

Dakota Counsel

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Open Records Victory and the Bigger Picture

DRC’s latest victory

The long-awaited verdict is in: the NDSU Research Foundation is a public entity and is subject to the state’s open records law.

Dakota Resource Council (DRC) had requested an attorney general’s opinion last June after DRC chair Dean Hulse asked for the NDSU records in May and was told that the facility is not subject to the open records law.

“It’s a good day for public accountability,” said DRC past chair Dean Hulse, Fargo. “We did this to shine a spotlight on public entities.”

DRC was seeking information about NDSU’s relationship with Monsanto, which had agreements with the facility to do research on a genetically modified (GM) hard red spring wheat that is resistant to glyphosate, the herbicide contained in Monsanto’s product Roundup.

The Foundation responded with hundreds of pages of documents, but did not include contracts between NDSU and Monsanto, claiming that they would be “of no use.”

DRC responded with a letter requesting the contracts. In November 2005, DRC did receive copies of contracts. However, they were related to research on corn and soybeans and not Roundup Ready wheat.

Since NDSU had been doing research on the GM wheat, the missing records are perplexing.

“The most surprising thing about the records we obtained,” said Hulse, “is what is missing.”

Expect legislative battle in 2007

Attorney General Wayne Stenehjem has shown a strong commitment to enforcing the state’s open records and meetings law—one of the friendliest to the public in the nation. He has served North Dakota well by ensuring the public’s right to know.

After all, when taxes are supporting a public institution, agency or local government, it is public scrutiny that helps to keep things above board.

But what if those laws are weakened, allowing some public institutions to hide from the public eye?

This is exactly what could happen in the 2007 North Dakota legislative session.

In an October 26, 2005 interim hearing of the North Dakota Economic Development Committee, Committee Chair and House Majority Leader Rep. Rick Berg (R-Fargo) suggested that North Dakota look at making itself an “island” for business interests by creating a safe haven that would insure protection of intellectual property.

At the hearing, Deputy Commerce Commissioner Shane Goettle briefed the committee on a proposed study of North Dakota’s intellectual property rights. Goettle told the committee that universities and the corporations they contract with are concerned about North Dakota’s open records laws and the ability to keep confidential information from the public.

Some legislators wondered if the discussion was leading toward weakening the state’s open records laws.

Berg raised the issue of how the state’s open records law impacts commercialization of intellectual property with Dr. Robert L. Potts, Chancellor of the North Dakota University System.

According to the meeting minutes, Berg “asked Dr. Potts if he could provide the committee with any specific examples of how open meetings or open records laws impact the ability to commercialize new technologies.”

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The Dakota Counsel is published six times a year by Dakota Resource Council, a nonprofit, grassroots activist organization. The mission of Dakota Resource Council is to form enduring, democratic local groups that empower people to influence decision-making processes that affect their lives. DRC is committed to preserving sustainable agriculture and natural resources.

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Staff

Dickinson Office

P.O. Box 1095, 113 1st St. West
Dickinson, ND 58602

Phone: (701) 483-2851; Fax (701) 483-2854

Mark Trechock, Staff Director
mark@drcinfo.com

Aleta Hendricks, Office Manager
aleta@drcinfo.com

Cindy Klein, Organizer
cindy@drcinfo.com

Kathy Brackel, Adm. Asst.

Bismarck Office

103 1/2 S. 3rd St., Bismarck, ND 58504

Phone (701) 224-8587; Fax (701) 224-0198

Mary Mitchell, Energy Coordinator
mary@drcinfo.com

Barb Price, Organizer
barb@drcinfo.com

Fargo Office

118 Broadway, Ste. 801, Fargo, ND 58107

Phone: (701) 298-8685; Fax (701) 298-9044

Lynn Wolff, Organizer
lynn@drcinfo.com

Terry Schaunaman, Organizer
terry@drcinfo.com

THE RAZOR'S EDGE

By DRC Board Chair Dean Remboldt

Another round of World Trade Organization (WTO) trade meetings were held December 13 through 18. Jeri Lynn Bakken, our Regional Program Associate at Western Organization of Resource Councils (WORC), did a great job of informing those of us that were interested in the trade talks and the “behind the scene” reports, via e-mail updates from Hong Kong.



