**Before the North Dakota Department of Health**

**Re: Periodic Review Hearing relating to North Dakota's Sulfur Dioxide ($SO_2$) Prevention of Significant Deterioration (PSD) Air Quality Modeling Report to the United States Environmental Protection Agency (DRAFT FINAL October 29, 2004)**

**Recommendation of the Hearing Officer to the State Health Officer of Proposed Findings and Determination**

## 1.0 Introduction

North Dakota Department of Health (Department) conducted a public hearing on April 19, 2005, beginning at 9:00 a.m., at the North Dakota Heritage Center, Lecture Rooms A/B, 612 E. Boulevard, State Capitol Grounds, Bismarck, North Dakota. The purpose of the hearing was to receive oral and written comments on the following:

- "North Dakota's SO2 PSD Air Quality Modeling Report" (Draft Final October 29, 2004), and Addenda B, C, D, F, G, and H, as completed pursuant to the February 24, 2004 Memorandum of Understanding (Addendum A) between the State of North Dakota (State) and the United States Environmental Protection Agency (EPA);

- The modeling and analysis in the October 29, 2004 draft report and Addenda that continues to show compliance with the relevant PSD increments.

The public comment period was extended by the hearing officer to June 30, 2005.

Based on the comments and the hearing record, the hearing officer makes these recommendations and proposed findings to the State Health Officer.

## 2.0 Prior Periodic Review Proceedings

In 2002-2003, the Department held a PSD periodic review hearing under 40 C.F.R. § 51.166(a)(4) to address several issues, including refining the modeling analysis for PSD increment review, determining the role of monitoring data in PSD compliance, reviewing the adequacy of the State's state implementation plan (SIP), and determining whether the PSD increments were being complied with. On September 8, 2003, State Health Officer Terry L. Dwelle, M.D. issued a final order determining that there are currently no PSD class I sulfur dioxide increment violations occurring in North Dakota or Eastern Montana, and that the State's SIP is adequate to protect against air quality deterioration.

## 3.0 Scope and Purpose of This Proceeding

As required by finding 10.0 of the September 8, 2003 final order, at the conclusion of its 2002-2003 periodic review, the Department and the State entered into a process with EPA to resolve remaining issues relating to its PSD program. On February 24, 2004, the State and EPA entered into a memorandum of understanding (MOU). The State and EPA agreed to a modeling protocol under the MOU, which the State forwarded to EPA on May 5, 2004. On November 8, 2004, the State forwarded its October 29, 2004 draft report and Addenda to EPA as agreed under the MOU protocol. This hearing provided an opportunity for public comment on the above-noted draft documents before they are finalized. The October 29, 2004 draft report and its Addenda, like the State's 2002-2003 periodic review, show compliance with PSD class I $SO_2$ increments.

This is an investigatory hearing under N.D.C.C. chapter 23-25 and a periodic review conducted under the PSD provisions of the Clean Air Act (CAA §§ 160-169), North Dakota's SIP, and its implementing rules and notice requirements (including 40 C.F.R. § 51.102).[1] The Department has considered the comments and evidence submitted into the record, and has revised and finalized the October 29, 2004 draft report and its Addenda based on those comments and considerations. These findings also make a determination relating to the adequacy of the State's SIP, and whether the PSD $SO_2$ increments are being complied with.

One commenter submitted results using recent EPA-approved refinements to CALMET and CALPUFF. These results apparently are not significantly different than the results of the Departments modeling submitted to EPA. The Department will continue to consider these and other EPA-approved air quality models as they become available or are submitted to the Department in future PSD or New Source Review proceedings (within the constraints of its budget and resources).

Comments supported the Department's policy to use more refined meteorological data, monitoring data, and emissions data, as those data become available, after considering performance through model accuracy performance testing. Comments also supported the State's general policy to use air quality monitoring to provide an empirical basis by which modeling techniques are verified and "held to earth" by a continuing iterative process of confirmation and reassessment as better techniques, technically upgraded models, and more meteorological data, monitoring data, and emissions data become available.

No comments disagreed with the document entitled "Background Discussion of Model Input Data and Potential Refinements" which was included in the notice of hearing and placed into the docket for public comment. It summarizes refinements that have been made to the State's modeling protocol, and potential refinements that may be considered, consistent with the State's policy to use best available verifiable data and technologies as they become available (within the constraints of the Department's budget and resources). This document is adopted as additional background and explanation for the Department's modeling protocol and results and is attached to the Final Report as Addendum I.

