

2011 SENATE AGRICULTURE

SCR 4008

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SCR4008
February 17, 2011
14655

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Urging the United States Environmental Protection Agency to request an additional 12 month stay of mandate for implementation of the Sixth Circuit Court of Appeals ruling in the matter of National Cotton Council of America et al., v. United States Environmental Protection Agency.

Minutes:

Attachment: #1,

Senator Flakoll: Meeting called to order this 17th day of February, 2011 SCR 4008
Clerk take roll.

Clerk Take roll

Terry Weckerly: President of ND Grain Growers Association (Attachment #1)

Senator Larsen: If they want the permits every time that you have to spray, will it be a yearly permit.....is there a cost or come in every spring and have to get permits for every time they spray?

Terry Weckerly: As written now, we wouldn't have to as a farmer or retailer. The people listed; mosquitoes, weeds and algae, animal control, forestry,they would have to get permits. The concern is once you get this in place, will have the "tumble down" effect as we know regulations tighten up instead of getting better. What can come down from the feds? This is as friendly as it can get for the common producer.

Senator Murphy: Why would that governmental regulation agency call pesticides a pollutant? Why do you think that is wrong?

Terry Weckerly: There are science and environmentalist that sue agency to make stricter regulations. In too heavy quantity, you could make a pesticide a pollutant....too much added mix to the liquid to cause it to become a pollutant. They made the sprayapplication equipment ...properly applied, the spray is safe. That is why laws written by EPA called FIFRA (example given of combination of pesticides)

Senator Murphy: This doesn't regulate farmers They think they can spray without a permit. You are worried about what might happen?

Terry Weckerly: As a personal concern, what might the federal government change as time goes on? I hope the congress eliminates the need for the NPES system...that what I think should be done because we had EPA and FIFRA protections put in place.

Dan Wogsland: Executive Director of ND Grain Growers Association. Answer questions....permitting process is a 5 year process as it is envisioned in ND presently. Dept of Health and Agriculture for putting together to make this process that goes within the law and environment protections, not an owners process and they have the permitting process in place under a come at period until March 4, 2011. Pesticide application is done by Ag and others is governed by labeling laws also governed by FIFRA ...anything prior to the national cotton case, any application that was done under that process directly was not considering point source pollution. The court case has changed that, we have a permitting process in place which is going to be mandated April 9, 2011. Reasons for this are good for this resolutioncongratulations to ND we have done the work in this state to get ready for this....not in other states. The second reason, yesterday, this issue was discussed and is fed legislation moving forward in regards to eliminate and change the law so NPDS permits are not needed.

Senator Flakoll; Oppositions?

Senator Heckaman; Like to hear from the Health Dept. Are you confident that we covered the bases for our agricultural industry?

David Glatt: Environment Health Section for ND Dept of Health. Background, under the NPDES program....we were against this process having the pesticides regulated under this program. We felt the labeling and FIFRA requirements were sufficient to protect the environment. We didn't see problems and nothing that rose to be a concern. Threatened by EPA.....they threatened to take many programs if we didn't take this over. Took advantage of laws in place, our permit that you didn't have to notify us to get the permit. Follow the label and notify within 20 days and do what needs to be done. Following FIFRA puts you in compliance and the permit.

Senator Miller; Would you speak about the study that have been done...chemicals, streams...etc.

David Glatt; We have on going monitoring the surface water and ground water looking for pesticides.....teams with Ag dept to do some of that work. Go out different times of the year looking at streams.....looking for chemical constituents and pesticides....what we've seen are low level detections. Most of it is such a low level it is not a problem. If we do find a problem, we try to find the source as someone not following the label or not applying it correctly. We will continue to monitor....we do a good job of finding the issues in the state.

Senator Klein: Questions for Jim Gray. How does this apply to ND? Tell us how well we are doing and how we got there? If we should be concerned?

Jim Gray: ND Dept of Agriculture. The resolution, the EPA in 2006 had written their own fed rule that said pesticides are not pollutants under the clean water act as long as they are used in overall compliance with the nations FIFRA which is the fed insecticide punch side.

There was a very clean line in the sand which EPA set up saying that pesticides are adequately regulated under the other law. EPA got sued and the court said you have to strike that rule by April....then for the need for NPDES permits in regulations under the clean water act. The pesticides are regulated under state and federal laws and I agree the ultimate fix to this is federal legislative fix that makes that clear.....that is what this resolution does. The Ag department and Health Dept have been working with variety fed agencies to design ambience surface water monitoring across the state. Any detects that we see are at low levels and few pesticides. Any concerns...we react and find cause and correct it. (Example of monitoring 33 sites to check...we found 9 different chemicals and they were commonly used products used in ND and found at very low levels.) No major problems in ND rivers and streams. Next step is to sample some stationary bodies of water, like small lakes and wetlands.

