

2009 HOUSE AGRICULTURE

HCR 3067

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 3067

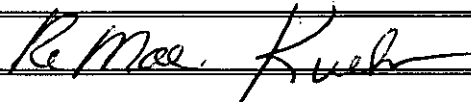
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: April 21, 2009

Recorder Job Number: 12073

Committee Clerk Signature



Minutes:

A joint hearing with the Senate was held for HCR 3067. (See Senate attendance sheet)

**Representative Mueller, Sponsor:** This is another suggestion for our federal government.

This resolution comes out of some degree of frustration. It is about spraying pesticides near or over water. The issue involves a rather complex bureaucracy with EPA, Clean Water Act, and Stays of Action. The impact this action by EPA will have in North Dakota will affect 13,119 privately certified applicators and 7,888 commercially certified applicators. These people work with spraying about 40 million acres in the state. The ruling of the 6<sup>th</sup> circuit court to vacate EPA's exemption for spraying pesticides because they might pollute water will have a very negative impact and consequence for those applicators and acres that I just referenced.

This will affect anyone from production agriculture to homeowners that want to spray lawns.

It is an action pushed by environmental activists using the Clean Water Act to force the EPA to require permitting for all kinds of pesticide spraying processes. I think we need to take a stand. What we do in North Dakota is about safe environment, preserving what we have for future generations. We follow the label.

**Senator Behm:** It always bothers me that people in town that spray their lawns, they overdo it. They want to be sure to kill everything that is out there. A farmer is going to watch what he is putting on because it is going to cost him a lot of money if he over sprays.

**Representative Mueller:** They will be impacted if the EPA does what they want to do.

Maybe that would be an effort handled on the local level by the extension service.

Having the right people certified in the right way for the right places is important.

**Agriculture Commissioner Doug Goehring:** (Written testimony attached #1)

**Senator Wanzek:** What is spray "on or near"? What is the definition of "near"?

**Commissioner Goehring:** Some herbicides can be used near surface water. There are some pesticides that are made to be used on water to control mosquitoes. There are actually aquatic pesticides that are used in water. That is what makes this so asinine that they would rule them as pollutants when they are actually designed to do that job. Concerning the issue for noxious weeds to be controlled near surface water, those have been evaluated and tested.

**Vice Chairman Brandenburg:** Where do we go from here?

**Commissioner Goehring:** We hope that with the pressure that is being applied to EPA from the stakeholders that they would look for a rehearing. If they don't, there is a Stay of Mandate so that we can at least operate the way we are right now for the next 20 months or so and give us a chance to move into this. The Stay of Mandate would be the next step in this if we don't get a rehearing. In doing so, that would give us the opportunity to work with the Health Dept. to see what process we have to implement to help pesticide users. Under the permitting that is required here, every time that you would spray, you need a permit. You would also have to have it for every different chemical. We've heard some stories of it taking from up to several months to 12 months to get a permit. So to do that for every producer for every pesticide

every time you want to go out to spray, I don't know how we will accomplish doing what we need to do out here.

**Vice Chairman Brandenburg:** So we need to get people together, with hearings dealing with this to implement the plan. So it would be important that we have a seat at the table for whatever happens in the future.

**Commissioner Goehring:** If we get the Stay of Mandate, I would expect that not only the Dept. of Agriculture in North Dakota but all of the ag groups would get together to work with ND State Health Dept. to address this issue. You as a producer don't know when you are going to be out there spraying a herbicide. There is humidity, wind conditions, and environmental conditions that are going to dictate a lot of that. You are trying to follow a timeline as to when you need to manage those pests that exist out there. I think they are looking for you to spray on a specific day.

**Senator Wanzek:** How important is it for the state to be abreast of what is happening on the national level? Do we have the resources to be sure that our state is well informed and to be involved at the federal level in making sure that our interests are heard?

**Commissioner Goehring:** Our department will be monitoring it along with other agencies. For example, the Health Dept. is concerned about a health risk with West Nile Virus in controlling of mosquitoes. I think the ag community will be leading the way.

**Dave Glatt, Health Dept.:** We would be the agency tasked to implement this program. My counterparts in other states have sent a message to EPA that we don't want to do this program. There are already programs in place that feel the label is the law. To add on another layer of bureaucracy becomes an unfunded mandate. Reducing pesticides in the environment is a good thing, but we also need pesticides in agricultural production. What is surface water? Is it a pothole that holds water for two weeks or six months, a drainage ditch?

