

2013 HOUSE AGRICULTURE

HB 1227

2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1227
January 24, 2013
Job #17664

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Fiscal Note)

Relating to the imposition of civil penalties; relating to fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, and plant amendments.

Minutes:

Attachment #1

Representative Kempenich, Co-Sponsor: This is a rewrite of the fertilizer laws in North Dakota.

Representative Pollert, Co-Sponsor: I own and operate GNR Grain and Feed in New Rockford. It is a grain elevator, feed plant, and a fertilizer operation. I am also a member of the Ag. Association.

A few items to bring to the committee:

1. On p. 5, line 31, it refers to a fee of \$20 going to \$100 per location. As an example in my grain elevator license, I do pay for a license. If that is late, that fee is \$100 over and above the regular fee.
2. On p. 16, line 27, dealing with the fines.

The rest of the bill I agree with.

Vice Chair John Wall: What is your concern with the penalty on p. 16?

Representative Pollert: I think it is high. That is in place for pesticides and anhydrous. I am asking the committee to take a look at it. I will give my input then. The 20 cent assessment per ton is accurate. It has been that in the past. If you have a \$5,000 fine, how many tons does that represent? Is it a safety issue? Pesticides and anhydrous have more of a hazard potential.

Another concern, we did pay our tonnage fee on time and we tried to pay online. They won't take a credit card because there is a convenience fee of using a credit card of 10%. So we sent them a check.

Representative Rust: This bill is a rewrite. Is that section on p. 16 new language? Is the "\$5,000 per violation fine" new language or is it in current law?

Representative Pollert: I couldn't tell you because I haven't been fined.

Representative Headland: Do producers need to worry about fertilizer being correctly represented?

Representative Pollert: The Ag. Dept. is out during the winter and spring probing the bins. They find out where we bought it from. They will analyze it. In the spring they grab it out of the blender.

Chairman Dennis Johnson: Would 1152, for example, be tested at the federal level before they get to the dealers?

Representative Pollert: I couldn't tell you.

Troy Bassingthwaite, North Dakota Agriculture Association President:
(See attached #1) (12:20)

The twenty-member committee had a lot of discussion on fee structure. Everybody agreed that \$25 in today's age is not adequate. There was discussion to make the fine \$10,000. They chose \$5,000 for consistency with anhydrous and pesticide laws.

Looking at penalties in other states around us: Missouri has no limit, Colorado is up to a \$1,000/day, Minnesota is up to \$7500, South Dakota is a \$1,000 and the fine can be increased based on the water table, etc., Montana is up to \$2,000, New Hampshire is up to \$5,000 which would be consistent with us. The fertilizer law hasn't been looked at for 20 years.

We wanted to clean up our law and make it easier to read. We wanted the fee structure up to the industry around us. This would be proactive and be ahead of future federal regulation.

Vice Chair John Wall: Who do you go after when testing fertilizer? Do you go after the elevator or is it the company that imported it from Russia?

Troy Bassingthwaite: If it is a blend from the retail plant, it is the responsibility of the retailer. The retailer would have to go after the wholesaler. This bill also cleaned up what a fertilizer is.

Representative Fehr: Are the penalties on p. 16, starting on line 25, new or is it a rewrite of a section that said \$25.

Troy Bassingthwaite: I believe it is new. The verbiage on the \$25 was in here. I don't see it struck out.

Steve Hepper, North Dakota Grain Dealers Association: We represent 218 facilities throughout the state. We are in favor of this bill. On page 16, line 25 we would use that as a caution on penalties.

Representative Larson: What is a violation of this section?

Steve Hepper: A violation would be of the analysis of the product and what they are applying to the crops.

Representative Larson: If he gets 1152 when he is buying 1152, that is the type of violation you are talking about. It isn't the product that the consumer is buying.

Steve Hepper: Yes.

Jim Gray, Pesticide and Fertilizer Division Director with the North Dakota Dept. Ag.: Our fertilizer specialist, Spencer Wagner is here. He can talk about the technical nature of fees, etc.

Representative Nelson: What are prohibited materials? Are there standards for radioactivity? Can I put things in fertilizer and not have them on the labels?

Jim Gray: The bill cleans up a lot of definitions. A lot of the prohibited materials will be addressed in administrative rules. We plan on going through rule making sometime this summer.

Representative Boschee: How often in the last biennium was the fee assessed on p. 16.

Jim Gray: Under the existing fertilizer law, the only civil penalties apply to late fees. The types of violations that we see with the fertilizer law are a variety of things such as selling products not registered, operating a fertilizer distributor business without being licensed, or selling fertilizer products whose content does not match label claims.

Recently we have levied very little in fines outside of late fees, since that is the only regulatory authority that we have.

Chairman Dennis Johnson: With this new language, are you going to have more time to investigate or audit more often.

Jim Gray: Our regulation of fertilizers has really been limited to registration and licensing. We had limited resources to go out and do field investigations outside of gathering a couple hundred samples. With the addition of the two new field staff for the anhydrous program, that does allow us resources to go out. The fertilizer industry indicated there is a need for more oversight of their industry.

Representative Trottier: What is the variance that a dealer is allowed in a blend?

Jim Gray: Refer to Spencer Wagner.

Representative Trottier: If a dealer wanted to get around, for example 19-19-19, could the dealer say we are going to quit that and ask for 800 pounds of this or 800 pounds of that. Would that get around this?

Jim Gray: On every fertilizer product, there is a guarantor that guarantees the contents of that product. If a product is guaranteed to be 18-18-5, there are some allowed variances from that. But that is the expectation. If the product is not that content, then that guarantor has to put a different analysis on that tag.