Senator Klein; Are we concerned that with the NPDES we are going to find more regulations?

Jim Gray: We always need to be cognoscente with a balance of whatever regulatory program that we have. My job is to regulate pesticide users and dealers. What is the best use of resources... our state agencies are very small....how do we allocate those resources so the things that matter the most? We are not overly concerned about pesticide contamination in surface water...we shouldn't build a huge regulatory framework to regulate that may be a lower priority.

Senator Flakoll; Close the hearing SCR 4008

Senator Flakoll; Any amendment pending on the bill or resolution?

Senator Murphy Move adoption senate concurrent resolution SCR 4008

Senator Klein; Second

Senator Flakoll; Discussion?

Senator Miller; It is clear our state is doing beyond its call of duty to make sure pesticides are handled and used properly.

Senator Luick; Moving the 12 month to 24 months day?

Senator Flakoll; Motion on floor

Senator Flakoll; Clerk take roll for DO PASS for SCR 4008

Clerk: Roll Call vote

Senator Flakoll; Motion carries Senator Larsen carrier.

Senator Flakoll: Meeting adjourned.

Date: 2/17/2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SCR 4008

Senate Agriculture Committee

Legislative Council Amendment Number _____

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

Motion Made By Senator Murphy Seconded By Senator Klein

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	✓		Senator Heckaman	✓	
Vice-Chair Oley Larsen	✓				
Senator Klein	✓				
Senator Luick	✓				
Senator Miller	✓				
Senator Murphy	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Larsen

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

REPORT OF STANDING COMMITTEE

SCR 4008: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4008 was placed on the
Eleventh order on the calendar.

2011 HOUSE ENERGY AND NATURAL RESOURCES

SCR 4008

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

SCR 4008
03/11/2011
15329

Conference Committee

Committee Clerk Signature *J. Mineth*

Minutes:

2 "attached testimony."

Rep. Porter: We will open the hearing on SCR 4008.

Dan Wogsland: Executive Director of the North Dakota Grain Growers Association. The resolution seeks to get a 12 month extension from the sixth circuit court of appeals case in the case of the National Cotton Council et al. v United States Environmental Protection agency. (See attachment 1&2) This is a pro active approach and for that reason the North Dakota Grain Growers Association supports SCR 4008.

Rep. Kasper: The Agriculture committee appears to negate the requirement all together.

Dan Wogsland: Right.

Rep. Kasper: Wouldn't you want to consider amending the resolution and do the same as what congress is trying to do? Are you concerned about not getting it done?

Dan Wogsland: I believe that the resolution does address that. I would be open to any amendments that would make it better.

Sandy Clark: Representing the North Dakota Farm Bureau and we support SCR 4008.

Rep. Porter: We close the hearing on SCR 4008.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

SCR 4008
3/17/2011
15567

Conference Committee

Committee Clerk Signature *J. Mineth*

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Minutes:

"no attached testimony."

Rep. Porter: We will open SCR 4008. This SCR is one that Mr. Wogsland gave us the testimony on, the spring near water and seeking the 12 month extension through the resolution.

Rep. DeKrey: I move a Do Pass and place it on the consent calendar.

Rep. Nathe: Second.

Rep. Porter: Is there any discussion?

Rep. Nelson: The EPA has asked for that extension.

Rep. Porter: All those in favor voice vote taken motion carried.

Carrier: Rep. Nelson.

Date: 3-17-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4008

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep DeKrey Seconded By Rep. Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunsakor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep Nelson

If the vote is on an amendment, briefly indicate intent:
price note taken Consent Calendar

REPORT OF STANDING COMMITTEE

SCR 4008: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR**
(15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4008 was placed on the
Tenth order on the calendar.

2011 TESTIMONY

SCR 4008



#1

Your voice for wheat and barley. www.ndgga.com

North Dakota Grain Growers Association Testimony on SCR 4008 Senate Agriculture Committee February 17, 2011

Mr. Chairman, members of the Senate Agriculture Committee, for the record my name is Terry Weckerly; I am a fourth generation farmer and farm retailer from Hurdsfield. I am also President of the North Dakota Grain Growers Association. I appear before you today on behalf of the North Dakota Grain Growers Association to support HCR 4008.

The Sixth Circuit Court of Appeals ruling in the matter of National Cotton Council of America et al. v. United States Environmental Protection Agency has resulted in the EPA having to mandate a National Pollution Discharge Elimination System (NPDES) permitting system across the United States. As originally proposed, NPDES permits would be required of anyone applying pesticides "on or near water"; such regulation would be impossible to enforce and would be impossible to comply with especially for the agricultural industry located in prairie pothole region. The court mandate of having NPDES permits in place by April 9, 2011 further complicates the issue.

