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**Recommendations for Consideration by the Agriculture and Natural Resources Committee
Concerning North Dakota Century Code 19-20.1 – Fertilizer and Soil Conditioner Law.**

**Presented by Eric Delzer, Fertilizer Program Director for the North Dakota Department of
Agriculture**

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Roughrider Room, State Capital
Bismarck, North Dakota

Chairman Onstad and members of the Agriculture and Natural Resources committee, I am Eric Delzer, Fertilizer Program Director with the North Dakota Department of Agriculture (NDDA). I am here to testify regarding proposed changes to North Dakota Century Code (N.D.C.C.) 19-20.1 entitled “Fertilizer and Soil Conditioner Law.”

The Department agrees with most of the updates proposed in the Legislative Counsel staff’s first draft revision of the fertilizer law, however the Department feels there are several areas of the law that should be further reviewed by the committee and substantive changes to the rule should be considered. Fertilizer use and its role in crop production and the environment is a highly debated topic nationally at the moment. Fertilizer is absolutely necessary in sustaining a healthy robust crop, and when used properly it should not have any adverse effect on the environment. One way we can ensure of this is by having a clear and concise fertilizer law and fair and consistent regulation over the industry.

Currently the state of North Dakota is engaged in legal battles with the U.S. Environmental Protection Agency (EPA) over their Waters of the United States (WOTUS) rule that was finalized in June of 2015. A large driver of the promulgation of that rule was the nutrient loading and hypoxic algae blooms that are plaguing many bodies of water around the country. Agricultural fertilizer use is getting unjustly blamed as the main contributor of this pollution nationwide when in truth it is a combined factor of many different factors, some naturally occurring, some industrial, and some from the wastes of civilized living. Commissioner Goehring and the NDDA have been heavily engaged in defending agriculture and working with stakeholders to ensure they have a voice in this argument.

One of the challenges in maintaining a defensible position is having sufficient supporting data. Currently the NDDA issues licenses to any entity selling a fertilizer product in this state. Part of the licensing requirement is that licensees must annually report the amount of tons sold each year to the Department. We can use that data to monitor how much fertilizer was used per year and actually break it down by county to see what areas are seeing the heaviest use. That data is valuable when investigating claims of water impairment across the state or to simply defend

agriculture when the data shows something different than what the claims are that are being suggested.

One shortfall of the current law is that there is a licensing exemption (page 5, lines 26-27) for dealers that sell only “specialty fertilizers” otherwise known as lawn and garden fertilizers. These common fertilizers are sold in greenhouses, hardware stores, gas stations, and big box retail stores and are applied in large quantities in almost every town across the state. Currently the Department has no data regarding the amount of “specialty fertilizer” that is sold annually across the state because specialty fertilizer dealers are not currently required to be licensed or to report their tonnage data. There is also a provision in the law that requires only quantities of fertilizer over twenty five pounds to be reported.

By being able to better ascertain the level of nutrients being applied in urban areas, we can have a better understanding of the nutrient load distribution across the whole state. Hopefully then we could avoid the creation of reactionary laws that are not properly addressing the real problems we are challenged with. Due to these reasons, the Department feels that it is critical that the committee consider addressing changes to the fertilizer distributor licensing and reporting requirements.

Mr. Chairman if there are no questions I would like to proceed with the Departments other recommended changes to the fertilizer law.

NDDA Recommended Edits to the First Draft Presented to the Agriculture and Natural Resources Committee by Legislative Council Staff.

Page 4, lines 29-30; page 5, lines 1-4 – Exemptions for Product Registrations

This section covers the requirements for fertilizer product registrations as well as the registration exemptions. This language needs to be addressed because as it is written now, it could be construed that any fertilizer blending facility in the state, such as most small local coops, would have to go through a registration process for every custom blend fertilizer they create. This would involve the creation of a label, an application to the Department, along with a \$50 fee per registration. I am certain this was not the intent when the law was created. We believe there should be a clearly stated exemption to the registration requirements for custom blends that are created to specifications requested by the consumer.

Page 9, lines 16-20 – Analysis Methods

The Journal of the AOAC no longer exists and it is now known as the Journal of the AOAC International. The Department feels that this reference is important and should be left in place with only the name of the “Journal of the AOAC” updated to “Journal of the AOAC International.”

Page 10, lines 24-25 – Misbranding

The Department feels that the reference to the Association of American Plant Food Control Officials (AAPFCO) is very important and should not be stricken out.