Jim Gray: I have one additional issue, p. 9 line 15. Under the previous version of the bill, those fertilizer tonnage fees which generate over \$400,000 per year were going into the EARP fund. When the bill was drafted, that language was taken out. Now those fees would go into the general fund. If you wish to amend that, the way to get those tonnage fees into the EARP fund would be to eliminate overstrike.

Representative Fehr: On the civil penalties, p. 16 could you address the amount of the fee?

Jim Gray: The Ag. Dept. uses a mix of outreach and compliance assistance with regulatory pressure to drive compliance. That has work well with pesticides and anhydrous ammonia. If this bill passes, we would develop a penalty matrix regardless of what that maximum amount is that would show if it is a first-time offense or a chronic offense or a minor offense. It would go from a warning to a maximum amount. The penalty has to be high enough to drive compliance. We asked the Ag. Assn. for an appropriate penalty. That is the number they came up with.

Representative Fehr: Is it your intention to put the penalty matrix in administrative code or is it internal to the dept.? Also, in terms of compliance, have you looked at a daily fee?

Jim Gray: All of our penalty matrices are internal documents developed under ag. dept. policy and signed off by the agriculture commissioner. That gives us flexibility. If we are trying to drive compliance in a certain area, we can adjust.

Have we considered daily fines? No.

Representative Belter: When there is a violation, is it the dealer that gets fined or the supplier?

Jim Gray: If a company is operating without a fertilizer distributor license, it is the company that gets the penalty. If they are selling an unregistered fertilizer that dealer would get the penalty. If a product's content does not meet the stated chemical levels, it is whoever the guarantor on the tag is. That name is responsible. We could also look at the manufacturer of straight materials.

Representative Rust: Who is protected by the penalty? Is it the farmer or is it the large company vs. a small company?

Jim Gray: The fertilizer law is a consumer protection law. The content of the fertilizer has to match stated claims.

Chairman Dennis Johnson: When the distributor is checking their analysis and blends, does the state also inspect plants that make urea or ammonium sulphate and different products before they are sent out to the dealers?

Jim Gray: Everything with fertilizer is state inspection. There is no federal law.

Chairman Dennis Johnson: The product from Canada or the Gulf --what level do we start inspecting?

Jim Gray: There is no federal agency that checks fertilizers when they cross the border outside of a homeland security issue. As soon as they enter channels of trade here they are regulated by North Dakota.

Representative Belter: There are now facilities buying fertilizer in unit train amounts. This bill is designed to protect the farmer. What if a supplier gets 50 cars of nitrogen fertilizer and it is not the right quality, who do you go after?

Jim Gray: Whoever is at fault. If the consumer is not getting what they paid for, is it the blending facility, the straight materials, etc. The lab analysis would help us trace back through that chain.

Representative Trottier: If I ordered 10 pounds of zinc to be added to a ton, can the state department check on micronutrients?

Jim Gray: We would look at the analysis of that product. If that product claims to have a percentage of zinc and it does not, that would be a violation.

Representative Nelson: I was trying to figure out how one section worked, Section 5 on p. 5, starting on line 9. (Reads word for word) Is it that only one 1846 label needs to exist for the whole state even though it may come from multiple manufacturers? Does each manufacturer need a different label?

Spencer Wagner, Fertilizer Specialist with North Dakota Ag. Dept.: (40:40)

That language implies that the co-op that buys 1846 from CHS or the wholesale distributor does not need to register that product again. If there are five different companies that manufacture 1846, all five products need to be registered because there are different formulations and different labels. When those five products are sold to dealers, they don't have to register again.

In reference to the convenience fee, we have a contract with an online data base that allows customers/farmers to look up products, search for companies and dealers. We use that database to make it more streamline for us to renew products. The tonnage convenience fee is not with the state, it is the third party contract. To get around that, print out a payment page and then send the check--no fee.

Gary Knutson with North Dakota Agriculture Association: It is a consumer protection issue. We want to maintain the integrity in the industry. Simplify the law. We are talking about a penalty matrix. The Ag. Dept. will work with the dealers.

Vice Chair John Wall: Closed the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1227
January 25, 2013
Job #17732

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Fiscal Note)

Relating to the imposition of civil penalties; relating to fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, and plant amendments.

Minutes:

Committee Work on 1227

Chairman Dennis Johnson: There were two things pointed out during testimony.

I have one amendment drafted--#13.0487.01001. This amendment takes care of when this bill was drafted, a portion crossed out that should have addressed where the money goes. This would amend p. 10, after line 26, it would add #5.

Representative Larson: moved the amendment

Representative Fehr: seconded the motion

Voice vote was taken. Amendment passed.

Vice Chair John Wall: On p. 16, line 27, there were quite a few questions on the penalty phase and the fee. I would like to offer the amendment changing \$5,000 per violation to \$2,500. The rationale being that some other states are higher. It would also be in line with some of the other penalties such as pesticides and anhydrous ammonia. The whole bill might be in jeopardy on house floor if it is left at \$5,000. To go from \$25 to \$5,000 would be difficult to pass.

Vice Chair John Wall: Moved amendment to change penalty from \$5,000 to \$2,500.

Representative Kiefert: Seconded the motion.

Representative Nelson: I talked to several members yesterday and that was a common area of concern. I support this amendment.

Chairman Dennis Johnson: The people I talked to understand where the \$5,000 is coming from but it is a big change. We don't want to lose the bill.

Representative Fehr: Is there a sense that members will support \$2,500. From \$25 to \$2,500 is still a large jump.