If we are forced to go down this road, there are a couple of components? One, would be monitoring. We would want to find out the extent of the problem. Second, the state would push for a general permit. This basically identifies, if you follow these conditions, that you could get a permit. Although, you don't put your name on a list without somebody taking note of it. There would be spot checks and record keeping.

**Chairman Johnson:** When you talk about a general permit, are you envisioning an annual permit or before each application?

**Dave Glatt:** The state program will have to mirror what the feds tell us. We want a general permit that will identify if you follow the label and stay X feet away from a surface water body that is defined and apply in conditions as stated on the label. That is all you would have to do.

**Chairman Johnson:** Would you have to be a certified applicator to get a permit or can anyone get a permit?

**Dave Glatt:** Whatever is required now under Restricted Use Pesticides will still be required in the future.

**Representative Mueller:** Who would be responsible for enforcement?

**Dave Glatt:** Currently the State Health Dept. has jurisdiction for the Clean Water Act. So the state would petition EPA to run the program. If that is approved, the state would run it with oversight by EPA. They would still have the authority to come in on any of our programs to come and do inspections.

**Representative Mueller:** You really don't have a choice in that matter if this thing goes the way we hope it doesn't.

**Senator Behm:** To me this is almost impossible to regulate. If you spray and you get a hard rain. . . .

**Dave Glatt:** Producers don't want to waste money. There are cases where you get spray drift or a run off. To say we are going to eliminate pesticides with this program, I don't think it is going to happen.

**Vice Chairman Brandenburg:** Three judges from Cincinnati made this decision. Why can't we have judges making that decision for our area?

**Dave Glatt:** That is where the appeal process comes in. There are some industry & agriculture groups that are pushing for an appeal. With all the environmental issues, this is not a huge issue now.

**Senator Wanzek:** It is worth noting that today's machines are better and more precise. If you overlap where you sprayed, it shuts itself off. What kind fines are there even with unintended violation?

**Dave Glatt:** The maximum penalty can be up to \$5,000 per day per violation. Very seldom do we collect that.

**Senator Taylor:** You mentioned that industry groups are working on an appeal. The Secretary of the EPA is the only one that can request an appeal?

**Dave Glatt:** I'm not sure.

**Richard Schlosser, ND Farmer's Union:** We are in support of the resolution. We need to contact people on the national level. Our president, President Carlson, was in Washington, D.C. and did bring this to our National President and Board. We do have an effort going forward at Farmer's Union at the national level.

**Brian Kramer, ND Farm Bureau:** We support this resolution. Our national organization is also working hard on this issue.

**Dan Wogsland, Executive Director, ND Grain Growers Assn.:** We also support the resolution. The 6<sup>th</sup> Circuit Court of Appeals provided a solution for which there isn't a problem. The National Assn. of Wheat Growers is also working on the national level to help solve this.

**Opposition:** None

**Chairman Johnson:** Closed the hearing.

**Representative Belter:** Moved amendment on page 2 to have resolution also sent to Senate and House leadership at the national level—both majority & minority leadership.

**Vice Chairman Brandenburg:** Seconded it.

**Voice Vote taken.** Passed.

**Vice Chairman Brandenburg:** Moved Do Pass as amended.

**Representative Vig:** Seconded.

A Roll Call vote was taken to be placed on the Consent Calendar.

**Yes: 9, No: 0, Absent: 4,** (Representatives Rust, Schatz, Boe, and Froelich).

**Representative Mueller will carry the bill.**

VR  
4/21/09

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3067

Page 2, line 3, after the comma insert "the Majority and Minority Leaders of the United States  
House of Representatives and the United States Senate,"

Renumber accordingly



Date: 4/21/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3067

House Agriculture Committee☐ Check here for Conference Committee

Legislative Council Amendment Number 9.3/33.0/01

**Action Taken**      ☐ **Do Pass**      ☐ **Do Not Pass**      ☐ **Amended**

Motion Made By Rep. Belter Seconded By Rep. Brandenburg

[illegible]

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

**Absent** \_\_\_\_\_

**Bill Carrier**

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

Date: 4/21/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3067

House Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 93133.0101

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Rep. Brandenburg Seconded By Rep. Vig

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	AB	
Mike Brandenburg, Vice Chair	✓		Rod Froelich	AB	
Wesley R. Belter	✓		Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust	AB		Benjamin A. Vig	✓	
Mike Schatz	AB				
Gerry Uglem	✓				
John D. Wall	✓				

Total (Yes) 9 No 0

Absent 4

Bill Carrier Rep. Mueller

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

Consent Calendar

**REPORT OF STANDING COMMITTEE**

HCR 3067: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (9 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HCR 3067 was placed on the Sixth order on the calendar.

