

MINUTES

Industrial Hemp Study

Representative Lee Qualm, Chair
Senator Rocky Blare, Vice Chair



**Third Meeting, 2019 Interim
Monday, October 07, 2019**

**Room 362 – State Capitol
Pierre, South Dakota**

The third meeting of the Industrial Hemp Study Committee was called to order by Representative Lee Qualm, Chair, at 12:00 PM (CDT) in room 362 of the State Capitol in Pierre. A quorum was determined with the following members answering roll call: Representatives Shawn Bordeaux, Bob Glanzer, Tim Goodwin, Randy Gross, Oren Lesmeister, and Nancy York; Senators Joshua Klumb, and Reynold Nesiba (via phone); Senator Rocky Blare, Vice Chair; and Representative Lee Qualm, Chair. Excused: Senator Red Dawn Foster.

Staff members present included Amanda Marsh, Senior Research Analyst; and Cindy Tryon, Senior Legislative Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.

Approval of Minutes

A motion was made by Representative Lesmeister, seconded by Senator Klumb, to approve the minutes of the Monday, August 19, 2019, Industrial Hemp Study Committee meeting. Motion prevailed on a voice vote.

Committee Discussion

Representative Qualm said work is being done on the legislation regarding hemp but will not be finalized until after the USDA releases the federal program regarding hemp. The basis for the draft legislation is [HB1191](#) from the 2019 legislative session with changes based on information gathered during the interim study committee meetings.

Representative Qualm presented the draft legislation with proposed changes to the 2019 HB1191. Ms. Amanda Marsh, Senior Research Analyst, read the proposed changes to HB1191. This draft adds section 4 on page 2 stating "an applicant means an individual or legal entity. The designee or farm manager may act as the applicant for the entity." On page 5 of HB1191 new language is added on lines 5 through 7 stating, "A grower, producer, or processor cannot be civilly or criminally charged for the possession of hemp or hemp products confiscated or destroyed under this section." On page 8 of HB1191, section 19 is added stating, "Any person who possesses hemp who is not licensed under this Act is guilty of a Class 3 felony."

Representative Qualm said these clarifications will help reduce the questions regarding the industrial hemp legislation. The intent is to also incorporate deadlines and fee schedules based on Kentucky's industrial hemp program. It has been suggested to set 2-1/2 acres as the minimum plot size.

Representatives Goodwin and Glanzer said the minimum should be much higher to assure the hemp is being grown as an agricultural product, and to help eliminate the abuse and misuse of this crop.

Representative Lesmeister said the minimum needs to stay low enough to allow people to test grow the hemp before investing too much into the crop. Federal regulations require a background check of all those who apply to grow hemp.

Representative Qualm said he would not support requiring more than 5 acres as the minimum. The permits are key to making the hemp program work rather than the minimum allowable acreage. If someone grows hemp without a permit he or she is guilty of a felony no matter the number of acres planted.

Senator Blare said the number of people involved in agriculture continues to decrease and Kentucky saw an influx of young people come back to the farms because of the opportunities with hemp. Legislation should not make the application process so onerous either fee-wise or acre-wise that the process keeps people from getting involved.

Representative Bordeaux said 4 of the tribes in South Dakota have been approved by the federal government to raise hemp. Not all tribal land is on the reservation and there could be some concern when transporting the crop from one area to another. There are non-Indians who rent tribal land and want to grow hemp on that land. It is important everyone understands and follows the rules. It is important to have everyone at the table when making these decisions.

Representative Qualm said there will need to be a lot of conversations back and forth across the jurisdictional lines, so everyone is on the same page. Requiring a permit to grow and transport hemp would help everyone understand the process, and having USDA require uniform permits across the United States would best allow for consistency and protections.

Representative Bordeaux said a letter should be sent to the Great Plains Tribal Chairmen's organization as this legislation progresses to be sure the tribes are informed as to how the state is addressing the legalization of industrial hemp.

Minnesota Hemp Program Minnesota Department of Agriculture

Mr. Anthony Cortilet, Hemp Program Supervisor, Minnesota Department of Agriculture (MDA), spoke to the committee via telephone ([MDA Industrial Hemp website](#)). Minnesota was one of the 9 original states establishing a hemp program when Congress passed the 2014 Farm Bill. The state legislature had been considering a hemp program since the mid-90s as Canadian farmers were profiting from growing hemp. With the passage of the 2014 Farm Bill, Minnesota was able to pass legislation in 2015 to legalize industrial hemp and the first modern-day legal hemp crops were grown in Minnesota in 2016.