Chairman Dennis Johnson: From testimony given yesterday other states are higher.
Colorado is up to a \$1,000/day
Minnesota is up to \$7500
South Dakota is a \$1,000 which can be increased based on the water table, etc.
Montana is up to \$2,000
At \$25/day we are really out of line with the other states.

We have the inspectors up there with the anhydrous program and dry fertilizer. When we come back in two years, if we have to increase the fine we can look at it again.

Representative Rust: What we have to emphasize heavily is "up to." That "up to" would be seldom used unless it is a lot of tonnage.

Representative Nelson: The rationale for dropping it is that it is hard to get companies' attention unless it is big enough. One of the dangers hanging over our head is that the Dept. of Ag. has no administrative rules. Most of the time they are bluffing when dealing with companies. It was under the health department about 20 years ago because they have a lab. Then it was moved to the Ag. Dept. To this date they have not written administrative rules.

We are trying to get the companies' attention. If it starts too high, companies will fight more and that will cause problems.

Voice vote taken on 2nd amendment. Amendment passed.

Representative Fehr: Moved Do Pass as amended.

Vice Chair John Wall: Seconded the motion.

A Roll Call vote was taken: Yes 12, No 0, Absent 1. (Rep. Headland)

Do Pass as amended carries.

Representative Wall will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/28/2013

Amendment to: HB 1227

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$4,200	\$30,570	\$4,200	\$30,570
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides civil penalty authority and increases late fees associated with fertilizer product and license renewals.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 2 and 3 increase the late fees for fertilizer and license renewals. Section 17 provides civil penalty authority.

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.*

General Fund: There are 418 fertilizer facilities in North Dakota. The Department will inspect 84 facilities annually - 168 per biennium. Of those facilities inspected, the Department projects a 25 percent violation rate. The estimated average penalty will be \$100 per incident. Other Funds: The late penalties are based on the current percentage of late product and license renewals multiplied by the increase in the fee. The penalty is \$100 for both. The fee increases were not included in the executive budget. The engrossed version of this bill decreases the maximum violation from \$5,000 to \$2,500; however, this does not change the Department's revenue calculations.

- 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.*

N/A

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Spencer Wagner

Agency: ND Department of Agriculture

Telephone: 328-1508

Date Prepared: 01/29/2013

FISCAL NOTE
Requested by Legislative Council
01/15/2013

Bill/Resolution No.: HB 1227

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$4,200	\$30,570	\$4,200	\$30,570
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides civil penalty authority and increases late fees associated with fertilizer product registrations and fertilizer license renewals.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 2 and 3 increase the late fees for fertilizer product registrations and license renewals. Section 17 provides civil penalty authority.

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.*

General Fund: There are 418 fertilizer facilities in North Dakota. The Department will inspect 84 facilities annually -168 per biennium. Of those facilities inspected, the Department projects a 25 percent violation rate. The estimated average penalty will be \$100 per incidence. Other Funds: The late penalties are based on the current percentage of late product registrations and license renewals multiplied by the increase in the fee. The penalty is \$100 for both. The fee increases were not 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.*

N/A

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Spencer Wagner

Agency: ND Department of Agriculture

Telephone: 328-1508

Date Prepared: 01/18/2013

1/25/13
CONE

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1227

Page 10, after line 26, insert:

"5. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund."

Page 16, line 27, replace "five" with "two"

Page 16, line 27, after "thousand" insert "five hundred"

Renumber accordingly

Date: 1/25/13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1227**

House **Agriculture** Committee

Legislative Council Amendment Number 13.0487.01001

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Larson Seconded By Rep. Fehr

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman John Wall			Rep. Jessica Haak		
Rep. Wesley Belter			Rep. Marvin Nelson		
Rep. Alan Fehr					
Rep. Craig Headland					
Rep. Joe Heilman					
Rep. Dwight Kiefert					
Rep. Diane Larson					
Rep. David Rust					
Rep. Wayne Trottier					

voice vote
passed

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Fees go to the state treasurer for deposit in the environment and rangeland protection fund

Date: 1/25/13

Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1227**

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Wall Seconded By Rep. Keifert

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman John Wall			Rep. Jessica Haak		
Rep. Wesley Belter			Rep. Marvin Nelson		
Rep. Alan Fehr					
Rep. Craig Headland					
Rep. Joe Heilman					
Rep. Dwight Kiefert					
Rep. Diane Larson					
Rep. David Rust					
Rep. Wayne Trottier					

Vote
Vote
passed

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Change penalty on p. 16 from \$5,000 to \$2,500.

Date: 1/25/13

Roll Call Vote #: 3

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1227**

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Fehr Seconded By Rep. Wall

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman John Wall	X		Rep. Jessica Haak	X	
Rep. Wesley Belter	X		Rep. Marvin Nelson	X	
Rep. Alan Fehr	X				
Rep. Craig Headland	AB				
Rep. Joe Heilman	X				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. David Rust	X				
Rep. Wayne Trottier	X				

Total Yes 12 No 0

Absent 1

Floor Assignment Rep. Wall

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

REPORT OF STANDING COMMITTEE

HB 1227: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1227 was placed on the Sixth order on the calendar.

Page 10, after line 26, insert:

"5. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund."

Page 16, line 27, replace "five" with "two"

Page 16, line 27, after "thousand" insert "five hundred"

Renumber accordingly

2013 SENATE AGRICULTURE

HB 1227

2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

Engrossed HB 1227
March 14, 2013
19910

Conference Committee



Relating to fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments

Minutes:

Written testimony

Chairman Miller opened the hearing on Engrossed HB 1227. All committee members were present.

