



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 5 2000

Roger Johnson, Commissioner
Department of Agriculture
State of North Dakota
600 E. Boulevard Ave., Dept. 602
Bismark, ND 58505-0020

Heidi Heitkamp, Attorney General
State of North Dakota
600 E. Boulevard Ave.
Bismark, ND 58505-0040

Dear Commissioner Johnson and Attorney General Heitkamp:

We would like to share with you the Agency's determination (enclosed) on the importation and domestic use of pesticide products that are identical to those manufactured and sold outside of the United States. As you and we are aware, this issue has been especially difficult in North Dakota due to the significant price disparity between some products sold in Canada and their U.S. counterparts sold and used in your state.

We appreciate your efforts to address this problem and work to find an innovative solution. Unfortunately, when Congress enacted the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA did not receive authority to regulate prices charged by pesticide registrants for their products. In fact, FIFRA provides for certain rights to pesticide registrants and owners of pesticide data allowing them to price their pesticide products as they choose to recoup data costs and obtain profits. Therefore, because of the law, EPA cannot regulate the prices of pesticides.

EPA is charged with ensuring that pesticides do not pose an unreasonable risk to human health or the environment. In part, EPA accomplishes this by holding pesticide registrants accountable for product integrity and making sure that pesticides are properly labeled. As discussed in the enclosed memorandum, we conclude that FIFRA does not permit the actions recently recommended by the State of North Dakota Department of Agriculture (NDDA) that individuals relabel a Canadian pesticide product, Achieve® 80DG, and import that pesticide into North Dakota. Consequently, the statute does not allow EPA to approve the importation of Achieve® 80 DG labeled according to the instructions on the NDDA website, nor approve any

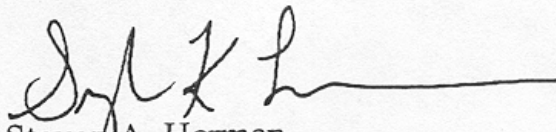
Notices of Arrival of Pesticides for Achieve® 80DG. We must also ask NDDA to evaluate its website and make appropriate revisions to inform interested parties that the importation of Achieve® 80DG or any other noncompliant Canadian pesticide would not be permissible.

We acknowledge the important interest NDDA has in ensuring its farmers have access to agricultural chemicals at competitive prices and we respect NDDA's efforts to provide leadership on this important state pesticide issue. We have worked diligently to resolve the technical and legal questions you have raised and have dedicated a significant amount of staff and management time to work through these concerns. Please note that the EPA's Office of Pesticide Programs registered on June 6, 2000, a Novartis pesticide product, Discover, for similar uses as Achieve® 40 DG. We are hopeful the marketplace will work to stabilize the prices.

We are aware of the price differentials between U.S. and similar Canadian products. As you know, the Agency is working to harmonize the availability of pesticide products between U.S. and Canada through the NAFTA Technical Working Group on Pesticides, in cooperation with stakeholders, including registrants, growers, and concerned states. We have very much valued the interest and support shown by North Dakota State officials and growers in this harmonization effort. We hope that future harmonization will alleviate some of the pricing issues that exist today.

While we acknowledge the importance of maintaining compliance with all of FIFRA's statutory requirements, our enforcement priorities remain on those violations that present the highest risk of harm to human health and the environment. We also want to ensure that our actions prevent adverse environment and safety issues. Although the continued importation of Achieve® 80DG is impermissible, we look forward to continuing to work with you and your staffs on pesticide management issues.

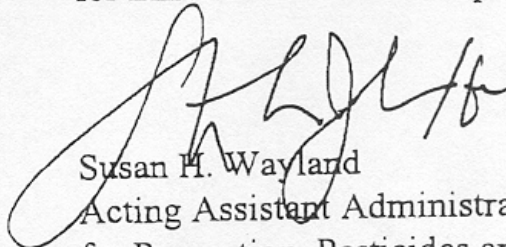
Sincerely,



Steven A. Herman

Assistant Administrator

for Enforcement and Compliance Assurance



Susan M. Wayland

Acting Assistant Administrator

for Prevention, Pesticides and Toxic Substances

Enclosure

cc: Robert E. Risdale, Ph.D., Zeneca Ag Products