Already, trade agreements have re-shaped the U.S. economic system—from a national, agricultural/manufacturing, wage-based economy to global, service oriented, asset-driven economy.

Three key results? Large trade deficits, out-sourcing or off-shoring jobs, and a devastating loss of farmers and ranchers.

In North Dakota our biggest potential downside effect from trade agreements could be the impact the WTO has on agriculture. As Congress wrestles with the writing of the 2007 farm bill, it is going to have the pressure of trying to weigh the needs of our producers against our trade negotiators’ willingness to reduce or flush the safety net that the Loan Deficiency Payments (LDPs) and other federal payments provide.

Through a series of DRC-sponsored public forums titled “Hello Free Trade—Good Bye Democracy,” Sara Johnson of Public Citizen explained how the North American Free Trade Agreement (NAFTA) could usurp our federal, state, county and local governments’ ability to enforce zoning or environmental laws. Let’s be clear folks: NAFTA affects our national sovereignty.

NAFTA also provided the launching pad for a corporation like Wal-Mart to expand to become the world’s largest retailer. These agreements have enabled Wal-Mart to enter and dominate markets by using suppliers who are willing to “jump ship” and gyrate to the places that are willing to “race to the bottom” for both wages and environmental concessions.

Another aspect of NAFTA has been wafting across North Dakota of late. If you have been following the news, perhaps you have seen the story about DRC organizer Barb Price and her exclusion from a public relations (PR) trip to an Elite Swine factory farm in Manitoba.

Apparently Elite Swine is more elitist than its name implies. Their contention is that they don’t want an “environmentalist” to tour their hog factory with people that they are trying to convince that they are “good neighbors.” because that environmentalist might point out some facts that they may not want known.

Would the PR in that case be “Pig Refuse”? The way that this factory farm tried to sneak in under the radar of the Oliver County Commissioners by going above them to the North Dakota Health Department and Agriculture Commissioner is what really stinks.

Barb has done a great job of putting together some fact sheets on factory hog farms that are a must read for anyone interested in Concentrated Animal Feeding Operations (CAFOs). Contact her at our Bismarck office (1-701-224-8587) and she can send you a copy.

TRADING AWAY DEMOCRACY

U.S. free trade policy is leading to the loss of state and local government authority to regulate industry and protect citizens.



Sarah Johnson

That was the key message brought to North Dakota by trade expert Sarah Johnson of Public Citizen's Global Trade Watch in a series of five DRC-sponsored January town meetings, plus meetings with state officials.

"International trade agreements being negotiated today extend far beyond traditional trade matters such as tariffs and quotas," said Johnson. "They can affect many kinds of domestic policy."

What allows this intrusion are key provisions of NAFTA and other agreements that let exporters challenge the laws and judicial decisions of other countries, all the way from federal laws to local zoning regulations. Cases are decided behind closed doors by an international trade tribunal of three lawyers.

Johnson said the three areas of today's trade agreements that are most responsible for undercutting the authority of state and local governments are:

◆ Investment, under which investors can sue the U.S. government for actions or inactions that impede corporate profits;

◆ Government Procurement, under which states (only if they agree to be bound by the rules) can face challenges if they have purchasing preferences for local products, have a percentage goal for the purchase of renewable energy or a requirement for purchasing recycled materials;

◆ Services, an area in which negotiations are currently underway, covering "anything you can't drop on your foot."

Foreign entities are empowered to use these provisions to challenge many decisions traditionally made by our state and local governments. For example, since the United States has made commitments in the retail sector, another country could bring a challenge if a community wishes to limit the square feet of new retail stores, or require that an economic study be done to ascertain

whether or not there is a need in the community for another store, or limit the hours of operation of retail establishments.

In North Dakota, for example, Sunday closure law could be scrapped. Laws limiting casino ownership to tribes could be challenged. The state could be opened up for more lotteries operated by for-profit corporations. The public would have no input.

What can be done? Johnson said that state officials can opt their states out of certain areas of trade agreements. Each time an agreement with government procurement rules is negotiated, a letter is sent to the states and the governor is given a choice to either opt in or out of the agreement.