Representative Kempenich, District 39, introduced Engrossed HB 1227 and testified in support. This bill is rewriting fertilizer law. The concern on the House side was the fees. He stated that he was the consumer part of this equation and there are others that will go into more detail.

Troy Bassingthwaite, President of the North Dakota Agricultural Association, testified in support of Engrossed HB 1227. He deferred any question on the Matrix system to the North Dakota Agriculture Department. **Written testimony #1**

Senator Klein asked if what he was hearing is that he is o-k with the way this is written and o-k with the fees that are being imposed on him and his industry.

Troy Bassingthwaite said that is correct. The Ag Association has about 475 members, made up of mostly retailers, industry folks like him. With the increased costs in inputs and commodity prices, it opens the door for "bad actors". The industry sees this as protecting themselves and for the farmer they see this as protecting them so they know what they are buying.

Senator Klein said that he understands that the established folks that we do business with are abiding by the law but because of high commodity prices and the direction agriculture has gone, we may have some bad actor salesman. Have we imposed penalties on some folks out there?

Troy Bassingthwaite said that currently there is no penalty structure. He said that they are not aware of a lot of issues out there today but it is a concern and other states have or are rewriting their fertilizer law. This bill should help to defer some potential problems and if North Dakota does have problems, penalties can be enforced. The bill has additional merits, it simple, easier to read and it addresses some of the tonnage reporting.

Senator Heckaman asked if any of the overstrikes changed any of the laws that use to be there.

Troy Bassingthwaite deferred that question to the State Ag Department whom was deeply involved with this rewrite.

Senator Miller asked how you qualify to be a member of their organization. And what does it cost?

Troy Bassingthwaite replied that they have an annual fee for membership and membership must be from the Ag Industry. They do not have farmer members but some of their retailers are farmers.

Gene Erpelding, Chief Executive Officer of Allied Agronomy and a member of the committee that helped with the rewrite testified in support of Engrossed HB 1227.

Darrell Scheresky, member of NDAA and manages the Agronomy Center in Washburn, Underwood, Faulkner and Hazen, testified in support of Engrossed HB 1227. From a farmer's perspective and a retailer's perspective, this is a win-win for everyone.

Senator Miller said this still seems to leave some digression to the Ag Department.

Darrell Scheresky said that if an analysis of fertilizer comes up short, it could be his fault and that may be caused simply by an employee not blending correctly. He said they needed to monitor it on their end and he is fine with that. He is also buying products that he trusts has the analysis that he is paying for. It is a multistep deal that is ensuring that we are all getting what we are paying for. He said that if he did come up short on a test he feels the State Ag Department will work with him and he is going to work with them to ensure he is providing what he says they are selling.

Marty Leiss, past president of NDAA, has been involved with this rewrite and the committee work. His company supports this bill.

Brad Steffes, member of NDAA and works for FEI Inc. out of Valley City North Dakota testified in support.

Spencer Wagner, fertilizer specialist for the North Dakota Department of Agriculture (NDDA), explained the working group, the bill and amendments 13.0487.02001. He urged a Do Pass as amended on Engrossed HB 1227. **Written testimony #2**

Senator Luick asked for some clarity on the striking of the language on page 6, the proprietary information with an ingredient in a fertilizer, is proprietary to that company to another company but not the Ag Department. Is that correct?

Spencer Wagner answered yes, and explained that the Ag Department can request that data but it cannot be shared with the public.

Senator Miller asked if this law included manure.

Tory Bassingthwaite replied that there is currently an exemption in the law that allows an exemption for farmer to farmer transfer of compost or manure. If a farmer or operation wanted to start bagging and selling manure they would have to come into the requirements of this law.

Senator Klein had a question on the \$5000 fine or if it had been reduced to \$2500.

Tory Bassingthwaite said that the House amendment lowered it to \$2500. They support the \$2500 fine.

Senator Luick asked how many violations they had in a year.

Tory Bassingthwaite said they are very minimal.

Discussion followed on locks on anhydrous tanks and that it was no long necessary because of better ways to help curve meth manufacturing.

Senator Larsen asked if the \$.20/ton has always been in the law.

Tory Bassingthwaite said that the \$.20/ton is not new. It has been there since this law was written.

No opposing testimony.

Chairman Miller closed the hearing on Engrossed HB 1227.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

Engrossed HB 1227
March 15, 2013
19977

Conference Committee

Hauge

Relating to fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, and plant amendments

Minutes:

Do Pass as Amended

Chairman Miller opened discussion on Engrossed HB 1227.

Senator Heckaman moved for adoption of amendments 13.0487.02001.

Senator Larsen seconded.

Roll call vote: 5-0-0

Senator Luick moved a **Do Pass as amended** on Engrossed HB 1227.

Senator Larsen seconded.

Roll call vote: **5-0-0**

Chairman Miller is the carrier.

Chairman Miller adjourned.

FISCAL NOTE
Requested by Legislative Council
01/28/2013

Amendment to: HB 1227

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- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides civil penalty authority and increases late fees associated with fertilizer product and license renewals.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 2 and 3 increase the late fees for fertilizer and license renewals. Section 17 provides civil penalty authority.

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.*

General Fund: There are 418 fertilizer facilities in North Dakota. The Department will inspect 84 facilities annually - 168 per biennium. Of those facilities inspected, the Department projects a 25 percent violation rate. The estimated average penalty will be \$100 per incident. Other Funds: The late penalties are based on the current percentage of late product and license renewals multiplied by the increase in the fee. The penalty is \$100 for both. The fee increases were not included in the executive budget. The engrossed version of this bill decreases the maximum violation from \$5,000 to \$2,500; however, this does not change the Department's revenue calculations.

