

Testimony
Budget Section
Tuesday, March 13, 2011
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 total of \$381,750 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 is anticipating the need to request the line of credit funding 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. Based upon documented air quality performance the state is concerned that model use, without consideration of appropriate air quality monitoring data, can result in the over prediction of actual air quality conditions. The over prediction of air quality impacts can result in

the installation of unnecessary and expensive pollution control equipment. Since our last report the state continues to dialogue with the other intervening states on this issue. The state is preparing for oral arguments in this case scheduled for May 3, 2012 in the DC Circuit Court .

- **Best Available Control Technology (BACT)**

The federal Department of Justice in cooperation with the Environmental Protection Agency challenged a state BACT determination made pursuant to a consent decree involving the Minnkota Power Cooperative (Minnkota), the EPA and Department of Justice. Since our last report the following has occurred:

- On December 21, 2011 the federal District Court in Bismarck in the case *USA et al v. Minnkota Power Cooperative Inc, et al*, in its opinion “denied the United States motions, finding that North Dakota’s determination that selective non-catalytic reduction is the best available control technology for the Milton R. Young Station is not unreasonable, arbitrary or capricious.”

- **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:

- On March 2, 2012 the US EPA provided a final decision on the proposed Regional Haze State Implementation Plan. EPA’s final decision differs significantly from their September 2011 proposal to disapprove major aspects of the state’s plan and impose a federal plan in its place. EPA has instead approved most of the state’s plan. In their decision the EPA agreed with the state in that Selective Non Catalytic Reduction (SNCR) nitrogen oxide control technology was the appropriate technology to be installed on the Minnkota and Leland Olds power generation facilities. However, there are still areas of disagreement between EPA and the state. EPA’s final decision also would require the installation of appropriate combustion controls at the Antelope Valley Station, and SNCR at the Great River Energy Coal Creek Station. The final decision also did not agree with the state’s visibility modeling methodology. The Department, with legal counsel is reviewing this most recent development to determine if further action by the Department is warranted.

This concludes my testimony. I will answer any questions you may have concerning this matter.