## 4.0 Record and Availability of the Report and Other Documents

A docket was opened for this hearing, and a written transcript of all oral presentations presented at the hearing has been completed and made a part of the record. All written comments received by the Department are referenced in the docket and were placed in the hearing record.

The October 29, 2004 draft report and its Addenda refer to and rely upon the hearing record from the 2002-2003 periodic review. Thus the hearing record from the earlier periodic reviews was incorporated and made a part of this hearing record, as well as all additional documents considered or relied on by the Department for this hearing were placed in the docket and made available for public review.

## 5.0 Background

The CAA establishes "a comprehensive national program that ma[kes] the States and the Federal Government partners in the struggle against air pollution." General Motors Corp. v.

[1] N.D.C.C. § 23-01-23. See, e.g., Usery v. Tamiami Trail Tours, Inc., 531 F.2d 224, 245 (5th Cir. 1976) ("[A]s a matter of principle the trial method is not required for development of general facts that are used for making law or policy or for guiding the exercise of rulemaking discretion.").

United States, 496 U.S. 530, 532 (1990). At the same time, the CAA recognizes that "air pollution prevention . . . and air pollution control at its source is the primary responsibility of States and local governments." 42 U.S.C. § 7401(a)(3) (emphasis added); see also id. § 7407(a) ("Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State") (emphasis added). Thus, while the CAA assigns the EPA the responsibility for establishing national ambient air quality standards ("NAAQS") for certain pollutants, see id. § 7409, the Act assigns the States the responsibility for implementing them. See id. §§ 7407(a), 7410(a).

To this end, the CAA requires each State to adopt and submit for the EPA's approval a state implementation plan ("SIP") that provides for the attainment and maintenance of the NAAQS. See id. § 7410(a). If a State does not have an approved SIP in place, the Act requires the EPA to adopt and implement a federal implementation plan. See id. § 7410(c). The EPA may delegate to a State the authority to implement and enforce any part of such a federal plan. Id. § 7410(c)(3).

Areas of the country "that meet[] the [NAAQS] for a [given] pollutant" (attainment areas) or for which insufficient information exists to determine whether the NAAQS have been met (unclassifiable areas) are known as "clean air" areas. Id. § 7407(d)(1)(A)(ii), (iii).[2] The CAA establishes maximum allowable increases (or increments) of certain pollutants in such clean air areas. Id. §§ 7473, 7475(d) (sulfur dioxide increments and alternative increments); see also 40 C.F.R. § 51.166(c). To ensure in part that those increments are not exceeded, the Act requires that each SIP contain emission limitations and such other provisions as may be necessary "to prevent significant deterioration of air quality" in clean air areas, including a PSD permit program. Id. §§ 7410(a)(2)(C), 7471. The CAA provides that no "major emitting facility" may be constructed or modified in a clean air area without a PSD permit. Id. § 7475(a)(1).[3]

North Dakota, through the North Dakota Department of Health (the state agency given authority to implement and enforce its state plan), has an EPA-approved SIP, see 40 C.F.R. Part 52, §§ 1820-1835, under the Clean Air Act, and has administered the PSD provisions of the Act since the PSD law was implemented shortly after its passage by Congress in 1977. See, e.g., 42 Fed. Reg. 26,977 (May 26, 1977); 44 Fed. Reg. 63,103 (November 2, 1979); and 49 Fed. Reg. 36,501 (September 18, 1984). North Dakota is a "clean air" state that has never had a violation of any of the primary or secondary National Ambient Air Quality Standards (NAAQS) that protect public health and welfare (42 U.S.C. § 7409(b)) under the Act, including never having a violation of any of the sulfur dioxide NAAQS (i.e., of the annual sulfur dioxide (SO2) standard of 80 micrograms per cubic meter of air, of the maximum 24-hour SO2 standard of 365 micrograms per cubic meter of air, or of the 3-hour SO2 standard of 1300 micrograms per cubic meter of air). See N.D. Admin. Code ch.. 33-15-02 (Table 2) and "Monitored Air Quality in North Dakota," Addendum "F" to "North Dakota's SO2 PSD Air Quality Monitoring Report" (which shows that North Dakota's air quality is among the cleanest of all states).

