Testimony
Budget Section
Wednesday, December 5, 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 approximately $548,000 has been approved for reimbursement 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 currently using 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:

- **Regional Haze SIP/FIP**

There are two consolidated challenges to EPA's regional haze rule for North Dakota. In the first, the state is challenging EPA's disapproval of portions of the state's regional haze plan and promulgation of a federal plan in place of the state plan. Since the last report, the state has submitted legal briefs to the court addressing portions of the EPA Regional Haze Federal Implementation Plan; specifically:

1.) That the state did not give up its decision making authority regarding appropriate control technology for the Great River Energy facility to EPA. We

believe that Congress intended for the state to make the determinations regarding implementation of this portion of the Clean Air Act.

2.) That we believe EPA acted recklessly in arbitrarily rejecting the modeling protocol developed by the state to assess visibility impairment.

The second challenge was brought by several environmental organizations and questions EPA's approval of certain aspects of the state's plan, including the Department's determination to allow implementation of Selective Non Catalytic Reduction (SNCR) over Selective Catalytic Reduction (SCR) for nitrogen oxide control at Minnkota's Milton R. Young Station and Basin's Leland Olds Station. In the next few weeks, the state will be submitting a brief supporting EPA's approval of these state decisions. However, EPA has recently indicated that they will grant the Petition for Reconsideration request from the environmental organizations, as it relates to this issue. The environmental groups seek to have EPA disapprove the Department's decision and mandate the use of SCR controls. The net effect of this action is to require another public comment period regarding the EPA decision, delaying a final decision in 2013 and potential court action to follow.

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