August 15, 1977

Mr. W. Van Heuvelen
Executive Officer
North Dakota State
Department of Health
State Capitol
Bismarck, ND 58505

Dear Mr. Van Heuvelen:

This is in response to your letter of 29 July 1977 indicating that your department has been working with a named oil company refinery to develop systems for use of their waste heat. You indicate that presently there is an investigation of using the waste heat to control temperatures in greenhouses so that certain vegetables could be grown throughout the entire year.

You indicate that since the company is a corporation they have raised the question of whether this would fall under the corporate farming law. You indicate that your department, because of your interest in environmental control, is concerned about waste heat and interested in seeing programs start for its utilization.

You indicate that you would appreciate a legal opinion from us as to whether or not a refinery run by a corporation growing food produce on refinery property utilizing waste heat for temperature control within greenhouse structures would be considered corporate farming or would there be any legal restrictions on such farming and disposal of the produce from these greenhouses.

You do not describe in further detail the size, structure, method of operation, etc., of the proposed greenhouses. We do note that the Supreme Court of this state in Unemployment Compensation Division of the Workmen's Compensation Bureau v. Valker's Greenhouses, Inc., 296 N.W. 143 involving the agricultural exclusion from mandatory coverage determined a greenhouse operation was not farming within the meaning of that particular exclusion. The operation there considered was described in three paragraphs on page 144 of the N.W. Report as follows:

> The defendant, as its name implies, operates a greenhouse. This structure covers about one acre under glass and is located on an eighteen acre tract of land in the outskirts of Minot. In connection with the greenhouse, the defendant also leased another tract of seven acres of land nearby. This tract is used chiefly for pasture and hay land. Of the eighteen acre tract, approximately fourteen acres are under cultivation. In addition to the greenhouse, there is located on this tract a large barn used to house four head of cattle, two horses, and two Shetland ponies. This livestock is fed chiefly on the produce from the two tracts. There is also a small barn in

> which machinery and tools are housed. Water is secured from two or three wells. Pumping is done by an electric motor. The milk from two cows is used by the families of two employees who live in apartments above the greenhouse. None is sold. The greenhouse is heated by a system fed by an automatic stoker. No janitor is employed. The soil within the greenhouse is watered by a sprinkling system.
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> The defendant, in addition to the greenhouse, operates a store in the business section of Minot where four people are employed. The employees of the greenhouse devote their efforts exclusively to that enterprise. The labor is unskilled and of the same type as is used on farms. Two or three extra men are employed in the spring. The work of the other employees is fairly constant. These employees devote about one-half of their time to working inside the greenhouse and the rest of the time outside chiefly on the eighteen-acre tract.
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> The labor is performed by hand or with the two horses kept on the premises. The enterprise is devoted chiefly to raising flowers, shrubs, plants, and trees for sale. Sales are made through the down town store. About three acres of sweet corn are raised every year, also about two acres of potatoes. The sweet corn is sold but the potatoes are used. Some hay is sold. The soil in the greenhouse is changed each year. The president of the corporation testified that it does not do a nursery business to any extent.

We are familiar with no judicial precedent directly considering whether or not greenhouse structures in general can be considered “farms” within the meaning of the so-called corporate farming law. It does seem possible that a different criteria might be applied by the Supreme Court of this state under the corporate farming laws than would be applied under the workmen’s compensation and related laws. Thus the history of our corporate farming law, some of its language, and the ancient precedent for such legislation. i.e., the old English “Mortmain” statutes, do appear to indicate that at least a part of its purpose is to keep lands used or usable for “agriculture” out of corporate hands. Workmen’s Compensation and Unemployment Compensation are more closely orientated to personal and sociological factors. We do think it is of interest however, that Valker’s Greenhouse, Inc., by the public record developed and shown in the decision cited, utilized roughly 25 acres of land only one of which was “under glass”, and that to the current date we are informed of no action brought against them under the Corporate Farming Act.

There being no direct judicial precedent on the subject matter, and no further indicia in the statute directly relevant to the question, we certainly cannot rule as a matter of law, that no greenhouse type of operation that could conceivably be carried on in this state could constitute a violation other Corporate Farming Act. We would however, tentatively conclude, that a greenhouse operation carried on in approximately the mode described for Valker’s Greenhouses, (except of course utilizing waste refinery heat, rather than an automatic stoker) and occupying not more than twenty-five acres of land would not be questioned as being violative of the Corporate Farming Act. We would assume, of course,

that the “vegetable,” “food product” sold, like in Valker would not be direct competition with the usual farm produce of this state.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely,

John E. Adams
Assistant Attorney General