During the mid-East oil crisis of the 1970's, North Dakota experienced an unprecedented energy development boom, when its oil, natural gas, and lignite coal resources were explored, permitted, and developed as never before (or since). During the same period of time, the original provisions of the Clean Air Act were being implemented, and the PSD provisions of the Act

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[2] Clean air areas are divided into three categories: (1) class I areas, which include certain national parks and wilderness areas; (2) class II areas, which are intended to accommodate "moderate" growth; and (3) class III areas, which are intended to accommodate "intensive major industrial growth." See 42 U.S.C. §§ 7472, 7474(a); H.R. Rep. No. 95-294, at 152-153 (1977).

[3] A detailed discussion of the development of the PSD provisions of the CAA is contained in Addendum "G" to "North Dakota's SO2 PSD Air Quality Monitoring Report".

were being developed through litigation, legislation and rulemaking. Natural gas released from the oil and gas wells developed in the western part of North Dakota during the 70's were flared at the wellhead, a practice that was continued until natural gas processing facilities were developed and these wells were "tied in" to the gas processing facilities through the 80's and 90's. Some of the lignite coal energy conversion facilities (primarily coal-fired electricity generation facilities) in North Dakota were permitted and built before Congress enacted the PSD amendments to the Clean Air Act in 1977, some during the period of uncertainty from 1977 to 1980 when PSD rules were being implemented and challenged through litigation, and some after 1985 when a multi-party lawsuit challenging the 1980 rules was settled. North Dakota finalized its adoption of the 1980 federal PSD rules into its state PSD rules in 1984.[4]

The permitting of a large number of these coal-fired facilities during this period placed North Dakota at the forefront of implementing and applying newly enacted and promulgated PSD statutes and regulations in a NAAQS attainment area that had only PSD new source review issues to deal with in permitting new facilities.[5] North Dakota was one of the first states to do long-range pollutant transport modeling with a computer (i.e., computer modeling that estimates SO2 concentrations at the surface more than 50 kilometers from the stack emitting the pollutant) to determine compliance with the class I PSD increments for sulfur dioxide.[6] Monitoring equipment and technologies sufficiently accurate to measure small amounts of sulfur dioxide in the ambient air were not available until after 1977. The State has maintained one or more monitors to measure sulfur dioxide concentrations in its class I areas beginning in 1980. Since then these monitors have periodically been moved and updated.

Coal-fired facilities permitted and constructed shortly after the minor source baseline of December 19, 1977, were determined to have consumed all available sulfur dioxide increment in North Dakota class I areas based on computer modeling methods used at that time. This computer modeling, however, was conducted primarily under the federal and state PSD rules adopted and implemented shortly after Congress adopted the PSD amendments to the Clean Air Act in 1977, see, e.g., 43 Fed. Reg. 26,380 (June 19, 1978), rather than the modified rules adopted by EPA and the State after the Alabama Power decision clarified the meaning of the '77 PSD amendments to the Act and their permissible construction. See 45 Fed. Reg. 52,675 (August 7, 1980). It is primarily the meaning and discretion states have under the PSD rules promulgated by EPA in 1980 that are the subject of the process identified in the MOU between the State and EPA and which is the subject of this periodic review hearing. As noted above, the PSD rules EPA promulgated in 1980 were implemented in North Dakota in 1984. 49 Fed. Reg. 36,501 (September 18, 1984).

Between 1982 and 1993, numerous new facilities were permitted in North Dakota for construction based on federal land managers (FLM) determinations under 42 U.S.C. § 7475(d) that they would have no adverse impacts on air quality related values. See, e.g., 47 Fed. Reg. 30,222 (1982), and 58 Fed. Reg. 13,639 (1993). Two North Dakota facilities continue to operate under these FLM certifications of no adverse impact. 42 U.S.C. § 7475(d)(2)(C)(iii & iv); 47 Fed. Reg. 41,480 (Little Knife); 58 Fed. Reg. 13,639 currently Dakota Gasification Company). Until 1999, no additional PSD new source review (NSR) modeling was done in the State.

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[4] See "The PSD Variance Issue in North Dakota," Addendum "H" to "North Dakota's SO2 PSD Air Quality Monitoring Report", p. 5 et seq.

[5] See Exhibit 126, "A case history of the North Dakota PSD program.," Environmental Science & Technology, Vol. 16 (1982), No. 7, by Myron F, Uman, National Research Council.

[6] See "The PSD Variance Issue in North Dakota," Addendum "H" to "North Dakota's SO2 PSD Air Quality Monitoring Report", p. 12 et seq. See also Exhibit 19, "Background, Findings of Fact and Conclusions of Law Regarding Certain Air Quality Models – 1981".

