (1:1:1)	4A
12736-96-8	Silicic acid, aluminum potassium sodium salt	4A
1335-30-4	Silicic acid, aluminum salt	4A
1344-00-9	Silicic acid, aluminum sodium salt	4A
1344-95-2	Silicic acid, calcium salt	4A
1343-88-0	Silicic acid, magnesium salt	4A
7631-86-9	Silicon dioxide (crystalline-free forms only)	4A
1393-03-9	Soapbark (Quillaja saponin)	4A
9005-38-3	Sodium alginate	4A
7647-14-5	Sodium chloride	4A
50-70-4	Sorbitol	4A
8001-22-7	Soybean oil	4A
8002-24-2	Sperm oil	4A
57-11-4	Stearic acid	4A
57-50-1	Sugar	4A
7704-34-9	Sulfur	4A
7778-18-9	Sulfuric acid, calcium salt (1:1)	4A
7778-80-5	Sulfuric acid, dipotassium salt	4A
7757-82-6	Sulfuric acid, disodium salt	4A
7727-73-3	Sulfuric acid, disodium salt, decahydrate	4A
7487-88-9	Sulfuric acid, magnesium salt (1:1)	4A
68937-99-5	Sunflower seeds	4A
61789-97-7	Tallow	4A
544-63-8	Tetradecanoic acid	4A
589-68-4	Tetradecanoic acid, 2,3-dihydroxypropyl ester	4A
53563-63-6	Tetradecanoic acid, diester with 1,2,3-propanetriol (9CI)	4A
27214-38-6	Tetradecanoic acid, monoester with 1,2,3-propanetriol (9CI)	4A
13429-27-1	Tetradecanoic acid, potassium salt	4A
57-13-6	Urea	4A
121-33-5	Vanillin	4A
1318-00-9	Vermiculite	4A
	Vinegar (maximum of 8% acetic acid in solution)	4A
1406-18-4	Vitamin E	4A
7732-18-5	Water	4A
8006-95-9	Wheat germ oil	4A
8042-47-5	White mineral oil (petroleum)	4A
68917-75-9	Wintergreen oil	4A
13983-17-0	Wollastonite (Ca(SiO ₃))	4A
11138-66-2	Xanthan gum	4A
68876-77-7	Yeast	4A

Inert Ingredients Ordered Alphabetically by Chemical Name - List 4A Updated August 2004

1318-02-1	Zeolites (excluding erionite (CAS Reg. No. 66733-21-9))	4A
68989-22-0	Zeolites, NaA	4A
12063-19-3	Zinc iron oxide	4A
1314-13-2	Zinc oxide	4A

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**Testimony of Jim Gray
Pesticide Registration Coordinator
Senate Bill 2371
House Agriculture Committee
Peace Garden Room
March 3, 2005**

Chairman Nicholas and members of the committee, I am Jim Gray, Pesticide Registration

Coordinator with the North Dakota Department of Agriculture. I am here to provide testimony in support of engrossed SB 2371, a bill that amends Chapter 19-18 of the North Dakota Century Code (N.D.C.C.) to exempt minimum risk pesticides from registration with the North Dakota Agriculture Commissioner.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires the registration of all pesticides with the U.S. Environmental Protection Agency (EPA) prior to their distribution, sale, or offering for sale in the United States. However, FIFRA Section 25(b) also exempts certain pesticides from registration, most notably those that are characterized as minimum risk pesticides.

Minimum risk pesticides exempt from EPA registration under FIFRA Section 25(b) contain minimum risk active ingredients such as citronella, mint oil, garlic, and similar substances.

These products can also contain inert ingredients which EPA has classified as minimal risk, commonly called List 4A inerts. Please refer to the enclosed EPA notice, Pesticide Registration (PR) notice 2000-6, and the most current list of 4A minimal risk inerts for a complete listing of the ingredients allowed in Section 25(b) minimum risk pesticides. PR 2000-6 also discusses the labeling requirements for pesticides exempt from EPA registration under FIFRA Section 25(b). There are certain statements that can be found on labeling for Section 25(b) exempt pesticides, certain statements that cannot be included, and requirements for the formatting of certain types of label information.