Mr. Chairman, members of the Senate Agriculture Committee, much has transpired since the Sixth Circuit Court ruling. Due to a tremendous amount of work and effort by Ag Commissioner Doug Goehring and the staff of the North Dakota Department of Agriculture who worked alongside the staff of the North Dakota Department of Health, the NPDES permitting process in North Dakota, as well as across the country, has been vastly refined. The North Dakota Department of Health, which is the lead agency overseeing the NPDES permitting process, recently released a draft permit for public comment. The North Dakota permit would be limited to:

- Mosquito and Other Flying Insect Control - management of all public health/nuisance pests which develop or are present during a portion of their life cycle in standing or flowing water, when applying pesticides in or over standing or flowing water. Public health/nuisance pests in this use category include but are not limited to mosquitoes and black flies.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

- Weed and Algae Control- management of weeds and algae in water and at water's edge using aquatic pesticides, including but not limited to lakes, rivers, streams, irrigation canals, and drainage systems.
- Animal Control - management of invasive or other nuisance species in water and at water's edge, including but not limited to lakes, rivers, and streams. Aquatic nuisance animals in this use category include but are not limited to fish, lampreys, and mollusks.
- Forest Canopy Pest Control - aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where a portion of the pesticide unavoidably will be applied over and deposited to water to target the pests effectively.

For other pesticide applications on or near water, pesticide labeling laws and laws under the Federal Insecticide, Fungicide and Rodenticide Act would govern. The North Dakota NPDES permitting process has been designed to provide environmental protection under the law and at the same time mitigate undue regulatory burden. The North Dakota Department of Health deserves a lot of credit for designing such a permitting process.

With such a permitting process in place, you may ask why SCR 4008 is needed. As stated before, much has transpired since the Sixth Circuit Court ruling. Presently in Congress there is proposed legislation that would do away with the NPDES permitting process altogether. In addition, there are a number of states who are not as proactive as North Dakota and have not put a NPDES permitting process in place. Given the dynamics and the fluidity of the situation, asking EPA to request from the Court a 12 month extension of the process and requesting for federal legislation exempting pesticides from the definition of a pollutant seems to be a proactive approach by the North Dakota legislature on this issue.

Therefore, Mr. Chairman, members of the Senate Agriculture Committee, the North Dakota Grain Growers Association supports SCR 4008 and would respectfully request that the Committee give it a Do Pass recommendation.



Your voice for wheat and barley. www.ndgga.com

**North Dakota Grain Growers Association
Testimony on SCR 4008
House Energy and Natural Resources Committee
March 11, 2011**

Mr. Chairman, members of the House Energy and Natural Resources Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association. I appear before you today on behalf of the North Dakota Grain Growers Association to support HCR 4008.

The Sixth Circuit Court of Appeals ruling in the matter of *National Cotton Council of America et al. v. United States Environmental Protection Agency* has resulted in the EPA having to mandate a National Pollution Discharge Elimination System (NPDES) permitting system across the United States. As originally proposed, NPDES permits would be required of anyone applying pesticides "on or near water"; such regulation would be impossible to enforce and would be impossible to comply with especially for the agricultural industry located in prairie pothole region. The court mandate of having NPDES permits in place by April 9, 2011 further complicates the issue.

Mr. Chairman, members of the Committee, much has transpired since the Sixth Circuit Court ruling. Due to a tremendous amount of work and effort by Ag Commissioner Doug Goehring and the staff of the North Dakota Department of Agriculture who worked alongside the staff of the North Dakota Department of Health, the NPDES permitting process in North Dakota, as well as across the country, has been vastly refined. The North Dakota Department of Health, which is the lead agency overseeing the NPDES permitting process, recently released a draft permit for public comment. The North Dakota permit would be limited to:

- Mosquito and Other Flying Insect Control - management of all public health/nuisance pests which develop or are present during a portion of their life cycle in standing or flowing water, when applying pesticides in or over standing or flowing water. Public health/nuisance pests in this use category include but are not limited to mosquitoes and black flies.
- Weed and Algae Control- management of weeds and algae in water and at water's edge using aquatic pesticides, including but not limited to lakes, rivers, streams, irrigation canals, and drainage systems.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

- Animal Control - management of invasive or other nuisance species in water and at water's edge, including but not limited to lakes, rivers, and streams. Aquatic nuisance animals in this use category include but are not limited to fish, lampreys, and mollusks.
- Forest Canopy Pest Control - aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where a portion of the pesticide unavoidably will be applied over and deposited to water to target the pests effectively.

