

**Senator John
HOEVEN**

**Senator Kent
CONRAD**

**Congressman Rick
BERG**

**Governor Jack
DALRYMPLE**

February 28, 2011

Ms. Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington DC 20460

Dear Administrator Jackson:

We strongly object to the United States Environmental Protection Agency's preliminary decision to disapprove North Dakota's Regional Haze State Implementation Plan (SIP). Congress left primary responsibility for the development of these plans to the states, and the fact that EPA might prefer something different is insufficient under the Clean Air Act (CAA) to disapprove state plans. SIP disapproval should occur only when a state has failed to take into account the factors specified in the Regional Haze regulations and failed to provide a reasoned explanation for its judgment. That is not the case for North Dakota.

EPA has informed North Dakota that it intends to disapprove North Dakota's SIP and propose a Federal Implementation Plan (FIP) for several coal-fired power plants in the state because of a "disagreement" regarding what constitutes Best Available Retrofit Technology (BART) for those units. We feel that this action is unwarranted, as North Dakota completed a detailed BART analysis for these units following EPA's BART Guidelines and supported its BART determination with extensive reasoning. EPA's preference would require hundreds of millions of dollars in additional control equipment at each of the coal units in question with no or negligible improvement in visibility, a result North Dakota does not feel is warranted at this time. That is precisely the determination Congress left to the states, which EPA's proposed course of action frustrates. For EPA to insist on its preferred outcome would be inappropriate for North Dakota in this uncertain economy.

The following 5 reasons support our strongly held belief that EPA should not substitute its judgment for North Dakota in reviewing the pending Regional Haze SIP, and the underlying BART determinations:

1. EPA does not have the authority to impose specific BART determinations on states through the SIP approval process. Congress intended states to make visibility improvement decisions, including BART determinations. EPA's disapproval of regional haze SIPs because they fail to identify EPA's preferred source-specific BART determination is inconsistent with Congress' mandate that states, and not the EPA, play a primary role in specifying the manner in which air quality standards are met through the SIP process.

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2. EPA's rules require that it defer to state judgment on Regional Haze SIPs. EPA assigns to the states the authority and discretion to promulgate Regional Haze SIPs, and necessarily relies on states to assess the factors on which Regional Haze SIPs are based. For example, EPA's BART Guidelines list the factors that must be considered in making a case-by-case BART determination and provides that states are free to determine the weight and significance to be assigned to each factor.

3. States are more familiar with the sources in their jurisdictions and the underlying facts that bear on BART determinations and the development of Reasonable Progress Goals and Long-term Strategies. They are better positioned than EPA to make those judgments that hinge on the individual facts and circumstances of the sources located in their states.

4. States invest significant resources to carry out their Regional Haze responsibilities, an effort that is wasted if EPA rejects the SIP. Given the current economic climate, this country cannot afford to have EPA waste limited resources to duplicate or override state efforts that comply with Clean Air Act requirements.

5. EPA overruling state decisions can adversely impact the financial interests of states and their citizens without providing any compensating benefit. If a state has developed a Regional Haze SIP that takes into account all statutory and regulatory factors, reasonably balances costs and benefits and improves visibility, Regional Haze objectives have been accomplished and there is no justification for EPA to further burden state economies.

EPA should acknowledge and respect the authority and discretion given to states to make these judgments. As EPA begins the process of taking action on the number of pending Regional Haze SIPs before it, we strongly urge EPA to wield its SIP disapproval and FIP authority sparingly, and only in those cases where the states have not complied with the requirements of the Clean Air Act and the underlying Regional Haze regulations.

Respectfully yours,



Jack Dalrymple
Governor



Kent Conrad
Senator



John Hoeven
Senator



Rick Berg
Congressman

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