

TESTIMONY OF

L. David Glatt, Director

North Dakota Department of Environmental Quality

Chairman Klemin and members of the House Judiciary Committee. My name is David Glatt, Director of the North Dakota Department of Environmental Quality (DEQ). The DEQ is responsible for rule implementation oversight and enforcement of many of the environmental protection programs in the state. DEQ staff spend countless hours in the field and the office working with the regulated communities gaining specific state and industry knowledge necessary to ensure proper application of rules. The DEQ actions exhibit our commitment to following sound science and the law, in the field as well as in the court room. The DEQ has questions on whether SB 2285 could prohibit a proper judicial review of all relevant science by discounting state specific experience resulting in inappropriate outcomes at the judicial level.

SB 2285 could benefit outside organizations, industries, and states in legal disputes involving state permits and enforcement actions brought by the Department. Could it allow out of state agenda driven interests to receive judicial deference even though they may have limited to no scientific or practical experience with state industries, environmental conditions or quality? Does it ensure that judicial outcomes do not use faulty scientific conclusions not appropriate for the North Dakota environment or industries? Some examples of out of state "experts" include statements that there is no difference between Lignite and other types of coal when considering the application of appropriate treatment technologies or stating that pollution control devices need only be present and not required to be operating to control air emissions. The Department's record of common-sense rule application and expertise should be given due consideration and full judicial review. A judicial decision should only be made after all arguments from both sides are equally and fully considered based upon the law and applicable science.

Support of Proposed Amendment

The Department supports the proposed amendment which specifies that the court should only limit deference to ambiguous statute and rules.

Mr. Chairman and committee members, this concludes my testimony. I would be happy to answer any questions.