- 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.*

N/A

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Spencer Wagner

Agency: ND Department of Agriculture

Telephone: 328-1508

Date Prepared: 01/29/2013

FISCAL NOTE
Requested by Legislative Council
01/15/2013

Bill/Resolution No.: HB 1227

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$4,200	\$30,570	\$4,200	\$30,570
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides civil penalty authority and increases late fees associated with fertilizer product registrations and fertilizer license renewals.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 2 and 3 increase the late fees for fertilizer product registrations and license renewals. Section 17 provides civil penalty authority.

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.*

General Fund: There are 418 fertilizer facilities in North Dakota. The Department will inspect 84 facilities annually -168 per biennium. Of those facilities inspected, the Department projects a 25 percent violation rate. The estimated average penalty will be \$100 per incidence. Other Funds: The late penalties are based on the current percentage of late product registrations and license renewals multiplied by the increase in the fee. The penalty is \$100 for both. The fee increases were not 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.*

N/A

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

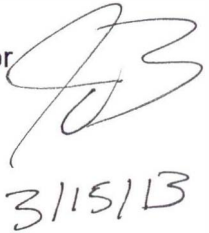
N/A

Name: Spencer Wagner

Agency: ND Department of Agriculture

Telephone: 328-1508

Date Prepared: 01/18/2013



Handwritten signature and date: 3/15/13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1227

Page 1, line 7, after the first comma insert "19-20.1-03.3,"

Page 1, line 7, remove "and"

Page 1, line 7, after "19-20.1-07" insert ", and 19-20.2-11"

Page 1, line 8, after "commissioner" insert ", protected information, rulemaking,"

Page 17, line 11, after the first comma insert "19-20.1-03.3,"

Page 17, line 11, remove "and"

Page 17, line 11, after "19-20.1-07" insert ", and 19-20.2-11"

Renumber accordingly

Date: 3-15-15
 Roll Call Vote #: 5

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. Engrossed: 1227**

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number Rep. 13.0487, 02001
Kempnich amendment

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Heckaman Seconded By Senator Larsen

Senators	Yes	No	Senator	Yes	No
Chairman Joe Miller	✓				
Vice Chairman Larry Luick	✓				
Senator Jerry Klein	✓				
Senator Oley Larsen	✓				
Senator Joan Heckaman	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

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

Date: 3-15-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1227

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Luick Seconded By Senator Larsen

Senators	Yes	No	Senator	Yes	No
Chairman Joe Miller	✓				
Vice Chairman Larry Luick	✓				
Senator Jerry Klein	✓				
Senator Oley Larsen .	✓				
Senator Joan Heckaman	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

HB 1227, as engrossed: Agriculture Committee (Sen. Miller, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1227 was placed on the Sixth order on the calendar.

Page 1, line 7, after the first comma insert "19-20.1-03.3,"

Page 1, line 7, remove "and"

Page 1, line 7, after "19-20.1-07" insert ", and 19-20.2-11"

Page 1, line 8, after "commissioner" insert ", protected information, rulemaking,"

Page 17, line 11, after the first comma insert "19-20.1-03.3,"

Page 17, line 11, remove "and"

Page 17, line 11, after "19-20.1-07" insert ", and 19-20.2-11"

Re-number accordingly

2013 CONFERENCE COMMITTEE

HB 1227

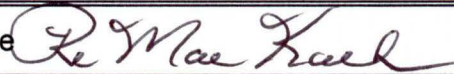
2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1227--Conference Committee
April 9, 2013
Job #21023

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the imposition of civil penalties; relating to fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, and plant amendments.

Minutes:

Representative Wall, Chair: Introduced Jim Gray who brought the amendments to the Senate side.

Jim Gray, Pesticide and Fertilizer Division Director, North Dakota Department of Agriculture: There were two amendments to the bill put on in the Senate Agriculture Committee. They were put on with the support of the Ag. Dept.

The first section, 19-20.1-03.3, is the protected information section of the fertilizer law. This is the section that allowed an applicant submitting a registration to designate portions of that application to be confidential trade secrets or commercial or financial information. This would not be publically released. The Attorney General's office contacted us and recommended striking that section. In their opinion it is already covered under other portions of the Century Code that deal with protected information and open records. They reference Century Code 44-04-18.4. This section covers that same sort of records. The Attorney General also warned that if we simply considered 19-20.1-03.3 and didn't consider the other parts of the open records law, we could inadvertently release confidential information.

The second amendment from the Senate Agriculture Committee deals with removing 19-20.2-11. This is in the anhydrous ammonia law. That is a section that required the Agriculture Commissioner to adopt rules identifying critical methamphetamine use zones and to establish nurse tank locking programs. The Ag. Dept. recently went through rule making. Under the advice of the Attorney General's office, we removed that chapter of the administrative rules that required nurse tank locks in Williams and McKenzie Counties. There are more effective ways to deal with meth issues such as putting decongestants behind the counter. They thought the anhydrous nurse tank program could end so we struck that chapter of the rules. That went into effect April 1. The Attorney General contacted us because now we have struck the rules and now we still have the law that requires us to establish those rules. They recommended striking that section.

Senator Luick: April 1 of 2013?

Jim Gray: Yes.

Senator Miller: McKenzie and Williams County and Walsh County too?

Jim Gray: The rule only required McKenzie and Williams County. Walsh County was added later and never adopted in the rules.

(6:40)

Representative Wall: It appears the Senate amendments are no longer needed or are detrimental.

(7:50)

Jake Geiermann, Legislative Intern: In Section 4 on pages 6 & 7, it is amending the same portion of law that you suggested to repeal. That seemed to be an inconsistency. Would you suggest that this section be removed from the bill?

