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Ms. Karen Tandy, Administrator
U.S. Drug Enforcement Administration
Mailstop: AES
2401 Jefferson Davis Highway
Alexandria, VA 22301

Dear Administrator Tandy:

I want to thank your staff for taking the time to meet with me on February 13, to discuss the applications I submitted on behalf of two North Dakota farmers for registrations to cultivate industrial hemp and on behalf of one of those farmers for a registration to import viable seed, as well, for purposes of such cultivation.

In the letter sent to me by Mr. Rannazzisi on February 1, prior to the meeting, DEA indicated that it would not waive the requirement for DEA registration for North Dakota-licensed industrial hemp farmers. DEA explained that, "as a practical matter, the registration requirement is the primary means by which DEA ensures that legitimate handlers of controlled substances abide by the regulatory requirements of the CSA and DEA regulations." Further, DEA declined to grant the State of North Dakota authority to regulate the cultivation of industrial hemp on the grounds that "Congress envisioned when it enacted the CSA that the states—through enforcement of uniform state controlled substances laws, which were designed to complement the CSA—would act in harmony with the federal government to prevent illegal controlled substance activity."

DEA should reconsider that position. Under North Dakota law, by definition, industrial hemp must have less than three-tenths of one percent THC in a mature seed or in a growing plant with a THC level above three-tenths of one percent if the CBD to THC ratio is not less than two to one. Such plants cannot produce any psychoactive effect and are therefore useless as drug marijuana. As William M. Pierce, Jr., Associate Professor Pharmacology and Toxicology at the University of Louisville School of Medicine has written, under "the most fundamental principles of pharmacology, it can be shown that it is absurd, in practical terms, to consider industrial hemp useful as a drug." (Pierce, W. M. Jr., Ph.D., letter to Andy Graves, President, Kentucky Hemp Growers' Cooperative Association, January 24, 1997.) The DEA should exercise its discretion

under the CSA to initiate a rulemaking proceeding to waive the registration requirement for cultivation of industrial hemp pursuant to state law and under state government supervision.

If DEA is not prepared to waive the registration requirement or grant state authority to regulate cultivation of industrial hemp, I would respectfully suggest that DEA is now required to afford careful and reasoned consideration of the registration applications which have been properly submitted to DEA. These farmers have already been licensed pursuant to state authority to cultivate industrial hemp in North Dakota.

Under the CSA, 21 U.S.C. §823(a), the DEA is *required* to register an applicant to manufacture a controlled substance in Schedule I *if* the agency "determines that such registration is consistent with the public interest and with United States obligations under international treaties, convention or protocols…" The statute then sets forth several factors which must be considered by DEA in determining the public interest:

1. "maintenance of effective controls against diversion of particular controlled substances…into other than legitimate, medical, scientific, research or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;
2. compliance with applicable State and local law;
3. promotion of technical advances in the art of manufacturing these substances and the development of new substances;
4. prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution or dispensing of such substances;
5. past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion; and
6. such other factors as may be relevant to and consistent with the public health and safety."

In a press release dated March 12, 1998, entitled "Statement from the Drug Enforcement Administration on the Industrial Use of Hemp," DEA confirmed its obligation to consider these statutory criteria in consideration of an application for registration to cultivate industrial hemp.

I believe that any fair consideration of the subject registration applications from the North Dakota farmers will lead to the conclusion, first, that there is simply no risk of diversion of the cannabis plant or any of its parts "into other than legitimate…industrial channels…" As State

Representative Monson explains in the cover letter to his registration application, he would obtain viable hemp seed from Canada (if a separate import license is granted); or domestically from a researcher, from North Dakota State University or from feral plants. None of these are sources of seed for plants that can in any way enter the stream of commerce for marijuana.

In harvesting the hemp plants, Rep. Monson would remove the seeds, on the premises of his farm, and process them in two ways: (1) by using a commercial grade oil press on his own premises to press seed into oil, and shipment of the oil directly to customers; and/or (2) by sterilizing a portion of the harvested and removed seed using an infrared sterilization process (heat) and shipping the sterilized seed to commercial seed pressers located in North Dakota and in neighboring states. Thus, following harvest, *no controlled substance of any kind* would leave Rep. Monson's farm. The only products that will leave his farm would be sterilized seed and oil, both of which are specifically *exempted* from the definition of "Marihuana" under the CSA, 21 U.S.C. §802(16).

