

Testimony
Budget Section
Tuesday, June 19, 2012
North Dakota Department of Health

Chairman Grindberg and members of the Budget Section, my name is L. David Glatt, Chief of the Environmental Health Section for the North Dakota Department of Health (Department). The Department is responsible for the implementation and oversight of many of the environmental protection programs in the state, including directing programs under the Clean Air Act (CAA).

During the 2011 legislative session, the Department was appropriated \$1 million for the purpose of defraying expenses associated with legal action against the U.S. Environmental Protection Agency (EPA). Of the \$1 million dollars appropriated to the Department, \$500,000 was to be provided out of the general fund with the remaining sum of \$500,000 to be borrowed from the Bank of North Dakota. The Department may spend the general fund moneys and access the line of credit upon approval by the Office of the Attorney General. Pursuant to Section 5 of House Bill 1004, the Department is also required to present a quarterly financial and project status update to this committee on actions associated with the litigation.

Financial Update: To date a little over \$408,000 has been expended from the funds allocated to the Department to pursue legal action against the Environmental Protection Agency as part of actions taken under the Clean Air Act (CAA). Based upon the current status of the legal activities associated with the EPA, the Department has requested the \$500,000 line of credit from the Bank of North Dakota as allowed in House Bill 1004.

The Department is currently working with the Attorney General's Office and Moye White, LLP, of Denver to address the following legal challenges:

- **Sulfur Dioxide (SO₂) 1 hour Standard**

The EPA has proposed to implement a 1 hour SO₂ ambient air quality standard that, based upon language in the rule preamble, would require states to utilize predictive air quality models to determine compliance. North Dakota, along with four other states, has challenged the rule in its current form claiming the modeling requirement is not allowed under the CAA, a departure from historical procedures used to determine compliance with air quality standards and was not appropriately vetted in a public forum. Since our last report, the state presented oral arguments in front of the DC Circuit Court on May 3, 2012. We anticipate a formal decision from the Circuit Court in the next couple of months.

- **Regional Haze State Implementation Plan (SIP)**

Since the Department's last report on the US EPA proposal to disapprove portions of the North Dakota Regional Haze State Implementation Plan, the following has occurred:

- The state has requested a judicial review of the March 2, 2012, EPA final decision on the proposed Regional Haze State Implementation Plan. In the final Federal Implementation Plan (FIP) EPA proposed:
 - 1) Approval of the selection of SNCR as the appropriate nitrogen oxide control technology for the Lelands Olds and Minnkota power plants;
 - 2) Required combustion controls for the Antelope Valley and Coal Creek Stations; and
 - 3) Rejected the visibility modeling methodology proposed by the state.

The state is anticipating it will challenge the FIP as it relates to the appropriate use of models and who should make the decision regarding appropriate control technology for emission sources located in North Dakota. It is important to note that several environmental groups have also challenged the final EPA FIP decision.

This concludes my testimony and I would be happy to answer any questions you may have regarding this matter.