

Testimony
Natural Resources Committee
Tuesday, September 6, 2011
Roughrider Room, State Capitol, 9:25 a.m.
North Dakota Department of Health

Chairman Damschen and members of the Natural Resources Committee, 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 programs under the Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA) and Resource Conservation and Recovery Act (RCRA).

I am here today to provide a brief overview of environmental protection programs that the Department implements under primacy or delegation agreements with the U.S. Environmental Protection Agency (EPA).

What is a primacy agreement?

Each federal environmental protection act, such as the CAA or SDWA, includes requirements that the EPA establish and enforce standards. These standards are designed to maintain or improve environmental quality and to protect public health. In some cases, implementation of federal programs may be delegated to states through formal agreements. These agreements are referred to as primacy or program delegation agreements.

How is primacy or program delegation achieved?

To receive primacy or program delegation, a state must petition the EPA expressing interest in program implementation and must demonstrate that it has the capacity to implement the program. Some of the federal requirements to assume primacy include: statutory authority to address the environmental issues of concern; laws or rules that regulate an action or concern that is at least as stringent as the federal law/rules; authority to enforce the state laws or rules; and ability to demonstrate the availability of adequate resources (i.e., technical, personnel and financial where a match is required) to implement the program.

What is the benefit of program primacy?

There are several benefits for both federal and state agencies who enter into primacy agreements. They include:

- > Program implementation costs less at the state level
- > More immediate and timely response to environmental and public health issues
- > Increased access to the regulatory process by the regulated and general public
- > Increased acknowledgement of local conditions that may impact program implementation
- > A more immediate say by the state into how rules are to be implemented

If a state chooses not to seek a primacy or program delegation agreement, the program requirements including standard setting, inspections and enforcement will be conducted by the EPA or its contractors. It is important to note that not all EPA programs may be delegated to a state. Some programs, such as the Spill Prevention, Control and Countermeasure (SPCC) Program, cannot be delegated and are implemented by the EPA.

How many programs have been delegated to the Department through primacy agreements?

The number of primacy agreements between the EPA and the Department may vary from time to time, depending upon the number of delegated programs available, the impact the federal rules will have on the state and the availability of state financial resources. At the present time, the Department has primacy agreements for major programs under the CAA, SDWA, CWA and RCRA.

Currently, the Department receives approximately \$3.5 million/year of federal funds for program implementation. In addition the Department receives approximately \$22 million to implement the Drinking Water and Clean Water State Revolving Loan Funds. The majority of the funding (i.e., 97%) goes to infrastructure upgrades through low interest loans and loan forgiveness projects.

What are the issues of concern regarding program primacy?

Although many programs work smoothly and operate in a cooperative state/EPA relationship, some program implementation issues arise.

- > The state/EPA relationship has been strained over the past few years regarding how programs should be implemented. The EPA would prefer a stronger federal presence to assure nationwide consistency in program implementation, while the state would like local, social, economic and environmental conditions to play a more direct role in program decisions.
- > The issue of state deference in program implementation decisions has been highlighted in several recent state actions. The Department believes that Congress intended the EPA to establish environmental standards but left implementation methods up to the states. Currently, the EPA has challenged a regional haze state decision and has threatened to take over a small portion of the decision-making authority currently held by the state. The state is challenging this decision.
- > The Department and the EPA are concerned that future budget cuts may require the turn back of some delegated programs. Program turn backs could result in decreased environmental protection, increased costs to local and federal partners, higher penalties, the potential for increased permit fees and a delay in getting permits approved.

Overall, the Department has had a professional working relationship with the EPA and has seen benefit from the various program delegation/primacy agreements. Primacy agreements have allowed the state to have a voice in how environmental and public health programs are implemented in the state.

This concludes my testimony. I would be happy to answer any of your questions.