Please note that a manufacturer of a minimum risk pesticide does not apply to EPA for an exemption. Instead, a product meeting the requirements of PR 2000-6 is automatically exempt from EPA registration, and the EPA depends on state and tribal pesticide lead agencies to identify unregistered pesticides that do not meet the minimum risk criteria.

Unlike FIFRA, N.D.C.C. 19-18 does not provide for the exemption of minimum risk pesticides. Instead, N.D.C.C. 19-18-03 requires the registration of all pesticides with the Agriculture Commissioner prior to their distribution, sale, offering for sale, or transport in the state, regardless of the pesticide's formulation. For reference, there are 115 pesticides currently registered with the Department that would meet the minimum risk criteria of FIFRA Section 25(b).

SB 2371 amends N.D.C.C. 19-18 by exempting those pesticides from state registration that meet the minimum risk criteria of FIFRA Section 25(b). In the engrossed bill, a minimum risk

pesticide manufacturer would submit to the Department an application for exemption from pesticide registration. Department staff would then review the composition and labeling for the product to ensure that the product has met the criteria of FIFRA Section 25(b). If the product meets the criteria of FIFRA Section 25(b), the Department will issue a certificate of exemption from registration to the applicant. The process and timelines to obtain an exemption from registration created by engrossed SB 2371 would be similar to what is currently done to obtain a pesticide registration.

The initial version of SB 2371 simply exempted FIFRA Section 25(b) minimum risk pesticides from the definition of "pesticide" in N.D.C.C. Such a statutory change would be problematic. First, changing the definition of "pesticide" in N.D.C.C. 19-18 would require similar changes to N.D.C.C. 4-35, the chapter of the Century Code that largely regulates pesticide use and storage. Second, Department staff routinely inspect pesticide retailers and distributors to ensure that all pesticides being offered for sale are compliant with N.D.C.C. 19-18 and FIFRA. The labeling and compositional criteria needed for a pesticide to be compliant with PR 2000-6 are extensive and complicated, requiring expertise in state and federal pesticide labeling law. Simply exempting these pesticides from the "pesticide" definition would require a significant amount of training for field staff so that they could readily determine whether an unregistered pesticide being offered for sale was truly an unregistered pesticide in violation of N.D.C.C. 19-18 or a minimum risk pesticide that met the FIFRA Section 25(b) exemption criteria.

In contrast, the system created by engrossed SB 2371 would ensure that minimal Department staff be used to ensure that a minimum risk pesticide meets the necessary criteria for FIFRA

exemption. This is a more efficient use of Department resources and simply good government. In addition, all pesticides receiving an exemption from registration could be captured in a database, just as the Department captures a list of all pesticides that are registered. Since all pesticides being offered for sale would need to be registered or exempted from registration, an inspector could readily determine which pesticides were compliant with N.D.C.C. 19-18.

I would like to suggest one minor amendment to subsection 4 of the bill to clarify that each exemption from registration would cover a designated two-year period just as pesticide registrations do. Renewing exemptions every two years will allow the Department to review updated labeling to ensure continued compliance with state and federal law, just as we currently do with pesticide registrations. As it is currently written, subsection 4 of the bill states, "A certificate of exemption issued under this section is effective on the date of its issuance and expires December thirty-first of an odd-numbered year." This is vague because it does not specify which odd-numbered year that the exemption would expire.

In contrast, pesticide registrations issued under N.D.C.C. 19-18 cover a designated two-year as described in N.D.C.C. 19-18-4 which reads, "Each registration covers a designated two-year period beginning on January first of every even-numbered year and expiring December thirty-first of the following year." For reference, our current pesticide registration period began on January 1, 2004, and will end on December 31, 2005. Therefore, any pesticide registrations issued in 2004 or 2005 will expire on December 31, 2005.

To get pesticide registrations and exemptions from registration on the same renewal cycles, I recommend amending subsection 4 of engrossed SB 2371 with similar language as that in N.D.C.C. 19-18-4 so that it reads, "Each certificate of exemption from registration covers a designated two-year period beginning on January first of every even-numbered year and expiring December thirty-first of the following year." Another option is to amend the existing language in subsection 4 so that it reads, "... and expires on the next December thirty first of an odd-numbered year."