Jim Gray: Our advice is to strike the whole section 19-20.1-03.3.

Senator Miller: The repealer at the end of the bill, if the House were to accede to the Senate amendments, it doesn't really matter. The code advisor will take care of it. In the rewrite section they rewrote this 19-20.1-03.3. We shouldn't need any additional amendments to the bill in order to do that.

Senator Miller: If the House wished to adopt the proposal of the Ag. Dept that came to the Senate, we wouldn't need to add any additional amendments to the bill.

Representative Wall: We may be hung up on semantics.

Jake Geierman: Anita Thomas said an official amendment would need to be adopted. The Senate would need to recede from their amendment. The new amendment would do the same thing and also strike Section 4 and renumber.

Senator Miller: I move that the Senate recede from its amendment and further amend.

Representative Wall: We'll need another meeting to see it in writing.

Representative M. Nelson: When we have the protected information right in here, do we need a reference that there is protected information under Section 44-04-18.04.

Jim Gray: On our applications for product registration, we could put a statement. I am not opposed to a reference in the Century Code. If that other section got amended, they would have to hunt through the Century Code and find any other reference to that section.

Representative Wall: In administrative rules?

Jim Gray: We could handle it through our rules and through putting references to the other section of Century Code on all of our applications.

Senator Heckaman: We made an amendment to take those sections out of law. Now you don't want them out of law?

Jim Gray: We support removing the protected information section from the fertilizer chapter. We support removing the section from the anhydrous chapter 19-20.2-11 that established the rule for anhydrous lock tank.

Senator Heckaman: Are you saying the Senate amendments were incorrect?

Jim Gray: We support the Senate amendments. The issue that we heard from the Legislative Intern was the way the bill was written. It amends the protected information section in one part of the bill and repeals that section in another part of the bill.

Senator Heckaman: You support the Senate amendments. It is not for the Senate to recede. It is for the House to accede.

Representative Rust: It would not have to be done in rules. It can be placed on the application.

Jim Gray: We can do it either or both ways. Simply communicating that on the application would suffice.

Representative Rust: That seems like the simplest.

Senator Miller: Because the repealer is repealing the entire section, Section 4 is inert.

Representative Wall: We'll meet again to adopt the amendment


Representative Wall: Closed the meeting.

2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1227--Conference Committee
April 11, 2013
Job #21099

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to the imposition of civil penalties; relating to fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, and plant amendments.

Minutes:

Amendment #13.0487.02002

Representative Wall, Chair: Explained Amendment # .02002.

What is removed is already found in code 44-04-18.4 which has better wording.

Senator Miller: Moved that the Senate recede from its amendments and adopt amendment # 13.0487.02002.

Senator Luick: Seconded the motion.

A Roll Call vote was taken: Yes 6 , No 0 , Absent 0 .

Motion carries.

Representative Wall: Closed the meeting.

FISCAL NOTE
Requested by Legislative Council
01/28/2013

Amendment to: HB 1227

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$4,200	\$30,570	\$4,200	\$30,570
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

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Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides civil penalty authority and increases late fees associated with fertilizer product and license renewals.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 2 and 3 increase the late fees for fertilizer and license renewals. Section 17 provides civil penalty authority.

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.*

General Fund: There are 418 fertilizer facilities in North Dakota. The Department will inspect 84 facilities annually - 168 per biennium. Of those facilities inspected, the Department projects a 25 percent violation rate. The estimated average penalty will be \$100 per incident. Other Funds: The late penalties are based on the current percentage of late product and license renewals multiplied by the increase in the fee. The penalty is \$100 for both. The fee increases were not included in the executive budget. The engrossed version of this bill decreases the maximum violation from \$5,000 to \$2,500; however, this does not change the Department's revenue calculations.

- 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.*

N/A

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Spencer Wagner

Agency: ND Department of Agriculture

Telephone: 328-1508

Date Prepared: 01/29/2013

FISCAL NOTE
Requested by Legislative Council
01/15/2013

Bill/Resolution No.: HB 1227

- 1 A. **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.*

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	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
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Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides civil penalty authority and increases late fees associated with fertilizer product registrations and fertilizer license renewals.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 2 and 3 increase the late fees for fertilizer product registrations and license renewals. Section 17 provides civil penalty authority.

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.*

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N/A

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Spencer Wagner

Agency: ND Department of Agriculture

Telephone: 328-1508

Date Prepared: 01/18/2013

April 9, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1227

That the Senate recede from its amendments as printed on page 1018 of the House Journal and page 772 of the Senate Journal and that Engrossed House Bill No. 1227 be amended as follows:

Page 1, line 3, remove "19-20.1-03.3,"

Page 1, line 7, after the first comma insert "19-20.1-03.3,"

Page 1, line 7, remove "and"

Page 1, line 7, after "19-20.1-07" insert ", and 19-20.2-11"

Page 1, line 8, after "commissioner" insert ", protected information, rulemaking,"

Page 6, remove lines 10 through 31

Page 7, remove lines 1 and 2

Page 17, line 11, after the first comma insert "19-20.1-03.3,"

Page 17, line 11, remove "and"

Page 17, line 11, after "19-20.1-07" insert ", and 19-20.2-11"

Re-number accordingly

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Agriculture

Bill/Resolution No. HB 1227 as (re) engrossed

Date: April 11, 2013

Roll Call Vote #: 1

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on H/S page(s) 1018 -- 1019

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

(Re) Engrossed HB 1227 was placed on the Seventh order of business on the calendar

Motion Made by: Senator Miller Seconded by: Senator Luick

Representatives	4/9/13	4/11/13	Yes No		Senators	4/9/13	4/11/13	Yes No	
Representative Wall	X	X	X		Senator Miller	X	X	X	
Representative Rust	X	X	X		Senator Luick	X	X	X	
Representative M. Nelson	X	X	X		Senator Heckaman	X	X	X	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Representative Wall Senate Carrier Senator Miller

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Removal of sections as already referenced in Century Code 44-04-18.4

REPORT OF CONFERENCE COMMITTEE

HB 1227, as engrossed: Your conference committee (Sens. Miller, Luick, Heckaman and Reps. Wall, Rust, M. Nelson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1018-1019, adopt amendments as follows, and place HB 1227 on the Seventh order.

