

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 583

HOUSE CONCURRENT RESOLUTION NO. 3053

(Representatives Kasper, Bellew, Drovdal, Rust)
(Senators Andrist, Nodland)
(Approved by the Delayed Bills Committee)

A concurrent resolution urging Congress to clearly limit United States Environmental Protection Agency regulation of hydraulic fracturing under the Safe Drinking Water Act to well stimulation treatments that use diesel fuel as the primary constituent--more than 50 percent diesel fuel by volume--of hydraulic fracturing fluid.

WHEREAS, hydraulic fracturing, a mechanical method of increasing the permeability of rock, thus increasing the amount of oil or gas produced from the rock, has greatly enhanced oil and gas production in this state; and

WHEREAS, oil and gas production increases in this state have led to growth in employment and economic development as well as promotion of energy independence for the United States; and

WHEREAS, the Energy Policy Act of 2005 uses the term "diesel fuel" more than 40 times and defines "diesel fuel" according to the American Society for Testing and Materials standard specifications for fuel oils; and

WHEREAS, the Environmental Protection Agency is being urged to define "diesel fuel" in Section 322 of the Energy Policy Act of 2005 in a different and broader manner than the definition of "diesel fuel" used elsewhere in the Act; and

WHEREAS, Section 322 of the Energy Policy Act of 2005 was never intended to subject injection of hydraulic fracturing fluids that contain minute amounts of diesel fuel, typically less than one-tenth of 1 percent by volume, to Safe Drinking Water Act regulation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-second Legislative Assembly urges the Congress of the United States to clearly limit Environmental Protection Agency regulation of hydraulic fracturing under the Safe Drinking Water Act to well stimulation treatments that use diesel fuel as the primary constituent--more than 50 percent by volume--of the hydraulic fracturing fluid; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the administrator of the Environmental Protection Agency and to each member of the North Dakota Congressional Delegation.

Filed November 10, 2011

CHAPTER 584

HOUSE CONCURRENT RESOLUTION NO. 3054

(Representatives Kasper, Delzer, Dosch, Wrangham)

(Senators Cook, Dever)

(Approved by the Delayed Bills Committee)

A concurrent resolution urging the United States Environmental Protection Agency to approve North Dakota's plan for addressing regional haze and urging Congress to clearly delegate responsibility for the regulation of regional haze and minor source air permitting to the states.

WHEREAS, in Section 101 of the Clean Air Act, Congress determined that preventing and controlling air pollution "is the primary responsibility of States and local governments" and the Act is designed to prevent the federal government from substituting its inflexible judgment for a state's superior knowledge of local conditions and needs; and

WHEREAS, in *American Corn Growers Association v. E.P.A.*, 291 F.3d 1, 2 (D.C. Cir. 2002), the United States Court of Appeals for the District of Columbia Circuit held that the Clean Air Act "calls for states to play the lead role in designing and implementing regional haze programs"; and

WHEREAS, the North Dakota State Department of Health developed a reasonable plan for addressing regional haze and this state's air is among the nation's cleanest in the nation with the 2010 American Lung Association ranking Mercer County, home to several coal-based power plants, as one of the 25 cleanest counties in the United States and ranking Billings County, home to Theodore Roosevelt National Park and significant oil and gas development, as the third cleanest; and

WHEREAS, the United States Environmental Protection Agency has noticed its intention in the Federal Register to disapprove a portion of this state's plan for addressing regional haze and impose a federal plan in its place that mandates an inappropriate technology, selective catalytic reduction, that is not proven on boilers using this state's high-sodium lignite and which when tested through a pilot study, the technology failed after two months; and

WHEREAS, when one compares the United States Environmental Protection Agency's plan to this state's plan there is no significant improvement in visibility under the United States Environmental Protection Agency's plan, so much so that the visibility improvements the United States Environmental Protection Agency claims would result from its plan are not even humanly perceptible; and

WHEREAS, the North Dakota State Department of Health found that international and out-of-state sources are the most significant cause of impaired visibility in the state's national parks and wilderness areas, and that even if every coal plant and oil drilling rig in the state were shut down, the Environmental Protection Agency's visibility goals could not be met because the problem is caused by sources outside this state; and

WHEREAS, this state has crafted an implementation plan that takes into account the various technology options available to oil and gas operators to reduce emissions of volatile organic compounds; and

WHEREAS, this state's natural gas gathering and processing industry has committed more than \$3 billion to build infrastructure that will capture and market flared gas; and

WHEREAS, the United States Environmental Protection Agency is ignoring this state's authority and local knowledge and the Environmental Protection Agency's proposed action would unnecessarily jeopardize this state's sovereignty and economic well-being;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-second Legislative Assembly urges the United States Environmental Protection Agency to approve North Dakota's plan for addressing regional haze and urges Congress to clearly delegate responsibility for the regulation of regional haze and minor source air permitting to the states; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the administrator of the United States Environmental Protection Agency and to each member of the North Dakota Congressional Delegation.

Filed November 10, 2011