

Testimony of Badlands Conservation Alliance
SB 2238
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Elizabeth Loos # 342

Chairman Porter and Members of the Energy and Natural Resources Committee:

My name is Elizabeth Loos and I am the Executive Director of Badlands Conservation Alliance. We are a non-profit organization based in western North Dakota dedicated to the wise stewardship of public lands, including the approximately 70,000 acres of Theodore Roosevelt National Park (TRNP). Many of our members live in or originated in the small communities and rural landscapes surrounding these public lands. Members hold significant familiarity with these lands and value them for a host of ecological, heritage and personal reasons, frequently through multiple generations. I appear before you today in opposition to SB 2238 in its current form.

As the only national park within North Dakota's borders, TRNP is a popular tourist destination, attracting nearly 600,000 tourists each year. The entirety of TRNP is designated a mandatory Class I federal area and, as such, has the strongest clean air protections in the country, mandated by the Clean Air Act (CAA). The Regional Haze Rule (RHR) requires federal and state agencies to work together with stakeholders to restore clear skies at Class I areas around the country. In order to meet the requirements of RHR, ND must submit its State Implementation Plan to the Environmental Protection Agency by July 2021.

The RHR requires states to set reasonable progress goals towards achieving natural visibility conditions in all Class I areas by 2064. A four-factor analysis is required under this rule to determine if there are reasonable controls available for reducing visibility-impairing emissions. The four factors considered are: cost of compliance, time necessary for compliance, energy and non-air quality environmental impacts, and remaining useful life of the source. Lines 17-18 on page 1 of SB 2238 read: "[t]he department may not require controls the department has determined serve only to increase total costs with little corresponding visibility benefit."

The EPA recognizes that states will weigh the visibility benefits of potential control measures along with those four factors, but according to its 2019 guidance document, "visibility is not an explicit fifth factor and does not have the same weight as the four statutory factors." Many individual sources contribute to regional haze, so according to the guidance document "it is not appropriate to reject a control measure for a single emission unit, a single source, or even a group of sources on the basis of the associated visibility benefits being imperceptible to the human eye.

Although the RHR requires states to calculate the capital costs of controls, EPA has rejected that total cost be decisive factor. Of course the capital cost of reducing pollution will always be higher than doing nothing at all, but it is not the only factor in evaluating reasonable control costs. In determining the cost effectiveness of a given control, states must also analyze the total anticipated reduction in pollution in Class I areas. EPA has established its cost-effectiveness analysis through regulation and state law cannot modify those federal requirements. I would suggest that the bill be amended to delete lines 17-18.

Thank you for the opportunity to testify this morning.