In 1999, the Department conducted draft modeling for a potential major modification of the Milton R. Young coal-fired power plant near Center, North Dakota, but this permit application was later withdrawn, and the modeling was never finalized. This draft modeling, however, triggered a concern on the part of EPA Region 8 that "draft modeling studies" indicated potential PSD sulfur dioxide class I increment violations. 66 Fed. Reg. 29,127 (May 29, 2001). The State committed to refine its modeling analysis and to adopt any revisions to its SIP necessary to address increment violations shown by the revised modeling analysis.

When compared to monitored readings of air quality in North Dakota's class I areas in 1999 and previous years, the Department's 1999 draft modeling appeared to significantly over-predict SO2 increment consumption. But a comparison that would reveal whether and how much the model was over-predicting increment consumption was not possible at that time because the Department was modeling increment-consuming and increment-expanding emissions only, rather than a full inventory of all SO2 sources. To make a comparison between monitored concentrations and computer-generated modeled concentrations, it is necessary to include (a) a background concentration of SO2 in the air that does not come from the modeled major and minor sources, (b) emissions from major SO2 "baseline" sources that impact the class I areas at issue, (c) emissions from additional major SO2 "increment-consuming" sources that impact the class I areas in question, and (d) emissions from minor SO2 sources that are close enough to the class I area in question to have measurable impacts (in this case, flared oil and gas wells within fifty kilometers of the class I areas).

The preamble to the 1980 PSD rules had anticipated that if permit "allowable" rather than "actual" emissions were used in PSD/NSR modeling, increment consumption would likely be overestimated, and inappropriate increment violations would likely be predicted:

> "[I]f increment calculations were based on allowable emissions, EPA believes that increment violations would be inappropriately predicted."

45 Fed. Reg. 52,675, 52,718 (August 7, 1980).[7]

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[7] EPA labeled this over-predication-of-increment-consumption issue when "allowable" rather than "actual" emissions are used the "Gulf Coast problem" and devoted two pages to discussing it in the 1980 preamble. 45 Fed. Reg. at 52,720-721. There EPA noted:

> "As discussed above [section XIV of the preamble dealing with "Increment Consumption" and "Use of Actual Emissions," id. at 52,717-719] and in Baseline Concentration [id. at 52,713-715], EPA has determined that both baseline concentrations and increment consumption should be based on actual air quality impacts. This is consistent with the suggestion of some commenters that EPA consider increment consumption to occur only when actual emissions increase and not when the permit or SIP allowing the increase is approved."

Id. at 52,721.

The 1980 preamble also noted, "as discussed in Baseline Concentration [section XIII.A. of the 1980 preamble, id. at 52,713-715], EPA has changed its June 1978 policy," id. at 52,721, which had calculated increment consumption based on potential or allowable emissions, rather than actual emissions. (Under the previous 1978 rule "the increments [were] generally consumed by new or modified sources on the basis of allowable emissions, whereas ambient monitoring will measure air quality as it is affected by changes in actual emissions." 43 Fed. Reg. 26,380, 26,399 (June19, 1978)). The 1980 rules added a definition for "actual emissions", 45 Fed. Reg. at 52,737, whereas the 1978 rules had only included a

These two issues – the role of air quality monitoring and whether actual, allowable, or some other measure of SO2 emissions should be used[8] – became two of several technical and legal issues which EPA and the Department continued to discuss and were issues in the periodic review proceedings the Department initiated in 2002. In May, 2002, and in June, 2003, the State held a PSD periodic review hearing under 40 C.F.R. § 51.166(a)(4) to address these and other issues, including refining the modeling analysis for PSD increment review, determining the role of monitoring data in PSD compliance, reviewing the adequacy of the State's SIP, and determining whether the PSD increments were being violated. On August 8, 2002, the State issued initial findings in the PSD periodic review proceeding, and on September 8, 2003, State Health Officer Terry L. Dwelle, M.D., issued a final order determining that there were no PSD class I sulfur dioxide increment violations occurring in North Dakota or Eastern Montana, and that the State's SIP is adequate to protect against air quality deterioration. See copies of August 8, 2002 and September 8, 2003, Orders of North Dakota State Health Officer.