Page 2, line 3, after the comma insert "the Majority and Minority Leaders of the United States House of Representatives and the United States Senate,"

Renumber accordingly

2009 SENATE AGRICULTURE

HCR 3067

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 3067

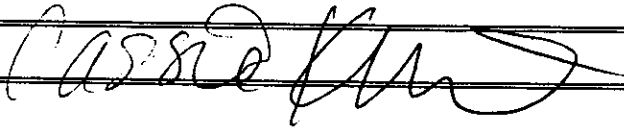
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: April 21, 2009

Recorder Job Number: 12181

Committee Clerk Signature



Minutes:

**Sen. Flakoll** opened the discussion on HCR 3067, all members (7) were present.

**Sen. Wanzek** motioned for a Do Pass and was seconded by **Sen. Behm**. Roll call vote 7 yea  
0 nay 0 absent.

**Sen. Wanzek** was designated to carry the bill to the floor.

**Sen. Flakoll** closed the hearing.

**Roll Call Vote #:**

3067

## Committee

☐ Check here for Conference Committee

**Legislative Council Amendment Number**

Number PO Pass

Wanzen

Behm

[illegible]

Total (Yes) 7 No 0

0

0

Sen. Wanzek

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

**REPORT OF STANDING COMMITTEE (410)**  
April 23, 2009 3:27 p.m.

**Module No: SR-71-8149**  
**Carrier: Wanzek**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HCR 3067, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HCR 3067 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HCR 3067



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**Testimony of Doug Goehring  
Agriculture Commissioner**

**House Concurrent Resolution 3067  
Joint Hearing of the House and Senate Agriculture Committees  
Brynild Haugland Room  
April 21, 2009**

Chairman Johnson, Chairman Flakoll and members of the House and Senate Agriculture Committees, I am Agriculture Commissioner Doug Goehring. I am here today in support of House Concurrent Resolution 3067.

HCR 3067 supports the restoration of the U.S. Environmental Protection Agency's (EPA's) November 2007 final rule that exempted pesticides from the Clean Water Act's definition of "pollutant" as long as the user complies with the product labeling and other provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Without this final rule, pesticide users would be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit prior to making pesticide applications on or near surface water, such as using insecticides to manage mosquitoes, herbicides to manage noxious weeds, or growers using pesticides as part of their normal pest management practices.

In January of 2009 in its ruling on *National Cotton Council v. US EPA*, the Sixth Circuit Court of Appeals ruled that pesticides can be considered to be pollutants under the Clean Water Act. As part of this ruling, the Court ordered the EPA to vacate its November 2007 rule exempting pesticide applicators from the provisions of the Clean Water Act requiring an NPDES permits.

If this ruling stands, users of pesticides on or near surface water will be required to obtain an NPDES permit prior to making applications in certain situations. This could affect the ability of pesticide users to make timely pesticide applications to manage pests. It also puts pesticide users in potential conflict with the Clean Water Act, even if they comply with all state and federal pesticide laws and regulations.

I don't think that this additional level of pesticide regulation is necessary. Pesticides are thoroughly evaluated for their potential to adversely affect human health and the environment during the pesticide registration process. Manufacturers spend a considerable amount of time and money evaluating pesticides for their potential to impact the environment and human health, and safety factors are built into the calculations to error on the side of caution. If those pesticide products are used consistent with their labeling, they should not cause unreasonable adverse effects

In summary, I support HCR 3067 because it sends the message that EPA's final rule should be restored. Without the restoration of this rule, North Dakota pesticide users will be subject to the unnecessary regulatory burden of complying with the NPDES permit provisions of the Clean Water Act. I would be happy to answer any questions.