That the Senate recede from its amendments as printed on page 1018 of the House Journal and page 772 of the Senate Journal and that Engrossed House Bill No. 1227 be amended as follows:

Page 1, line 3, remove "19-20.1-03.3,"

Page 1, line 7, after the first comma insert "19-20.1-03.3,"

Page 1, line 7, remove "and"

Page 1, line 7, after "19-20.1-07" insert ", and 19-20.2-11"

Page 1, line 8, after "commissioner" insert ", protected information, rulemaking,"

Page 6, remove lines 10 through 31

Page 7, remove lines 1 and 2

Page 17, line 11, after the first comma insert "19-20.1-03.3,"

Page 17, line 11, remove "and"

Page 17, line 11, after "19-20.1-07" insert ", and 19-20.2-11"

Renumber accordingly

Engrossed HB 1227 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1227

#1

1-24-13

North Dakota Legislative Assembly

House Agriculture Committee

Dennis Johnson, Chairman

H.B. 1227

Chairman Johnson and committee members, my name is Troy Bassingthwaite. I currently serve as president of the North Dakota Agricultural Association. Our membership consists of about 475 dealers and distributors of fertilizer, crop protection products, seed, and related production equipment in this region.

Approximately one year ago, NDAA established a committee to review ND fertilizer law and registration with the intent to update and simplify regulations and encourage effective compliance with the law. The twenty committee members included dealers, distributors, and manufacturers of fertilizer as well as representatives of Farm Bureau, Farmers Union, and the Department of Agriculture. Most of lined out and inserted changes as you can see are straight forward. You will note that in the area of penalties for non-compliance, the current fine of \$25 is replaced with the Language of "Up to \$5000". I think the point that we want to emphasize is that this can very well be a consumer or farmer protection matter. To our knowledge this has not been a problem in this part of the country, but as more fertilizer trade may evolve both intercontinental and world-wide, we need to assure label integrity and provide correct content disclosure so that the farmer is getting what he is paying for and also provide for fair competition in the market place.

As I indicated earlier, the intent of the committee is to streamline and clarify the regulatory process with in the fertilizer industry. Concerning the penalties for non-compliance, the industry is seeking similarity with the matrix system and fine structure utilized by the Ag Department in both the pesticide and anhydrous ammonia regulation. I would defer to their staff for any explanation the committee may desire

I would like to thank you for the opportunity to appear before you today and we would very much appreciate your support of HB 1227. I would be happy to answer any questions the committee may have.

MO - \$1000 / Jay
CO - \$1000 / Jay
MN - \$7500
SD - \$1000 can increase
MT - \$2000
WIH - \$5000

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Line 15) TCM 66F
F225

#1

March 14, 2013

NORTH DAKOTA LEGISLATIVE ASSEMBLY

SENATE AGRICULTURAL COMMITTEE

RE: H.B. 1227

JOE MILLER, CHAIRMAN

CHAIRMAN MILLER AND COMMITTEE MEMBERS, MY NAME IS TROY BASSINGTHWAITE. I CURRENTLY SERVE AS PRESIDENT OF THE NORTH DAKOTA AGRICULTURAL ASSOCIATION. OUR MEMBERSHIP CONSISTS OF ABOUT 475 DEALERS AND DISTRIBUTORS OF FERTILIZERS, CROP PROTECTION PRODUCTS, SEED, AND RELATED PRODUCTION EQUIPMENT IN THIS REGION.

APPROXIMATELY A YEAR AGO, NDAA ESTABLISHED A COMMITTEE TO REVIEW FERTILIZER LAW AND REGISTRATION WITH THE INTENT TO SIMPLIFY REGULATIONS AND ENCOURAGE EFFECTIVE COMPLIANCE WITH THE LAW. THE TWENTY COMMITTEE MEMBERS INCLUDED NORTH DAKOTA DEALERS, DISTRIBUTORS, AND MANUFACTURERS OF FERTILIZERS AS WELL AS REPRESENTATIVES OF FARM BUREAU, FARMERS UNION, AND THE DEPARTMENT OF AGRICULTURE.

MOST OF THE LINED OUT AND INSERTED CHANGES AS YOU CAN SEE ARE STRAIGHT FORWARD. YOU WILL NOTE THAT IN THE AREA OF PENALTIES FOR NON-COMPLIANCE, ~~THE CURRENT FINE OF 25.00 IS~~ REPLACED WITH LANGUAGE OF "UP TO 2500.00" ^{is included} I THINK THE POINT THAT WE WANT TO EMPHASIZE IS THAT THIS CAN VERY WELL BE A CONSUMER OR FARMER PROTECTION MATTER, TO OUR KNOWLEDGE THIS HAS NOT BEEN A PROBLEM IN THIS PART OF THE COUNTRY BUT AS MORE FERTILIZER TRADE MAY EVOLVE BOTH INTERCONTINENTAL AND WORLD-WIDE, WE NEED TO ASSURE LABEL INTEGRITY AND PROVIDE CORRECT CONTENT DISCLOSURE SO THAT THE FARMER IS GETTING WHAT HE IS PAYING FOR AND ALSO PROVIDE FOR FAIR COMPETITION IN THE MARKET PLACE.