As noted in section 3.0 above, at the conclusion of its 2002-2003 periodic review, the Department and the State entered into a process with EPA to resolve remaining issues relating to its PSD program as required by the September 8, 2003 order. The State and EPA entered into a memorandum of understanding (MOU) and subsequently agreed to a modeling protocol under the MOU, which the State forwarded to EPA on May 5, 2004. On November 8, 2004, the State forwarded its October 29, 2004 draft report and Addenda to EPA as agreed under the MOU protocol. This hearing provided an opportunity for public comment on the above-noted draft documents before they are finalized, and a review of the modeling conducted pursuant to the MOU and protocol. The October 29, 2004 draft report and its Addenda, like the State's 2002-2003 periodic review, show continued compliance with PSD class I $SO_2$ increments.

As noted in section 1.0 above, the Department held the hearing on April 19, 2005, and kept the record open for public comment until June 30, 2005.

Based on the above documents, records, and proceedings, the Department makes the following findings and conclusions.

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definition for "allowable emissions." 43 Fed. Reg. at 26,405. This change to "an actual emissions policy," 45 Fed. Reg. at 52,714, was based on EPA's conclusion that "increment consumption and expansion should be based primarily on *actual* emissions increases and decreases" because of "both the December opinion of the court [the 1980 Alabama Power decision] and the *Gulf Coast* problem [referenced and discussed at id., 52,718 and 52,720-721]." EPA also explained the policy reasons for making this change in the 1980 preamble:

> "Increment calculations based on the best prediction of actual emissions links PSD permitting more closely to actual air quality deterioration than calculations based on allowable 'paper' emissions. In addition, use of actual emissions for increment consumption is consistent with using an actual emissions baseline for defining a major modification and for calculating emissions offset baselines."

Id. at 52,718.

[8] In the modeling EPA Region 8 conducted, they used 90th percentile SO2 emissions, rather than either "actual" or "allowable" emissions as provided by rule.

## 6.0 Findings and Conclusions

The Department received oral and written comments on the following:

- "North Dakota's SO2 PSD Air Quality Modeling Report" (Draft Final October 29, 2004), and Addenda B, C, D, F, G, and H, as completed pursuant to the February 24, 2004 Memorandum of Understanding (Addendum A) between the State of North Dakota (State) and the United States Environmental Protection Agency (EPA);

- The modeling and analysis in the October 29, 2004 draft report and Addenda that continues to show compliance with the relevant PSD increments.

Most of the comments received supported the Report and Addenda as drafted. The Department has prepared a document entitled "Response to Comments" that summarizes and responds to comments received in the hearing or filed during the comment period. Those comments are adopted as part of these findings and are attached and incorporated by reference. The "Response to Comments" should be filed and placed as a separate entry in the hearing record.

**6.1** Section 3.0 of "North Dakota's SO2 PSD Modeling Report" summarizes in subsections 3.1-3.6 each of the six issues where the State and EPA agreed under section I of the February 24, 2004 MOU "that the State has the following discretion under the CAA and its implementing rules, and the State may choose these options in conducting the additional modeling it has agreed to do under this MOU." Each of these six subsections (3.1-3.6) provides the legal and factual reasons that the state relied on in exercising the options it did under the protocol and in conducting its modeling under the MOU. The Department has made changes to address oral and written comments received, and to improve clarity and readability. This finalized version of North Dakota's SO2 PSD Modeling Report is adopted and incorporated into these findings, and subsections 3.1-3.6 are adopted and incorporated as the specific findings and conclusions relating to each of the six issues the State and EPA agreed the state had the option to choose under section I of the February 24, 2004 MOU. (The MOU is Addendum "A" to both the draft and finalized Report.)

**6.2** "North Dakota's SO2 PSD Air Quality Modeling Report" and Addenda B, C, D, F, G, and H, as finalized and attached to these findings, are adopted as the final report to EPA. These documents are adopted in their entirety and incorporated by reference as findings and conclusions.

**6.3** The Department implemented the six issues of discretion described in Section I of the MOU in its modeling and report to EPA. And, the Department conducted model accuracy tests as part of its modeling under the MOU and provided those results in the Protocol Results Report (Addendum "C"). Those test results show that the Department's methodology under the protocol did not under-estimate actual sulfur dioxide in ambient air. But rather, the results verified that the modeling techniques of the modeling protocol (Addendum "B") were "held to earth."[9] The "Background Discussion of Model Input

[9] The Department has relied on the following language from the Alabama Power case that holds that monitoring data must play the important role of holding modeling projections "to earth" through a process of confirmation and reassessment:

Data and Potential Refinements" as noticed in the Notice of Hearing is adopted as additional factual and technical bases for these policy choices, and a copy of this finalized document is attached and incorporated into these findings and is added as Addendum "I" to the Final Report.