The MDA was not involved in the development of the hemp legislation and did not expect it to pass, so had to put a program together very quickly once the bill was enacted. The legalization of hemp in Minnesota led the farmers to really push the MDA to get a hemp program established so planting could begin in 2016. The MDA put together a licensing framework and some general guidelines the growers had to follow.

The laws regarding hemp in the 2014 Farm Bill and the 2015 Minnesota legislation were designed for growing hemp for grain and fiber and that is why the 2014 Farm Bill refers to industrial hemp. Growing hemp for CBD extract became popular about two years ago and has brought some new challenges for the hemp programs.

In 2016, the MDA had 8 applications to participate in the hemp program. To participate in the hemp pilot program intended to study the growth, cultivation, and marketing of industrial hemp, the grower had to write a study proposal. One application was denied as that grower wanted to grow medical cannabis. The hemp production was all grain growing and production the first year and everything was on a smaller scale than it is today.

In 2017, there were 40-50 licensed growers and the hemp was grown mostly for grain and some for fiber. In 2018, the number of growers increased to 60 and that is when growers became involved in the production of CBD. Growing hemp for CBD extraction is when managing the hemp program became more complicated regulatory-wise

as the new Farm Bill had not passed and it was not clear if CBD oil was legal. The MDA's only charge was to license and register farmers producing hemp. As long as the plants tested lower than the .3% THC levels then growers were allowed to continue growing hemp no matter the end product.

Growing hemp for CBD gets complicated because it suddenly becomes not about industrial hemp but more about marijuana without the THC. When growing hemp for fiber and grain the THC levels do not come close to the .3%. When growing CBD extraction varieties of hemp the THC levels will be right at that .3%. The MDA failed about 10% of the 540 fields.

This year there were about 600 applications submitted and 300 of those paid for the hemp license and put crops in 700 fields equaling 11,000 acres statewide. There are 10 million square feet of indoor plants for the CBD grow and those plants are a challenge as they are identical to marijuana plants. All registered growing locations are shared with law enforcement.

Another issue with the CBD plants are growers purchasing seeds from companies in states where recreational marijuana is legal. The out-of-state seed companies tell the growers the seeds are for plants below the .3% THC levels and then the plants test higher than .3% and have to be destroyed. Minnesota cannot regulate companies in other states, so the growers have no recourse. The USDA establishing federal regulations should help address the issue of misrepresenting hemp seeds sold across state lines.

The MDA works closely with law enforcement. Hemp plants that have higher than .3% THC levels are considered marijuana and are a schedule 1 controlled substance. When finding illegal plants, law enforcement does not give second or third chances for a schedule 1 plant and that usually results in felony charges. Everything law enforcement testified to as opponents to the legalized hemp legislation has come true in Minnesota. There are not many bad actors but as a regulator a lot of time is spent on those few. Most law enforcement in Minnesota are not opposed to growing hemp but the problem is law enforcement does not know when and how they can intervene. This is an issue in every state.

Law enforcement issues should not deter a state from legalizing hemp, but the Department of Ag needs to be prepared to work closely with law enforcement. It is important to protect the farmers who participate in the hemp program for the right reasons.

Minnesota is developing hemp processing in the state. There have been 34 processing licenses issued for CBD extraction, 4 processing licenses for fiber, and 12 licenses for processing for grain. Fiber development seems to be the future for hemp processing because it can be used in so many products. CBD extraction is where all the money is now regarding hemp processing, but farmers take great risk in growing these types of hemp plants as the plant can suddenly have high THC levels and the crop has to be destroyed and there are so many farmers nationwide growing hemp for CBD extraction which will end in a glut of product.

To obtain a license to grow hemp in Minnesota the grower cannot have a controlled substance felony within 10 years of applying. MDA does run a background check on every first time applicant and the background check must be passed before continuing with the licensing process ([MDA Hemp Application](#)). There is no requirement in Minnesota at this time as to where hemp is grown or how much can be grown. The MDA is going through the rule making process now and may be restricting grows within residential dwellings so people can no longer start seedlings in their homes and then transfer them to the fields as those plants are easily confused with marijuana plants.

Representative Goodwin asked about the development of hemp processing plants. Mr. Cortilet said the second year hemp was legal there was some interest from some out-of-state hemp processing companies. These businesses called and talked about relocating but never set up shop. It took the growers in Minnesota and in-state

entrepreneurs to start building that infrastructure. This year the hemp processing business has exploded because there are so many farmers growing hemp. South Dakota may see these businesses develop faster because neighboring states have processing plants and because there is no income tax in South Dakota.