The problem with this, Johnson said, is that there is no public process for making decisions regarding the position a state like North Dakota sends back to the federal government. Maryland has changed that by passing legislation that requires all of these decisions to go through a legislative process. Johnson recommended that North Dakota could pass similar legislation.

TRADE WINDS

Dumping dumped. One of the secret trade tribunals mentioned above rejected a North Dakota Wheat Commission (NDWC) attempt to retain tariffs on Canadian spring wheat in December.

Jim Peterson of the NDWC told the Associated Press the NAFTA tribunal's ruling probably meant tariffs would be lifted early this year.

The International Trade Commission imposed tariffs after finding in October 2003 that Canada was dumping spring wheat into U.S. markets below the cost of production. The ITC reached the opposite conclusion on durum.

Two years later the ITC reversed its spring wheat decision, and the NDWC appealed.

The tariff was initially set at 50 cents per bushel (14.15%) and later lowered to 40 cents.

As a result of the tariff, Canadian spring wheat exports to the United States dropped from 45 million bushels per year to just over 300,000 bushel during the 2004-2005 marketing year, according to the NDWC.

DRC was instrumental in 1999 legislation that increased the wheat checkoff levy to raise money for the initial anti-dumping complaint.

Let them eat GM. Nations cannot restrict imports of genetically modified foods, even if they present health and

SPILLSVILLE IN MCKENZIE COUNTY

In the quiet badlands of western North Dakota rancher and DRC member Ned Hermanson’s worst fears have come true.

A pipeline delivering salt water to a salt-water disposal well west of Alexander leaked undetected, contaminating Charbonneau Creek and the land around it.

Charbonneau Creek winds through land that Hermanson and others used for winter pasture. The creek provided a year-around source of water for cattle and horses.

The leak was reported by the drilling company, Zenergy (formerly Zinke and Trumbo), January 4, but Hermanson didn’t learn of the spill until three days later. Said Hermanson, “No one told the ranchers in the area who were using the creek for watering their livestock. We had to find out on our own.”

“I got my animals moved out five days later but who knows how much of the spill water they drank, what chemicals are in that water and whether it will affect my calf crop,” said Hermanson.

According Eric Barlow, a member of Powder River Basin Resource Council, the third trimester is a critical time for calving. There could be stillbirths or other problems when

calving starts this spring.

The leak of salt-water and oil field chemical contaminates filled up a dry stock dam and overflowed into the creek. Charbonneau Creek flows into the Yellowstone River, and agencies are monitoring the progression of the contaminated water to check for fish kills and to determine to what degree the Yellowstone will be impacted.

There also could be problems with the contaminated water leaking into the ground water. The aquifer is only 60 feet deep in some areas.

For area landowners, the spill adds to their existing worries about losing groundwater. Zenergy has been using millions of gallons of fresh groundwater in their extraction process for months. They are operating under temporary water well permits. Some have been extended beyond the one-year limit and may not be legal under North Dakota Century Code.

The DRC Oil and Gas Task Force met in Alexander on January 30 and conversation focused on what needs to be done to prevent future spills.

“There may not be anything we can do about this spill, but there are a lot of things that we can do to keep this from happening again,” said Hermanson.



**Salt water spill,
Charbonneau Creek**



WASH BASIN

Seven years after state officials discovered sulfur dioxide violations in North Dakota, Basin Electric Power Cooperative has promised to clean up emissions at its dirtiest plant.

According to the *Bismarck Tribune*, Basin has pledged to add scrubbers to its Leland Olds plant near Stanton in about three years. The scrubbers will eliminate much of the 47,000 tons of sulfur dioxide the plant emits annually.

“North Dakotans should be thanking DRC for applying the pressure to make the state’s air easier to breathe,” said Terrence Kardong, Richardton, chair of DRC’s Energy Policy Task Force.

DRC filed suit against the U.S. Environmental Protection Agency in September 2003 for failing to call for a new Clean Air Act State Implementation Plan (SIP) in light of sulfur dioxide violations of Prevention of Significant Deterioration (PSD) standards.

A new SIP would include a binding plan for clean-up.

A court later threw out the suit on the grounds as premature, accepting EPA’s argument that it had not yet ruled that the state was violating the law—despite numerous EPA documents that referred directly to violations.

