

Energy Development and Transmission Committee

Thursday, August 18, 2011

Roughrider Room, State Capitol

Chairman Wardner and members of the Energy Development and Transmission Committee my name is L. David Glatt, Chief of the Environmental Health Section for the North Dakota Department of Health. The Health Department is responsible for the implementation of many environmental protection programs including the federal Clean Air Act (CAA) and state air pollution control laws.

I am here today to provide information relating to the status of the Department's legal challenge to the proposed Regional Haze Program implementation decisions by the U.S. Environmental Protection Agency (EPA). The goal of the Regional Haze Program is to improve overall visibility in the state's Class I areas by requiring specific reductions in sulfur dioxide (SO₂), nitrogen oxide (NO_x) and particulate emissions. The state, after completing a public review/input process and a lengthy evaluation of alternatives, identified specific environmental control technologies that will result in reducing SO₂ emissions by 60% and NO_x emissions by 25. The Department has developed a State Implementation Plan (SIP) which specifically outlines how the state and industry will comply with the goals of the Regional Haze Program. As required by the CAA, this document has been submitted to EPA for concurrence.

The EPA has objected to the portion of the SIP which outlines how the state proposes to control NO_x emissions from specific electric generation facilities that utilize coal. North Dakota has decided, after review of coal quality, technical availability/applicability of emission controls, vendor guarantees and potential visibility improvement that Selective Non Catalytic Reduction (SNCR) is the preferred NO_x control alternative. EPA has indicated that another technology known as Selective Catalytic Reduction (SCR) is appropriate and has threatened to force that decision upon the state through a federally promulgated and enforced Federal Implementation Plan (FIP).

The state believes that Congress clearly defined the roles of the federal and state governments in the implementation of the Regional Haze Program under the Clean Air Act. In simplistic terms the role of the federal government is to develop air

quality standards while the role of the states is to make decisions, based upon local conditions, on how to appropriately implement the standards.

After several attempts to settle the disagreement with the EPA, the state has taken the following legal steps,

1. Amended the initial State Implementation Plan (SIP) to include information and data specific to the NO_x control Best Available Control Technology (BACT) decision made by the state as part of a parallel emission control determination required under a three party Consent Decree. This information has been provided to EPA for their review and concurrence.
2. Submitted appropriate briefs to the Colorado Federal District Court asking that the state be allowed to intervene in the U.S. EPA vs. Wild Earth Guardians (WEG) lawsuit where EPA agreed to either approve the state's SIP, or partially approve and implement a FIP on the non-approved portion. Because the EPA/WEG consent agreement did not include the state and we believe that the consent agreement has the potential to have significant impact on the state, we were allowed to intervene in the case. A decision on a petition to dismiss the entire case based upon a failure to notify, state discretion and the fact that EPA has not officially taken action on the State Implementation Plan is pending.

In addition to the Regional Haze legal action, the state is pursuing the following:

1. As part of a 2006 Consent Decree (CD), the state has identified NO_x BACT for the Minnkota Electric Generation Facility to be SNCR. EPA disagreed and – through the Department of Justice (DOJ) — invoked a dispute resolution clause of the CD and filed a petition asking the Federal District Court in Bismarck to overturn the state's decision. Briefs outlining the respective positions of the state (SNCR) and DOJ (SCR) have been submitted to the court and the parties are awaiting a ruling by the federal judge.
2. The state – together with TX, SD, LA, and NV – has challenged the method by which EPA has indicated they will determine attainment status with a new 1 hr SO₂ standard. EPA in the rule preamble has indicated that air quality modeling tools would be used to indicate attainment status which concerns the state for the following reasons: 1) the decision to use modeling as a compliance tool was not properly vetted

in a public forum, 2) models can provide inappropriate or erroneous results, and 3) is contrary to the rule language which indicated monitored data may be used to determine attainment. Briefing is scheduled to be complete in early 2012, after which the United States Court of Appeals for the District of Columbia Circuit will issue its decision.

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