**6.4** Based on the finalized report, Addenda adopted in 6.2 and 6.3 and the model accuracy demonstrations in those Addenda, it is determined that the air quality relating to sulfur dioxide impacts is being adequately protected, and that, at 2002-2003 sulfur dioxide emission levels, the relevant class I increments are not violated. Section 4.0 of the finalized report and final Protocol Results Report (Addendum "C") are adopted as the specific findings and conclusions for the modeling conducted under the MOU and the modeling protocol (Addendum "B").

**6.5** The final modeling protocol (Addendum B) is adopted as a guideline document pursuant to N.D.C.C. § 28-32-01(11)(k) for use in North Dakota's PSD/NSR program. Its use as a guideline for future PSD/NSR modeling is subject to the Department's general policy of using more refined meteorological data, monitoring data, and emissions data, as those data become available, after considering performance through model accuracy performance testing. This policy is grounded in the testimony, evidence, and legal authority presented in the record which supports considering relevant air quality monitoring to provide an empirical basis by which the modeling techniques are verified and "held to earth" by a continuing iterative process of confirmation and reassessment as better techniques, technically upgraded models, and more meteorological data, monitoring data, and emissions data become available for use in air quality assessments.

**6.6** Section 3.7 of "North Dakota's SO2 PSD Air Quality Modeling Report" and Addendum "H" discuss the legal, factual, and historical reasons why sources that have been granted PSD federal land manager certifications under CAA § 165(d) consume SO2 class I increment against the alternative increment at CAA § 165(d)(C)(iv), but not against the class I increment under CAA § 163(b)(1). This was an additional issue EPA and the State agreed to continue to evaluate and engage in technical dialogue under section II.1 of

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"We discern from the statute a technology-forcing objective. Congress intended that monitoring would impose a certain discipline on the use of modeling techniques, which would be the principal device relied upon for the projection of the impact on air quality of emissions from a regulated source. This projects that the employment of modeling techniques be held to earth by a continual process of confirmation and reassessment, a process that enhances confidence in modeling, as a means for realistic projection of air quality. This objective is furthered by the development of sophisticated monitoring techniques, and the collection of the data base that would result from monitoring's widespread use. Of course even a congressional mandate, such as a technology-forcing requirement based on a congressional projection of emergence of technology for the future, is subject to a justified excuse from compliance where good-faith effort to comply has not been fruitful of results. That is far different from the exemption created by EPA on the basis of current technological infeasibility. Though EPA has authority to require methods other than monitoring in its effort to ensure that allowable increments and NAAQS are not violated, and though it may choose to invoke that authority because of its perception that monitoring alone is inadequate to the task, it does not have authority to dispense with monitoring as at least one element of the overall enforcement effort where Congress has mandated the use of that technique."

Alabama Power Co. v. Costle, 636 F.2d 323, 372 (D.C. Cir. 1979).

the MOU. EPA's June 30, 2005 letter filed in these proceedings (Exhibit 154) refers to this issue and preliminarily concurs with the State's position as stated in section 3.7 of the Report and Addendum "H". The Department adopts Addendum "H" and section 3.7 as its findings and conclusions on this issue, and sources that have been granted PSD federal land manager certifications under CAA § 165(d) are to be treated in future PSD/NSR proceedings as consuming SO2 class I increment against the alternative increment at CAA § 165(d)(C)(iv), but not against the class I increment under CAA § 163(b)(1).

Dated this 29 day of August, 2005.

Hearing Officer

L. David Glatt, Chief
Environmental Health Section

**DETERMINATION**

These findings and "North Dakota's SO2 PSD Air Quality Modeling Report" (FINAL August 19, 2005) and its Addenda (A-I) are adopted and approved. A copy of this determination, these findings, and the Final Report and its Addenda (A-I) are to be placed in the docket of these proceedings. The whole record, including this determination, findings, and the Final Report and its Addenda, are to be transmitted to EPA. A copy of this determination should be published on the Department's website, and a copy of these findings, as well as the response to comments received, are to be sent to all persons who provided comments prior to the closing of the record on June 30, 2005.

Dated this 7 day of September, 2005.

Terry L. Dwelle, MD, MPHTM
State Health Officer