Subsequently, DRC petitioned the EPA to rule on the violations. EPA has failed to respond to the petition over the last 18 months.

At issue are not only existing violations but also the state’s new methods for measuring PSD. It took 14 tries before the state could bend enough EPA guidelines to make the violations disappear on paper.

“Clearly Basin’s move is aimed at creating headroom for new plants,” said Kardong. “But accurate PSD measurement would show that Basin’s scrubbers alone will not do the trick.”

AFFILIATES IN ACTION

GFC3. An eight-year battle over relocation of the Grand Forks landfill is on its way to court.

The city filed suit December 16 to override Turtle River Township's rejection of its permit application for the dump. The township officially responded January 27 to say it would defend its decision.

GFC3 members said city decision-makers ignored information GFC3 presented showing the landfill site was inappropriate. Opposition to siting the landfill in Turtle River Township was GFC3's founding issue in 2000.

According to the Grand Forks *Herald*, the city said it has already spent \$1.7 million on the landfill project—including land purchase and environmental studies designed to meet the township's permitting requirements.

The city discovered it needed a permit only after buying the land, and only one elected official from Grand Forks attended any of the township hearings at which GFC3 delivered testimony and scientific review from several experts showing the site would be unsafe.

The site has a high water table, lies near drainage into the Red River and is prone to overland flooding.

"Throughout this process, city politicians have been patronizing, stubborn and unwilling to consider alternatives seriously," said Dr. Dexter Perkins, professor of geology at the University of North Dakota, who described the city's commitment to the site as "emotional" and "irrational."

GFC3 leader Todd Leake said the city's message to Turtle River Township has been that the scientific evidence and the views of both township and city residents "don't count."

It's time the Grand Forks City Council wakes up from its lawyer- and consultant-driven stupor," said Leake, "start looking at responsible alternatives, quit stepping on the people and ask the citizens in Grand Forks and the county their opinion for a change."

BARC. BARC held its annual meeting in Manning December 15 in conjunction with a public meeting on trade issues (see p. 3).

BARC re-elected Linda Weiss, Belfield, as chair.

The group passed resolutions in support of biofuels development, federal farm payment limitations, eminent domain reform and the reversal of state law that restricts county rights to zone for seeds.

It also passed resolutions calling for an end to World Trade Organization authority over foods, asking the federal government to reconsider release of Roundup Ready alfalfa

(see p. 8) and opposing direct payment of wheat checkoff money to private entities.

SVC. SVC held its annual meeting in Minot February 18 in conjunction with a public showing of the film, "The Future of Food," which documents the impact of international chemical companies on the development of GM crops.

The group re-elected Ted Reinert, Minot, as chair.

MVRC. MVRC sponsored a public meeting on recycling January 19 in Bismarck, featuring Mary Aldrich of Minnkota Recycling in Fargo as speaker.

Minnkota operates a recycling facility that processes more than 50 million pounds of recyclable material each year.

According to DRC Board at-large representative and MVRC member Ramona Redding Lopez, Bismarck, only about two percent of plastic is currently recycled.

Waste Management, which handles Bismarck's recycling, accepts plastic at its plant, but residents cannot recycle it at other drop-off sites.

Lopez said Bismarck should make it easier for residents to recycle plastic and move to a volume-based garbage fee program, similar to that of Moorhead, Minnesota.

"Recycling is a common sense answer to the garbage crisis in America," said Lopez—and she urged making it easier for the public.

MCETA. MCETA will hold its annual meeting Tuesday, March 7 at the Civic Center in Watford City with oilfield engineer Jim Kuipers as speaker.

Kuipers and his consulting firm prepared the 2005 report, *Filling the Gaps*, which outlined deficiencies in oil and gas bonding throughout the West.

The report concluded that bonding shortfalls could result in public liabilities of billions of dollars in five states: Colorado, Montana, New Mexico, North Dakota and Wyoming.

MCETA is hosting supper prior to the meeting at 6:30 p.m. The public is invited.

SC3. Sen. Kent Conrad will headline a panel discussion on the 2007 federal farm bill at the SC3 annual meeting, Thursday, March 23, 7 p.m. at the Farmers Union building in Jamestown.

