

EPA is stepping on states' toes



By Andrea Blowers

The federal government is threatening to takeover North Dakota's right to manage its own air quality program.

In late November 2010, the Environmental Protection Agency Region 8 sent a letter to the North Dakota Department of Health with the message EPA intended to set aside North Dakota's state implementation plan (SIP) for regional haze and impose a federal implementation plan (FIP) – an action that would cost consumers hundreds of millions of dollars for no visible benefit.

The regional haze program focuses on visibility conditions in national parks and wilderness areas – what we can see – and North Dakota has some of the clearest skies and cleanest air in the nation.

For Basin Electric, a FIP would directly impact its Leland Olds Station. In determining the best available retrofit technology to reduce emissions at the plant, the state determined a new scrubber, over-fire air and other technologies were the best choices for reducing sulfur dioxide and nitrogen oxide emissions – at a cost of more than \$400 million. EPA wants to require that selective catalytic reduction (SCR) technology be installed – technology never proven to work on lignite coal at a cost of hundreds of millions more.



“This is the kind of issue that may ultimately end up in front of the United States Supreme Court,” says Lyle Witham, Basin Electric's manager of environmental services. “Congress gave states and the EPA very different roles in determining what was needed to improve visibility in the nation's national parks and wilderness areas.”

Witham says Congress gave EPA the authority to provide guidelines to the states, and to review state implementation plans to ensure states make reasonable progress toward reducing human effects on visibility.

“But Congress gave states the responsibility for determining, on a source-by-source basis, what emission reductions to require of each source, if any, during each 10-year phase of the program,” he says.

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Lyle Witham, Basin Electric

“States have to consider cost, effects on energy, what emission controls are already in place, the remaining useful life of the source, and whether reductions from that source will actually improve visibility in the national park or wilderness area in question.”

According to Witham, EPA is doing more than assuring reasonable progress and compliance with its visibility guidelines. In fact, the guidelines and presumptive limits that EPA set through public notice and comment are being largely ignored by the agency. In many cases,

EPA is stepping into the role that Congress gave to the states. “EPA is determining, on a source-by-source basis, what controls are needed for each source for visibility improvement. The legal issue that will be fought out in the federal courts is this: whether EPA has the legal authority to usurp the role of the states in the way they are threatening to do in North Dakota and other states.”

In February 2011, EPA Region 8 sent a letter to North Dakota's Department of Health advising they also intended to impose a FIP on North Dakota's program for reasonable progress on regional haze. That action would also affect the Antelope Valley Station. “In the second letter, EPA cited March 15 as its original deadline for implementing the FIP. However, the agency has extended that deadline twice.

“The formal Notice of Intent to FIP is currently scheduled to occur sometime in July. We will have to wait and see what EPA's final determination will be. We hope EPA will still concur with the state's determination, but an EPA representative's recent statements in the Bismarck (ND) Tribune suggest they may have already made up their minds,” Witham says.

He adds if EPA is ultimately successful in its attempt to legally step on the toes of the state and make the source-by-source determination Congress said was the state's responsibility to make, it means Basin Electric may have to put on hundreds of millions in additional technology which may or may not work. “It would be tragic for all concerned if, after \$550 million-\$600 million in capital investments for emission control technology, we would end up with a facility that could no longer be reliably operated because a regulator has forced a technology that won't work properly.”