When asked about the need for additional staff, Mr. Cortilet said he has hired 2 employees since the inception of the MDA hemp program and that is not enough. One of those employees is the program coordinator and the other handles all the inspections and issuance of certificates. MDA has done a good job networking with law enforcement and the law enforcement community has been a big help. The MDA utilizes existing staff and programs located throughout the state. The University of Minnesota is getting involved with the land grant extension which will help with outreach and assistance to farmers.

The Minnesota hemp program funding is mostly fee-based with the general fund originally funding \$200,000 annually and now funding \$250,000 a biennium. Currently the license fee is \$400 for up to 100 acres and \$50 for each additional field or grow area. The \$400 fee includes one field test. If the additional field(s) is more than 10 miles from the original 100 acres, the fee is \$100 due to the extra time for the inspectors to travel. There are additional fees for sampling. The cost is \$125 per sample and the grower pays for the samples but the department does not charge for travel. The MDA has found the fees do not cover all expenses so the fee rates will most likely be increased. *See the application for the updated fee schedule ([MDA Hemp Application](#)).*

There is a processing license. If the grower is also a processor he or she is listed as a grower/processor and additional fees are not required. Processing businesses that are not growers pay a \$250 licensing fee per location. These businesses are processing raw hemp and it is important to have the business locations for law enforcement purposes.

Senator Klumb asked about the testing process. Mr. Cortilet said the MDA does use a third-party in-state lab for testing. The MDA state lab is not set up to do the testing and it will take additional staff and new infrastructure to be able to do the testing. The MDA is working towards making changes to the state lab so testing can be done by the state eliminating a third-party from having to testify in court regarding test results. More third-party labs are being built throughout the country for conducting tests on hemp for growers as well as for government entities. All growers are encouraged to get plants tested by third-party labs to make sure the crop is within legal standards.

Representative Qualm asked about law enforcement intervention. Mr. Cortilet said a regional drug commander may receive a tip that begins an investigation as a drug grow. If the field looks like a hemp field the commander will call MDA to determine if a hemp field may have been left off the list. MDA immediately checks with the licensed growers and updates the information and contacts law enforcement. Law enforcement could technically destroy the crop if the field is not on the licensed hemp field list, but law enforcement would prefer not to destroy hemp fields.

Another example is law enforcement makes a traffic stop and the car has a strong smell of marijuana, the driver may have a hemp growers license and claim to have hemp in the car, but law enforcement finds bags of marijuana. When a licensed hemp grower gets caught with marijuana the hemp license is revoked.

Representative Lesmeister asked if a producer can grow hemp under another producer's hemp license. Mr. Cortilet said when the hemp program first started in Minnesota there were only 6 licensed growers and they were allowed to contract with other growers with the understanding the licensee was responsible for the contracted growers. This year a large processing company contracted with about 50 growers and the contractors all grew hemp under the processing companies license. The ability to contract growers is ending. Starting next year everyone planting hemp in Minnesota will have to be licensed. Mr. Cortilet strongly suggested South Dakota not allow hemp licensees the ability to share a license by contracting with other growers.

Representative Qualm thanked Mr. Cortilet for taking the time to speak to the committee.

North Dakota Highway Patrol

Major Aaron Hummel, Chief of Staff, North Dakota Highway Patrol (NDHP), spoke to the committee via telephone. Major Hummel said the NDHP is set up similar to the SDHP. The Major said to this day the NDHP has not had any situations arise relating to hemp. There have not been any loads of hemp that turned out to be marijuana or situations where people tried to disguise marijuana as hemp. In the early stages of the hemp pilot program there were a couple of growers who decided to grow hemp without first obtaining a license and another tried to grow marijuana. But those few early issues were the only trouble law enforcement has seen regarding the hemp program.

Representative Goodwin asked if the NDHP hired additional staff or have seen an increased workload because of the hemp program. Major Hummel said the department did not add any additional resources. The NDHP was asked to coordinate with the ND Department of Agriculture regarding the delivery of hemp seed. The NDHP is working with the Department of Ag to develop a law enforcement training course regarding hemp.

Representative York asked what the procedure is if a vehicle is stopped and there is a question regarding transportation of hemp or marijuana. Major Hummel said there have not been any such incidents but if the situation does arise the state lab has the ability to test for THC levels and the states attorney would decide whether to prosecute. Any arrests made up to now have been regarding product that is obviously marijuana. If there were to be a question of marijuana or industrial hemp the arrest would not be made until the plant type is determined.