State Agriculture Commissioner Roger Johnson has also agreed to take part, and SC3 has issued invitations to Rep. Earl Pomeroy and Farmers Union President Robert Carlson.

Discussion will focus on rural development aspects of the legislation, which is up for re-enactment next year.

The public is invited.

COALED CUTS OFF MENU

Elite Swine kept DRC Field Organizer Barb Price off the bus, but their pig plans for Oliver County are washed up anyway.

Price's planned bus trip to an Elite Swine facility in Manitoba came to a screeching halt when she was informed just two days in advance of the trip that she would not be allowed to enter the facility.

Price had signed up for the December 21 trip, which was promoted on KFYZ, through Oliver County extension agent, Rick Schmidt.

Price was interested in the trip because of plans to locate a 5,000-sow farrowing facility on mined land two miles from Center. Investors in the planned facility are Bill and Dan Price (no relation to DRC's organizer), Price, and Dr. Bill Cornatzer, Bismarck.

Elite Swine is Canada's largest hog producer. In the past few years they have moved into northeastern North Dakota and are currently pressuring Ramsey County to weaken zoning rules for Viking Feeders, an operation proposed near Edmore.

Two days prior to the Manitoba trip, Price received a call from agent Schmidt informing her that she was welcome to ride the bus but would not be allowed to tour the swine facility. Schmidt went on to explain that the reason she was permitted to ride the bus is because the bus was being provided by the North Dakota Department of Agriculture, not Elite Swine.

Last fall, after attending an informal Public Service Commission hearing regarding the proposed hog operation, Price broke the news of the facility to Oliver County Commissioners, who had no knowledge of the plans despite a series of meetings that investors held

over a period of a year with the North Dakota Department of Agriculture and BNI Coal.

Upon calling the state Department of Agriculture to inquire further about her exclusion from the tour, Price was told by the department's Bobbi Talmadge, that it was because she had spoken against the proposed operation. Talmadge also said that DRC's newsletter, the *Dakota Counsel*, spread misinformation about the hog farms in Ramsey County.

Elite Swine's North Dakota representative, Craig Jarolimek, told DRC Field Organizer Lynn Wolff that they were concerned that Price would "ask questions that would take half an hour to answer."

Meanwhile, the Prices and other investors announced they have chosen

an alternate location for the operation due to local concerns.

The announcement came one week after about 100 Center area residents attended an information meeting organized by hog farm opponents.

"We are relieved, but we are still going ahead with our plans to make our county zoning laws better," said Oliver County resident and DRC member Bernie Walters. "We want to be able to protect our water and residents from adverse impacts associated with these big operations"

Residents were concerned that a large hog farm could devalue their property, degrade county roads, pollute groundwater and cause odor problems.

The Prices said they will not divulge the location of the proposed new site at this time.



FAKE ENFORCEMENT

DRC cattle producers have known it for years, but now the inspector general of the U.S. Justice Department has confirmed that federal enforcement of the Packers and Stockyards Act is a joke.

The audit, released in January, concluded that since 1999 senior U.S. Department of Agriculture officials prevented cases from going to the Justice Department and ordered employees to count routine correspondence as "investigation."

"USDA's neglect...threatens my livelihood and the viability of rural communities across the country," said Link Reinhiller, a Hazen cattle producer and chair of DRC's Trade and Livestock Task Force.

Reinhiller called on Congress to pass the Captive Supply Reform Act (H.R. 4257 and S. 960) to curtail anti-competitive practices in the meatpacking industry. All three members of North Dakota's Congressional delegation have joined in sponsoring the bills.

WORC Livestock Committee Chair, Mabel Dobbs, Weiser, Idaho, noted that WORC first addressed the failure of competition enforcement at USDA in 1989. WORC members collected 10,000 signatures on petitions demanding enforcement of anti-trust laws in the meatpacking industry in 1989 and 1990..

"Seventeen years later, we're still fighting for the same reforms while USDA continues the foot-dragging and pandering to the meatpakcing industry and corporate agribusiness," said Dobbs.

WE WARNED THEM

by Tom Irgens

Saltwater has contaminated a livecreek in western North Dakota, southwest of Alexander. No one knows for sure how long the pipeline was leaking before it was discovered on January 4.

