

Testimony

United States Senate

Subcommittee on Clean Air and Nuclear Safety

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10:00 am

Chairman Braun and Ranking member Whitehouse and members of the Committee, my name is L. David Glatt, P.E., Environmental Health Section Chief for the North Dakota Department of Health. We are North Dakota's primary environmental protection agency responsible for the implementation of many of the US Environmental Protection Agency (EPA) federally delegated programs which includes the Clean Air Act. As background, North Dakota is a mostly rural agricultural state which leads the nation in the production of many agricultural crops. In addition, we are second in the nation for oil production and we are a net energy exporter distributing energy throughout the region following an all of the above philosophy utilizing abundant coal, oil, natural gas and renewable resources. The state is routinely recognized for its great air quality, high environmental program compliance and overall quality of life.

I am here today to briefly discuss my observations, after 35 years working with the Department, of the federal – state working relationship. At times it is referred to as a relationship founded in a Cooperative Federalism doctrine where in principle the federal government works with the states as equal partners in the pursuit of environmental and public health protection. Under this doctrine, the federal government sets the standards to provide national consistency and the states are tasked with the implementation of these standards with federal oversight. Due to the diverse nature of the nation, where climate, geology, topography, population, cultural and political elements vary widely, it is critically important that states take a lead role in the implementation of environmental programs. In fact, this doctrine has matured over the years to where states are directly responsible for over 90 percent of program implementation and enforcement activities. Where states are the primary implementors of programs, innovative and cost-effective approaches to environmental protection are the rule not the exception. We live in the communities we “regulate”, where transparency, responsiveness, accessibility and accountability are not just buzz words but expectations of the public we serve

Working at the state agency in various capacities, I have observed the following:

- Where Cooperative Federalism is embraced by both EPA and the states with respect to air quality, the result is relevant, lasting and cost-effective environmental protection solutions. In our state under this doctrine, Superfund Sites have been cost-effectively closed in a timely manner; use of compliance assistance technologies, such as optical gas imaging cameras were introduced for use in the oil fields; and EPA acknowledged and adopted a state-developed minor source air permitting program for oil wells that enhanced EPA's regulatory presence on tribal lands. Where Cooperative Federalism flourishes, relevant and meaningful environmental and public health protection follows.

- Since the establishment of EPA, states have consistently and methodically increased their technical expertise and competency to the point where they are at par or exceed the federal government in many areas of environmental protection. The states excel in areas where they follow good science and the law, and their technical expertise is applied to state specific environmental conditions or industrial operations. States' direct involvement with environmental challenges has also identified certain areas where their expertise may be limited, and in these areas federal input is appreciated and needed. Such as in the establishment of national ambient air or drinking water standards.

- Federal regulatory overreach that does not follow a Cooperative Federalism doctrine or ignores state-specific concerns has resulted in legal challenges and considerable expenditure of state dollars. Where EPA has not taken the time to listen to state-specific challenges and has instead created numerous, sometimes onerous, regulations while treating states as a singular entity has resulted in less cooperation and more litigation. During a past administration, North Dakota expended over \$700,000 challenging federal environmental regulations such as the Clean Power Plan (CPP) that did not account for the specific nature of the environment or industry, or the direct and indirect impact on the citizens of the state. The state viewed these regulations as an arbitrary federal regulatory over reach with little or no environmental benefit. Our expenditures spent on litigation in the current administration is a little over \$100,000, which has been primarily expended to address the actions from the previous administration. In the current working relationship with our federal partners, there has been more listening and cooperation than prescriptive directives. We generally feel that the excessive funds spent on litigation would be better spent on environmental compliance and improvement actions. It is important to note that environmental quality remains at high levels and compliance rates have not decreased in the state with the more open, flexible and cooperative approach taken by this administration.

- States are the constant in any administration change. Each new administration typically starts out declaring a new day and a new way of implementing environmental protection. Some have pursued a dramatic change from past administrations while some are subtle in their approach as they pursue change in the federal environmental protection paradigm. It has also been my experience that when a federal partner has outlined a new approach to environmental regulation, they believe it will be an improvement from previous actions. However, these federal declarations seem to discount the actions by the states, and the unique and necessary role they play in meaningful environmental protection. It has been my experience that the federal regulatory pendulum can swing widely from administration to administration while the state regulatory pendulum moves less radically. Although states do not agree on every issue, the foundation of all state-level action has historically been accessible, accountable environmental and public health protection.

- The right of the states to implement desired environmental protection and controls must also be applied judicially with great responsibility and caution. A state's quest to improve "in state" environmental challenges should not negatively impact sovereign state jurisdictions outside its borders. Negative regulatory impacts can include additional cost to an adjoining state with no perceived or actual benefit. We have experience with issues such as this as it related to energy production and how an adjoining state attempted to direct development and industry standards in North Dakota.

Overall, a federal and state partnership following a Cooperative Federalism with respect to air quality is essential to ensuring cost effective and lasting impact to address the challenges of the day. A strict top-down prescriptive approach without state input limits flexibility and innovation and ignores the essential role states play in effective environmental protection.

This concludes my testimony and I will stand for questions at the appropriate time.