The Department recognizes that minimum risk pesticides exempt from registration under FIFRA Section 25(b) pose minimal risk to humans or the environment. The system created by engrossed SB 2371 will allow the Department to quickly identify those minimum risk pesticides and focus its resources on those pesticides with greater risk for adverse effects.

Chairman Nicholas and committee members, I urge a do pass on engrossed SB 2371. I would be happy to answer any questions you may have.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2371

Page 1, after line 21, insert:

- "4. Each certificate of exemption from registration covers a designated two-year period beginning on January first of every even-numbered year and expiring December thirty-first of the following year."

Page 1, remove lines 22 and 23

Nicholas, Eugene N.

From: Gray, Jim A.
Sent: Thursday, March 24, 2005 2:05 PM
To: Nicholas, Eugene N.
Cc: Olson, Jeff M.
Subject: RE: SB 2371

Gene,

1. I am confused by the intent of the proposed language. In essence, it says that "natural insect repellents" and "pesticide alternatives" are exempted from the registration exemption section unless they were otherwise required to be registered. This is where I am confused. Dropping this as subsection 5 of SB 2371 would exempt these products from the registration exemption provision of NDCC 19-18. I think that the intent would be to exempt these products from registration, not from an exemption from registration.

Also, does the "required to be registered" term apply to state or federal law?

2. Right now, the engrossed bill basically says that all pesticides sold in ND need to be registered or exempted from registration. Pesticides that are characterized as minimum risk pesticides under FIFRA 25(b) can be exempted. Therefore, a "natural insect repellent" that met the criteria of FIFRA 25(b), could be exempted. If it did not meet the criteria of FIFRA 25(b), it would still need to be registered with EPA, regardless of us adding an exclusion to state pesticide registration requirements.

3. Use of the term "natural" on pesticide labeling is prohibited by FIFRA because EPA deems it to be a false and misleading statement. However, products exempt from EPA registration under FIFRA 25(b) can use the term "natural". Therefore, if we exempted "natural insect repellents" under our state law that did not meet the criteria of FIFRA 25(b), those products would be deemed "misbranded" under federal law.

4. We don't have a definition for "natural". Therefore, unless the word "natural" is found on the label (which it can't if the product is not a FIFRA 25(b)-exempt pesticide), how do we determine whether it is "natural"?

In summary, the proposed language doesn't add anything, and I think that it would mandate the registration of certain products that Rep. Skarphol wants to exempt from registration. Furthermore, it might very well present a conflict with federal law.

I think that the best avenue is still to pass the engrossed bill with the \$350 exemption fee. In such a system, all pesticides (natural or not) would be required to have either a registration or exemption from registration.

Jim Gray
Pesticide Registration Coordinator
North Dakota Department of Agriculture
600 E. Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

Telephone: 701-328-1505
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-----Original Message-----

From: Nicholas, Eugene N.
Sent: Thursday, March 24, 2005 1:41 PM
To: Gray, Jim A.
Subject: FW: SB 2371

3/24/2005

From: Skarphol, Bob J.
Sent: Thursday, March 24, 2005 1:14 PM
To: Nicholas, Eugene N.
Subject: SB 2371

Nick,

Would you be amenable to this language??

5. This section does not apply to a product which makes the claim that it is an alternative to a pesticide or that it is a natural insect repellent, if that product would not otherwise be required to be registered.

3/24/2005

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2371

Page 1, line 19, replace "twenty-five" with "three hundred"

Page 1, after line 21, insert:

- "4. Each certificate of exemption from registration covers a designated two-year period beginning on January first of every even-numbered year and expiring December thirty-first of the following year."

Page 1, remove lines 22 and 23

Proposed amendment to subsection 4 of engrossed SB 2371 (engrossment 50812.0200):

4. ~~A certificate of exemption issued under this section is effective on the date of its issuance and expires on December thirty-first of an odd-numbered year. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year.~~