

Testimony

House Bill 1024

Senate Appropriations Committee

March 1, 2017; 2:00 p.m.

North Dakota Department of Health

Good afternoon Chairman Holmberg and members of the Senate Appropriations Committee. My name is David Glatt, Environmental Health Section Chief for the North Dakota Department of Health. We are responsible for the implementation of the vast majority of environmental protection programs in the state, including programs delegated to the state through agreements with the U.S. Environmental Protection Agency. I am here today to provide testimony in support of House Bill 1024.

The Department of Health is requesting a deficiency appropriation of \$250,000 to cover the cost of several current or pending legal actions with the U.S. Environmental Protection Agency. The FY 2015-2017 appropriation for special legal activities is \$500,000. At present the Department has spent approximately \$645,000. Although it is difficult to predict the timing of anticipated court decisions or roll out of final federal agency rules, the Department expects to continue to either take a lead role or partner with other states in at least three major actions in the coming months. They include challenges to federal actions in the following areas:

- **Federal 1-Hour SO₂ Rule:** The state is asking the court to compel the U.S. EPA to make a final determination on the compliance status of the state of North Dakota as defined in the rule. EPA had up to two years to make the determination but is now asking to delay the action for several years while they evaluate the new rules or procedures to determine the state's status. The delay in the determination can harm the state as we move to permit new sources.
- **Clean Power Plan (CPP):** The U.S. EPA has proposed rules that would regulate how CO₂ emissions are regulated or how energy is produced in each state. There is concern that the final rules will exceed the authority of the federal government by directing energy policy in each state, thereby usurping state authority. We anticipate that because each state will be assigned a specific compliance goal, each state who opposes the final determination will need to initiate a

lawsuit against the EPA. The intent of the lawsuit will be to protect state authority to make decisions on how to implement federal laws and rules. Due to the challenge by North Dakota and other like minded states the US Supreme Court has stayed implementation of the CPP while the lower courts hear challenges to the rule and make a final decision. It is anticipated that the determination by the lower courts will be appealed to the US Supreme Court. North Dakota is an active participant in challenges 111(d) and 111(b) portion of the rule which would govern new and retrofit construction activities associated with new coal fired power generation facilities.

This concludes my testimony. I am happy to answer any questions you may have.