

PRIMACY AGREEMENTS WITH THE ENVIRONMENTAL PROTECTION AGENCY - BACKGROUND MEMORANDUM

Section 5 of 2011 House Bill No. 1014 ([Appendix A](#)) directs the Legislative Management to study primacy in the administration of federal Environmental Protection Agency (EPA) regulations. The concept of primacy is the state enforcing federal regulations through a state program. Generally, the state regulates and the federal government oversees the state regulatory program. If the state regulatory program becomes inadequate, as determined by the review by the federal agency, the federal agency assumes the regulatory program or a portion of that program. The main reason a state takes primacy in matters of regulation is for state control.

The legislative history for this study reveals the reason for this study is that primacy is not a subject matter on which much was known, and there is a desire to know more about primacy. House Bill No. 1014 was the appropriations bill for the Industrial Commission. The amendment requesting the study came early in the process in the House Appropriations Committee. The issue arose over a discussion over agreements by the Oil and Gas Division and the State Department of Health with the EPA over the Safe Drinking Water Act. The memorandum of agreement was up for a 10-year total review. The EPA was going to take back regulation on subsurface mining. This was brought to the attention of state agencies because of the review of regulation due to carbon dioxide storage rules. The legislative history reveals a concern for the number of primacy agreements and determining whether the cost of primacy is worth the state having control. Testimony reveals that the control extends to national lawsuits brought on environmental issues. If the state has primacy, there is less of an argument that national lawsuits affect state programs.

PRIMACY AGREEMENTS

The schedule below provides information regarding agreements between North Dakota state agencies and the federal EPA for primacy in the administration of EPA regulations:

State Agency	Federal Statute	Programs
Industrial Commission	Safe Drinking Water Act	Class II underground injection control - Oilfield waste disposal and enhanced oil recovery wells Class III underground injection control - Subsurface mineral solution mining
Department of Agriculture	Federal Insecticide, Fungicide, and Rodenticide Act	Enforcement, worker protection safety, and pesticide certification

State Department of Health	Clean Air Act	Air toxics, national emission standards for hazardous air pollutants, new source performance standards, and Title V air quality permits
	Clean Water Act	Construction grants, national pollutant discharge elimination system water quality permits, and state revolving fund
	Resource Conservation and Recovery Act	Land disposal restoration, mixed waste, solid waste, toxicity characterization, and underground storage tanks
	Safe Drinking Water Act	Drinking water, state revolving fund, and pretreatment
	Toxic Substance Control Act	Asbestos and Class V underground injection control - General

The EPA works in partnerships with states to carry out the requirements of various environmental statutes for which Congress has charged the EPA with implementation. The EPA delegates these programs to the states because it allows more resources to be used to protect the environment. A focus of the EPA is to use limited resources on the most critical environmental problems.

Attached are two documents from the EPA website. The first table entitled "Region 8 State Program Delegation Table" ([Appendix B](#)) lists the laws administered by the EPA, the name of the program under that law, and the status of state control. The table shows that regulation has been delegated to the state of North Dakota under the Clean Air Act (CAA), Clean Water Act (CWA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Resource Conservation and Recovery Act (RCRA), Safe Drinking Water Act (SDWA), and the Toxic Substance Control Act (TSCA).

The second document entitled "Performance Partnership Grants (PPGs) and Eligibility" ([Appendix C](#)) lists each program under the appropriate law and which states through which state agencies receive grants.

CURRENT DISAGREEMENT

One area of friction between the state of North Dakota and the EPA is on regional haze. In November 2010 the EPA informed the State Department of Health the EPA intended to set aside the state implementation plan for regional haze and would impose a federal implementation plan. The regional haze program addresses visibility conditions in national parks and wilderness areas. The disagreement centers on the proper manner by which to measure pollutants. The state supports monitoring actual pollutants, and the EPA supports determining the pollutants based on modeling.

SUGGESTED STUDY APPROACH

The committee may desire to receive testimony from state agencies with primacy agreements with the EPA. The focus of the testimony could be on what the primacy agreements cover, i.e., what control does the state gain, what is the cost, and what is the funding. The committee then may conduct a cost-benefit analysis to see if the benefits of state control outweigh the costs of exercising that control.

ATTACH:3