AS I INDICATED EARLIER, THE INTENT OF THE COMMITTEE IS TO STREAMLINE AND CLARIFY THE REGULATORY PROCESS WITH IN THE FERTILIZER INDUSTRY. CONCERNING ANY PENALTIES FOR NON-COMPLIANCE, THE GROUP IS SUPPORTING THE MATRIX SYSTEM CONCEPT UTILIZED BY THE AG DEPARTMENT IN BOTH THE PESTICIDE AND ANHYDROUS AMMONIA REGULATION. I WOULD DEFER TO THEIR STAFF FOR ANY EXPLANATION THE COMMITTEE MAY DESIRE.

AGAIN, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY AND WE WOULD VERY MUCH APPRECIATE YOUR SUPPORT OF H.B. 1227. I WOULD BE PLEASED TO STAND FOR ANY QUESTIONS.

CO - \$1000/day	MT - \$2000
MN - \$7500	NH - \$5000
SD - \$500/day	MO - No limit

COMMISSIONER
DOUG GOEHRING



#2
ndda@nd.gov
www.agdepartment.com

NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
STATE CAPITOL
600 E BOULEVARD AVE DEPT 602
BISMARCK ND 58505-0020

Testimony of Spencer Wagner
Fertilizer Specialist
HB 1227
Senate Agriculture Committee
Roosevelt Park Room
March 14, 2013

Chairman Miller and members of the Senate Agriculture Committee, I am Spencer Wagner, fertilizer specialist for the North Dakota Department of Agriculture (NDDA). I am here today in support of HB 1227, a bill that amends North Dakota Century Code (NDCC) Chapter 19-20.1.

NDCC Chapter 19-20.1 regulates fertilizers and fertilizer distributors. In general, it requires fertilizers to be registered before they are distributed in the state, distributors of agricultural fertilizers to be licensed, the paying of annual fertilizer tonnage fees by distributors, and truth in labeling so that the composition of a fertilizer matches market claims.

The North Dakota Agriculture Association (NDAA) formed a work group last year comprised of NDAA members, representatives from the ND Farm Bureau and Farmers Union, and the NDDA. The goal of the work group was to identify any concerns with the current laws and determine the best way to improve regulations to give the fertilizer industry an easy to read law that provides adequate consumer protection. The changes to NDCC 19-20.1 found in HB 1227 largely came out of that process, and we support the legislation.

Most of the revisions found in the bill are editorial in nature, to clean up definitions, and reword the Chapter in easy to understand language. This is consistent with our efforts to utilize educational compliance throughout our regulatory programs. We have found greater compliance with transparency in regulation, and easy to understand requirements.


Other changes are substantive. For example, the current law requires distributors of seed inoculants to hold a fertilizer distributor's license. Language in Section 3 of the bill would exempt seed inoculant dealers from the licensing requirements.

Section 7 of the bill deals with fertilizer tonnage fees. The law requires anybody who sells fertilizer in packages over 25 pounds to an end user to file an annual tonnage report and pay a fee equal to 20 cents per ton. Members of the NDAA have raised concerns with the accuracy of those reports and if all fertilizer distributors are paying their fair share. Two changes to the law have been proposed to help the Department ensure that tonnage reports are accurate. First, the language in lines 18 through 22 on page 10 of the bill requires fertilizer wholesalers to file an annual report listing the amount of fertilizers distributed to licensed fertilizer distributors, although there would not be a tonnage fee assessed with this new reporting requirement. This wholesale tonnage report will allow us to ensure accuracy in a distributor's tonnage by knowing how much of each fertilizer the distributor received from wholesalers, how much was reported sold to customers, and how much remains on-site. In addition, the language on lines 25 and 26 would require distributors to keep fertilizer purchase and sales records for three years.

The last and most significant change proposed to the fertilizer law is in Section 17 of the bill on page 16. It establishes civil penalty authority for the agriculture commissioner when violations are identified. Under the current law, the agriculture commissioner can impose a \$20 late fee if a distributor license application is not received within a month of the expiration date, and late product registration renewals are subject to a \$25 late fee. Beyond that, violations of the fertilizer law are not subject to a fine, including selling an unregistered fertilizer product, operating without a fertilizer distributor license, or selling a misbranded product.

The NDAA fertilizer workgroup spent a considerable amount of time discussing an appropriate civil penalty level for fertilizer violations. The Department's regulatory philosophy is to mix compliance assistance with regulatory oversight. Civil penalties are an effective regulatory response when dealing with violations that significantly impact consumers. To be effective, a civil penalty must be sufficiently high so that it is cheaper for the entity to come into compliance than simply paying the fine. The appropriate level of a civil penalty is based on the economics of the activity that is being regulated, and this is where we depend on the expertise of our industry partners since they understand the economics of the fertilizer industry.

During the workgroup discussions, it was proposed that the civil penalty authority in the law be set at a maximum of \$5,000. This was the original level set in HB 1227. We supported that number because it was based on the input of the fertilizer industry. Furthermore, it is comparable to the \$5,000 level set in our pesticide and anhydrous ammonia laws. That level also gives us considerable flexibility to respond to violations if and when they are found, allowing us to develop a penalty matrix that differentiates appropriate penalties between first-time, minor violations and recurring, serious violations.



Chairman Miller and committee members, I urge a do pass on House Bill 1227. I would be happy to answer any questions you may have.