For other pesticide applications on or near water, pesticide labeling laws and laws under the Federal Insecticide, Fungicide and Rodenticide Act would govern. The North Dakota NPDES permitting process has been designed to provide environmental protection under the law and at the same time mitigate undue regulatory burden. The North Dakota Department of Health deserves a lot of credit for designing such a permitting process.

With such a permitting process in place, you may ask why SCR 4008 is needed. As stated before, much has transpired since the Sixth Circuit Court ruling. EPA recently requested from the Court a 6 month extension of the ruling. On March 9, 2011 the House Agriculture Committee approved HR 872, the Reducing Regulatory Burdens Act of 2011. This legislation in essence reverses the 6th Circuit Court ruling in the case of *National Cotton Council vs. EPA* and eliminates the need for the NPDES permit process. However Congressional legislation takes time. Given the dynamics and the fluidity of the situation, asking EPA to request from the Court a 12 month extension of the process and requesting federal legislation exempting pesticides from the definition of a pollutant seems to be a proactive approach by the North Dakota legislature on this issue.

Therefore, Mr. Chairman, members of the House Energy and Natural Resources Committee, the North Dakota Grain Growers Association supports SCR 4008 and would respectfully request that the Committee give it a Do Pass recommendation.

Press Release | 112th Congress



Attachment 2

Ag Committee Advances Bill to Protect Producers from Duplicative Permit Requirement

March 9, 2011

MEDIA CONTACT:

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WASHINGTON – Today, the House Agriculture Committee approved H.R. 872, The Reducing Regulatory Burdens Act of 2011. It is a bipartisan bill that would amend the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) and the Clean Water Act (CWA) to clarify Congressional intent and eliminate the requirement of a National Pollutant Discharge Elimination System (NPDES) permit for pesticides approved for use under FIFRA.

The legislation, which is cosponsored by 39 of the 46 members of the Agriculture Committee, is necessary to address the negative economic consequences of the ruling posed by the case *National Cotton Council v. EPA* (6th Cir. 2009). Under the court ruling, pesticide users would have to obtain a duplicative permit under the Clean Water Act (CWA) by April 9, 2011 or be subject to a fine of up to \$37,500 per day per violation.

The next step in the legislative process will be for the House Committee on Transportation and Infrastructure to consider the bill as it is the committee of primary jurisdiction.

"Without Congressional action, this misguided ruling would be a crushing blow to an already fragile economy. It would unleash a blitz of regulatory burdens on our farmers and ranchers starting with requiring an extra permit for pesticide applications, thousands of dollars in fines for non-compliance, and an increased risk of lawsuits down the road. I urge my colleagues in both the House and Senate to work together on this issue so we can send a bill to the President," said Rep. Frank Lucas, Chairman of the House Agriculture Committee.

"For too long we've watched organizations use the courts to twist laws against American farmers and agricultural production. The courts are not the place to decide agriculture policy. This legislation is a step in the right direction to address this problem and make it clear that Congress never intended to burden producers with additional permit requirements that would have little to no environmental benefit," said Rep. Collin Peterson, Ranking Member of the House Agriculture Committee.

"I am pleased that H.R. 872 passed the Agriculture Committee so quickly because the April 9th deadline is fast approaching. Without this bill becoming law, this permit would cost jobs and further strain already tight state budgets," stated Rep. Jean Schmidt, Chairman of the House Agriculture Committee's Subcommittee on Nutrition and Horticulture.

"I thank my colleagues in the House Agriculture Committee for their swift action to ensure FIFRA remains the standard for safe and effective pesticide regulation. If left unfixed, the misguided ruling in the *National Cotton Council v. EPA* decision will lead to devastating consequences for the public health of Americans and the economic well-being of state regulating agencies, agricultural producers, and small businesses. I will continue to work towards quick passage of this responsible legislation from the House, so this fix can soon be signed into law," said Rep Joe Baca, Ranking Member of the House Agriculture Committee's Subcommittee on Nutrition and Horticulture.

"This unprecedented judicially-triggered expansion of government regulation creates duplicative, burdensome and costly obligations that provide no quantifiable benefits to human health or the environment. Unless Congress acts, the only measureable results of this ruling will be the higher costs for farmers and ranchers and the number of lost jobs in Ohio's leading industry. We must ensure that FIFRA remains the standard for pesticide regulation, and continues to protect the health and safety of our families and communities," said Rep. Bob Gibbs, Chairman of the House Transportation and Infrastructure Committee's Subcommittee on Water Resources and Environment.

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