

N.D.A.G. Letter to Bullinger (March 26, 1987)

March 26, 1987

Mr. Kenan L. Bullinger
Interim Assistant Director
North Dakota State Laboratories
Lock Box 937
Bismarck, ND 58502

Dear Mr. Bullinger:

Thank you for your letter requesting a legal opinion regarding the registration of "economic poisons." You inquire whether the State Laboratories Department has the authority to deny registration of a pesticide product when the product bears a label that has been approved by the Environmental Protection Agency.

The distribution and sale of pesticide products within the several states is regulated by the administrator of the Environmental Protection Agency by provision of 7 U.S.C. §136, et. seq. entitled The Federal Insecticide, Fungicide and Rodenticide Act. No pesticide may be sold or used which is not registered by the Environmental Protection Agency, by provision of 7 U.S.C. §136(a)(a). The label to be included with the product must be approved by the Environmental Protection Agency in accordance with the provisions of 40 C.F.R. §162.10. A label approved by the Environmental Protection Agency cannot be changed thereafter without the approval of the EPA. A state can not impose any requirements for labeling in addition to or different from that required by the Environmental Protection Agency, 7 U.S.C. §136(V)(b). Consequently, once the label has been approved by the Environmental Protection Agency, a state lacks the authority to impose any additional requirements for labeling of a product. The state may not disregard the EPA's approval and refuse to register the pesticide.

You also question whether the State Laboratories Department would incur liability for damages if any were to result from the use of a pesticide which did not have the specified precautionary label. The state can incur liability only to the extent that sovereign immunity to suit has been waived by a specific action of the state.

N.D.C.C. § 32-12.1-15 provides that immunity is waived by any agency which chooses to buy liability insurance for the agency or any employee. Immunity is waived only to the type of insurance coverage purchased, and only in the amount of the policy limits. Thus sovereign immunity is waived only where insurance covers the liability incurred.

Sincerely,

Nicholas J. Spaeth

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