At this time there is no manifest or paperwork validating the load being transported. Right now hemp is being treated as a crop. If there is a question the Department of Ag is contacted to determine if the transporter is a licensed grower. It would be helpful to law enforcement if there was some type of paperwork that could be checked when stopping someone transporting product to verify the load. The motor carrier industry is also concerned about transporting hemp without some type of paperwork.

Representative Qualm thanked Major Hummel for taking the time to talk to the committee.

Glanbia Nutritionals

Ms. Rachel Case, Technical Services Manager, Glanbia Nutritionals, Sioux Falls, talked to the committee via telephone. Glanbia Nutritionals is a global organization operating in 32 countries, has over 6,000 employees, and sales in over 130 countries. Glanbia has a variety of manufacturing sites across the country including here in South Dakota. Glanbia is the number 1 provider of whey-based nutritional solutions and number 1 producer of American style cheddar cheese.

When one of the Glanbia facilities in Canada burned down, Glanbia found South Dakota as the preferred location to rebuild. The facility is located in the I-29/I-90 corridor near Sioux Falls. The facility has top level food safety and quality standards.

The 63,000 square foot facility is now 100% powered with renewable energy. Glanbia produces a variety of plant-based ingredients, such as flax seed, chia seed, and other plant protein ingredients. These are packaged in 50 pound bags for use as ingredients in major retail products. More ingredients are being examined for use as plant-based products such as hemp.

Hemp seeds are pressed for oil and the cake remains which is mostly protein. The process is similar to using whey for cheese production. Hemp is about 45% protein and the process would not require any changes to the equipment

located in the facility. Canada has been putting the product into the market for quite some time. Glanbia would like to work with local growers for hemp production if the hemp bill is passed in South Dakota.

Glanbia can process 300,000 pounds of flax seed per week and has capacity to add new products to the production line. Glanbia products are gluten free, allergen free and non-GMO and hemp meets that criteria. With flax seed Glanbia has a supply chain. When hemp is legalized Glanbia will be looking for a hemp supply chain and contracting with farmers. As demand for the product grows, Glanbia will be wanting to contract a year in advance for producers to fill the raw product need.

The nutrition industry has been working on adding hemp proteins for a few years. States with legalized hemp are seeing this type of processing of hemp seed expanding and South Dakota is not included. The Glanbia facility was built for growth and is ready for hemp to be legalized in South Dakota. The interest in plant-based products and proteins continues to grow as does the demand for these products.

More information can be found on the [Glanbia website](#).

Representative Qualm thanked Ms. Case for taking the time to talk to the committee.

Horizon Hemp Seeds

Mr. Derrick Dohmann, Sales and Marketing Manager, and Dave Dohmann, Treasurer and Secretary, Horizon Hemp Seeds, Willow Lake, SD, talked to the committee about Horizon's hemp seed business operations. The business was started with the mission vision to develop strategic alliances with industry partners and provide quality, certified industrial hemp seed to the growers.

The company is projecting 10,000 bags of seed sold this year, at \$5 per pound or \$250 per bag. There is a plan to treat the seed to increase the yields. The company plans to get into processing in the future, including a food grade facility. The company will also be looking into genetics and developing customized strains of hemp.

The seed used in 2019 originated in Canada and is shipped to the farmer in North Dakota who is growing the hemp for Horizon this year. Two seed varieties were planted the end of May and there was emergence within three days. The seeding rate was about 20-25 pounds per acre.

This was the North Dakota farmer's fourth year of growing industrial hemp. During the harvest it is critical to get air on the cuttings right away as the seeds need to be under 10% moisture but below 9% is too dry. The goal of the harvest is to end up with North Dakota Department of Agriculture certified seed. One strain of the harvest tested at .0163% THC levels and the other strain was an even lower percentage.

Mr. Dave Dohmann presented the financial side of the business. Because the business is located in South Dakota and the farming and production is in North Dakota there are out-of-state-costs including travel costs for visits to the field. The contract costs for the grower is about 68 cents per clean pound and this year there will be about 220,000 pounds from the 150 acres planted so the farmer will be paid about \$150,000. Other expenses are out-of-state cleaning, bagging and storage.

When originally selecting a financial institution Horizon wanted to use a South Dakota bank with a branch in North Dakota but South Dakota banks cannot do business with a hemp company because of South Dakota laws. The business found a bank in Jamestown, North Dakota, willing to work with them but this was the first hemp business with which the bank had done business.