This situation is not unexpected. Dakota Resource Council pointed out in a 2004 report, "Law and Order in the Oil and Gas Fields," that there is a lack of inspection and enforcement in many parts of the country. Copies were provided to the North Dakota Oil and Gas Division (OGD) and the Bureau of Land Management (BLM).

Finally, almost two years later, the OGD has hired more staff: A much-needed reclamation supervisor and a field inspector.

Granted, the OGD, because of appropriations, needed to meet a specific rig count before being able to add the inspectors, but now the question remains, will they be standing on their shovels or making sure the oil and gas companies "Do it Right?"

The hirings come too little, too late for the ranchers that live on and use Charbonneau Creek. The damage is already done.

Right now, the issue at hand is getting the spill cleaned up properly and insuring that it will not happen again.

I certainly hope that Zenergy, formerly known as Zinke & Trumbo, does not complain about the cost. They made the mess and now it is up to them to clean it up without complaint. They should also be severely fined for allowing this to happen in the first place.

Zenergy and other operators should be required to install gauges that measure the volumes going in and coming out of the pipelines.

If they do not voluntarily comply with the request, the State Industrial Commission (Governor Hoeven, Attorney General Wayne Stenehjem and Agriculture Commissioner Roger Johnson) should not hesitate to implement emergency rules.

(Tom Irgens is At-Large Representative on the DRC Board of Directors. He is a grain farmer and lives near Springbrook.)



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TRADE WINDS, from p. 3

environmental concerns, according to an interim report of the WTO issued earlier this month.

The decision resulted from a challenge by the United States, Canada and Argentina to European regulations that delay commercialization of GM crops pending scientific investigation.

"It's disappointing that the WTO would seek to override democratic decisions at literally all levels of government," said Dennis Olson, of the Institute for Agriculture and Trade Policy.

"There is already a broad international consensus on how to handle GM

crops at the international level established at the Cartagena Protocol," said Olson.

"This consensus acknowledges that each country has the right to regulate GM crops based on precautionary principles, to require labeling of GM crops and to protect farmers and others from unfair liability arising from the release of GM crops in to the environment and food distribution system."

The federal government conducts no scientific testing to determine whether GM foods are safe and has come under increased criticism—even internally—for its lax procedures (see p. 8).

DRC JOINS GM ALFALFA SUIT

DRC joined two farmers and five other organizations February 16 in suing to reverse last year's federal approval of genetically modified (GM) alfalfa.

The suit contends the U.S. Department of Agriculture failed to analyze the public health, environmental, and economic consequences of the release.

The suit asserts that GM alfalfa will likely contaminate natural alfalfa and ultimately prevent farmers from producing natural, non-GE alfalfa for markets that demand it.

"As a producer of organic alfalfa seed and hay, there is absolutely no way I will be able to protect my crop from contamination," said DRC member Blaine Schmaltz, Rugby, owner of Blaine's Best Seeds.

Schmaltz markets seed to organic dairies and livestock growers and said GM alfalfa would require testing "at both ends, adding barriers and expense."

Buyers in Japan and South Korea, America's major alfalfa export customers, say they will avoid U.S. alfalfa if a GM variety is grown in this country. U.S. alfalfa exports total nearly \$480 million per year, with about 75 percent of exports going to Japan.

"I also export seeds for organic sprouting under strict, no-GM regulations," said Schmaltz. "That business may cease."

In addition to genetic contamination, the lawsuit says GM alfalfa poses unique risks to the environment.

In contrast with corn and soybeans, 83 percent of U.S. alfalfa is grown without any herbicides. Experts say Roundup Ready alfalfa could lead to massive increases in herbicide use, more chemical pollution in the environment and greater weed resistance to glyphosate.

The suit came less than two months after a federal inspector general issued a report saying, "Current regulations, policies and procedures do not go far enough to ensure the safe introduction of agricultural biotechnology."

"What concerns me about the questionable release of yet another GM crop may limit my choice as a consumer," said DRC Past Chair Dean Hulse, Fargo. "One of the reasons I choose organic foods is to make a statement. As a consumer, I vote with my purchasing power, and I'm telling the market that I want organic foods on grocery store shelves."

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Dakota Resource Council
P.O. Box 1095
113 W. First Street
Dickinson, ND 58602-1095
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