Concern about potential diversion of the controlled parts of growing cannabis plants, including seed, from the farmer's premises, is misplaced. As noted, these plants, under state law which my agency will enforce, will contain less than three-tenths of one percent THC. For that reason, they are absolutely useless as drug marijuana. For the same reason, the seeds of industrial hemp plants, even if they were diverted in viable form, would be useful only to cultivate more hemp plants which would themselves be useless as a narcotic drug, *i.e.*, useless for other than legitimate industrial purposes. Indeed, the experience of Canada and other countries shows that there is no realistic risk of diversion of industrial hemp plants into other than legitimate industrial channels for legitimate industrial purposes.

Since at this point, only two farmers are applying for registrations, DEA has no occasion to reach the issue of limiting bulk manufacture, i.e., cultivation, of industrial hemp to that number of establishments that would "produce an adequate and uninterrupted supply" of industrial hemp "for legitimate…industrial purposes." 21 U.S.C. §823(a)(1). The number of establishments required to meet that standard is surely greater than two so DEA can leave that question for another day.

With respect to the second factor, the applicants in these cases would be complying with applicable state and local law since they have been specifically licensed under state law to cultivate industrial hemp.

As to the third factor, the only possibility of promoting technical advances in the cultivation of industrial hemp in the U.S. is to permit such cultivation to take place, under the carefully controlled conditions contemplated by these applications.

As to the fourth factor, our agency has confirmed, through both state and federal background checks, that neither of the applicant farmers has any prior conviction record for anything, let alone violations of controlled substances laws. Both of these applicants are known to me personally and are lifelong farmers and outstanding citizens of our state with a reputation for

adhering to the highest ethical standards. Rep. Monson, as you may know, currently serves the Majority (Republican) Assistant Leader of the North Dakota House of Representatives.

Finally, no U.S. farmer has any past experience in the cultivation of industrial hemp specifically; both of these applicants have, however, demonstrated the existence in their establishments, for the reasons explained above and in Rep. Monson's letter, of effective control against diversion.

Mr. Rannazzisi's letter also mentioned DEA's concern about ensuring "compliance with international drug control treaties," and the statute also requires that DEA ensure that any registration is consistent "with United States obligations under international treaties, conventions or protocols." 21 U.S.C. §823(a). As you are undoubtedly aware, Article 28, section 2 of the 1961 Single Convention on Narcotic Drugs, which the United States has ratified and constitutes the relevant strand of the network of Conventions implemented by the CSA, provides that, "This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fiber and seed) or horticultural purposes…"

Consideration of the relevant factors should lead DEA to conclude that the issuance of these registrations is in the public interest and to grant these applications.

Given the history of other applications to DEA for registration to cultivate industrial hemp, for research and other purposes, I want to emphasize our strong belief that DEA is not free simply to ignore these applications. To the contrary, the agency has a legal obligation to review them carefully, to consider the relevant public interest factors set forth in the statute and to issue a reasoned decision based on such consideration. *See*, *e.g., State or Oregon v. Ashcroft*, 368 F.3d 1118, 1127-28 (9th Cir. 2004), *aff'd sub nom Gonzales v. Oregon*, 546 U.S. 243 (2006)(DEA must consider all factors listed in the statute in making a public interest determination on registration).

Further, while no specific time period for DEA's consideration is set forth in the law, we believe there is no reason why DEA cannot issue a decision in time for this year's planting season. In fact, to issue any decision after this year's planting season is to decide against the applicants since these applications are for the calendar year 2007. In order for these farmers to have adequate time to obtain seed and prepare the soil for planting, and to complete planting before the end of May, they need to have a decision from DEA by April 1. The facts are straightforward; our agency and the applicants themselves stand ready to respond promptly to any questions or requests for further information from DEA.

Again, I would like to thank your staff for taking the time to meet with me. I also appreciate your consideration of the applications which we have submitted on behalf of North Dakota farmers. If you have any questions or need any additional information concerning these applications or the State's industrial hemp program, please do not hesitate to contact me directly at 701-328-4754.

Sincerely,

Roger Johnson
Agriculture Commissioner

RJ:kj

CC: The Honorable Kent Conrad, U.S. Senator
The Honorable Byron Dorgan, U.S. Senator
The Honorable Earl Pomeroy, U.S. Congressman
The Honorable John Hoeven, North Dakota Governor
The Honorable Wayne Stenehjem, North Dakota Attorney General

The Honorable David Monson, North Dakota House of Representatives
National Association of State Departments of Agriculture