Projected net sales for 2020 is 1.5 million and those sales will continue to grow each year. In 2021, Horizon Hemp will plant 1,500 acres in North Dakota and northern Minnesota which adds up to 2.25 million pounds of seed. The plan is to double the amount grown in 2022 and hope to be adding some South Dakota acres by then. Mr. Derrick Dohmann said crop insurance for hemp will be available next year through USDA.

Horizon Hemp partners with Uniseeds out of Ontario, Canada, and exclusively represents Uniseeds in 10 states. A dealer network will be developed for sales and distribution across those 10 states.

Horizon Hemp joined NDSU in testing hemp. NDSU has been working with hemp for 4 years. NDSU will be publishing the results of the testing which demonstrates how the different hemp products compare. All varieties tested well below the .3% THC levels. The cost for having 4 varieties tested through this NDSU program was \$4,000.

For more information go to the [Horizon Hemp Seeds Website](#).

Representative Qualm thanked Derrick and Dave Dohmann for taking the time to talk to the committee.

Purpl Scientific

Mr. Chad Lieber, President, Purpl Scientific, and Mr. Chris Guthrie, General Manager, Delta 9 Systems, Cincinnati, talked to the committee via telephone. Mr. Lieber gave the history of the Purpl Scientific company. While working for a company that provides drug testing to pharmaceutical companies, Mr. Lieber saw the need for this same technology for testing cannabis. Much of the technology was developed by the USDA in the 1940s for agricultural inspections. Another manufacturer developed a product for testing that was complex and large in size. The company found a way to minimize the equipment in size and cost and that is when Purpl Scientific was established. Purpl Scientific markets Purpl Pro which measures the levels of THC in hemp.

Mr. Guthrie explained Delta 9 Systems, a subsidiary of General Data Company, which takes all the traceability and quality assurance technology used in other industries and applies that to the cannabis and hemp industry. The system uses the bar code technology for hemp seed sale tracking, making sure the product does not fall into the wrong hands and all the revenue is properly collected. Other tools regarding quality analysis are included on the truck and that is how the Delta 9 Systems connected with Purpl Pro.

Mr. Guthrie said being able to get fast, reliable, quantitative analysis and potency analysis for the flower or materials is important to this industry. This becomes even more important as law enforcement finds people with hemp or cannabis and needs to be able to quickly tell the difference.

Mr. Lieber said the company began selling Purpl Pro in March of 2019. The general market reception has been very good. Results of the Purpl Pro were validated by using labs in California and Oregon and a white paper was published regarding those results ([Validation White Paper](#)). Since that validation, sales continue increasing each month.

The Purpl Pro is low-cost, easy to use, and nearly instantaneous, but it does not measure lower than 2% THC levels. Although the device cannot measure lower than 2% THC levels, it can be used to determine if a plant is hemp or cannabis. The Purpl Pro does accurately measure the CBD content.

Representative Gross asked if the price of \$1500 listed on the website is for the complete product. Mr. Lieber said that price is for the entire product including the app ([Purpl Scientific website](#)). The device is about the same size and weight as a hockey puck. There is a sister company developing this same type of system for narcotic testing.

Representative Qualm thanked Mr. Lieber and Mr. Guthrie for taking the time to talk to the committee.

Public Testimony

Mr. Reid Vander Veen, Hemp Processing Solutions, Tea, invited the committee members to a meeting being held this afternoon at the Pierre Ramkota regarding the future of hemp in South Dakota.

Mr. Doug Riediger, Farmer, Wakonda, requested information be sent to extension agencies encouraging their support when drafting future hemp legislation. Mr. Riediger thanked the members of the committee for the work they are doing.

Committee Discussion

Representative Qualm said during an earlier committee meeting comments were made saying Texas no longer prosecutes for marijuana possession because of the legalization of hemp. Representative Qualm distributed a letter dated July 18, 2019, from the Governor of Texas explaining Texas does prosecute for marijuana violations ([Document #1](#)).

Representative Goodwin said he is making a formal request that the questions Governor Noem included in a press release regarding industrial hemp be answered by the Executive Branch. Representative Qualm said many of Governor Noem's questions will be addressed when the USDA announces the federal rulings regarding hemp.

The next Industrial Hemp Study Committee meeting will be held after the USDA makes an announcement regarding the USDA's hemp regulations.

Adjourn

A motion was made by Representative Gross, seconded by Representative Goodwin, that the Industrial Hemp Study Committee be adjourned. The motion prevailed on a voice vote.

The Industrial Hemp Study Committee adjourned at 4:30 PM.

NOTE: On October 29, 2019, the USDA did publish the draft of the federal regulations regarding the Domestic Hemp Production Program. The draft regulations are available on the USDA website or by [clicking here](#).