

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chair Carolyn McGinn at 8:36 a.m. on January 27, 2006, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Lisa Montgomery, Revisor of Statutes Office
Emalene Correll, Legislative Research Department
Judy Holliday, Committee Secretary

Conferees appearing before the committee:

Thomas Gross, Bureau of Air and Radiation, Kansas Department of Health and Environment
Whitney Damron on behalf of Empire District Electric, Aquila Corp., et al
Charles Benjamin, J.D., on behalf of Sierra Club
Allie Devine, Vice President and General Counsel, Kansas Livestock Association

Others attending:

See attached list.

The meeting was called to order and Chairperson McGinn asked that the Committee hear and work **SB 386**. She recognized Emalene Correll, Legislative Research Department, who explained **SB 386** to the Committee.

Chairperson McGinn recognized Thomas Gross, Bureau of Air and Radiation, Kansas Department of Health and Environment, who testified in favor of **SB 386** (Attachment 1), which would implement the federal Clean Air Mercury and Regional Haze rules.

Senator Lee asked if emissions from Kansas would affect parts of Western United States and if prevailing winds determined the amount of emissions traveling that distance. Mr. Gross stated that Oklahoma, Missouri, Arkansas, South Dakota were mainly affected and that the mountains were an effective barrier from preventing emissions to affect far western states. He explained that emissions would vary according to times of year. The largest component of pollution in Kansas is sulphur compounds from burning coal and automobile emissions. Senator Lee asked if that was because of the electric generation plants, and Mr. Gross stated that the power plants were the largest contributors to emissions.

Chairperson McGinn asked if there had been legislation since the 1997 CFR rule was created. Mr. Gross explained that there had been ongoing legislation introduced for several years. Senator Taddiken discussed the definition of regional haze, and Mr. Gross explained the technical definition, "an overall air pollution event of fine air particulates that reduces ability to see distances." He noted this was first noticed in the Grand Canyon and federal laws were implemented soon after that. Senator Taddiken asked if it makes a difference which particulate you cannot see but is there, and if dust would be one of those. Mr. Gross responded that some contributors have a greater affect than others; sulphur, nitrogen, or carbon have their own weighing factors, and either reflect or absorb light. Dirt has a lesser impact on visibility than other components have. Senator Taddiken talked about dust in the air in Western Kansas and how in the dust storms of the Dirty Thirties the dust ended up in Chicago. He asked if no degradation on the clearest days is zero, and Mr. Gross answered that in the law KDHE submits in the changes they make, they would not want to make it worse on the best days. Senator Taddiken asked if that meant that the changes would not cause degradation, and Mr. Gross stated that it would not.

Chairperson McGinn stated that the definition of air contaminant does mean dust, and it would be in the testimony to be submitted. She noted that it also could mean smoke and wondered if cigarette smoke could be included, since regional haze by definition is visibility impairment over a wide geographical area. Mr. Gross stated he did not want to speculate on that, but explained that smaller particulates travel greater distances, while larger particulates get deposited by gravity or the next rainfall closer to the source.

Senator Ostmeyer asked about Mt. St. Helens' particulates and how long they stay in the atmosphere to be deposited elsewhere. Mr. Gross said they have ways to flag unexpected events that occur during the course of a year so its not included in the baseline data for that year.

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Senator Ostmeyer asked how the Department balances what percentage goes to which database, and Mr. Gross answered that they do an annual emissions inventory to get information on all sources of pollutants to come up with a database of what goes into Kansas air. Senator Ostmeyer asked if Wichita could be blamed for emissions because of its traffic, and Southwest Kansas could be blamed for the emissions because of the power plant, and Mr. Gross explained that there is a sophisticated computer model that rates the pollution by type and amount and location over a three-year period.

Senator Lee asked where the testing is done, and Mr. Gross explained there are three monitors: one on the south bank of Cedar Bluff Park, one at Tallgrass National Monument in the Flint Hills, and one near one of the tribes in Northeast Kansas. These tests are broken down by how much is nitrogen, sulphur, and carbon. In addition, for other purposes they look at what is coming out of Wichita and Kansas City.

Senator Lee expressed concern about the mercury pollutants around the 3-mile area around the power plant. Chairpersonperson McGinn stated that the 3-mile area was misinformation and that Steve Miller of Sunflower had emailed a clarification to her which she would get to the Committee. She stated that the issue of mercury could not be covered today and would need to be taken up at another meeting.

Charles Benjamin presented testimony on behalf of his client, the Sierra Club. Mr. Benjamin testified as a proponent of **SB 386** (Attachment 2). The Sierra Club supports public policies that reduce man-made air pollutants which contribute to diseases and endorses this legislation because it gives the Secretary of KDHE increased flexibility to deal with local agencies and other states in air pollution issues.

Whitney Damron testified on behalf of his client, Empire District Electric Company and six other electric utilities, in support of **SB 386** (Attachment 3). He expressed appreciation to KDHE for working with representatives of the utility industry over the past months to bring this legislation forth.

Senator Huelskamp asked if the definition of regional haze is identical to the federal definition? Mr. Gross stated that federal law addresses other aspects of regional haze but does not address in the definition.

Senator Lee asked if the Secretary of KDHE could provide more information on what it means for entities to trade and sell. Representatives of KDHE agreed to provide that information.

Allie Devine of the Kansas Livestock Association provided comments on the bill (Attachment 4). She stated that while the KLA is not an opponent, it does have concerns, and asked that the Committee keep the record open until their attorneys further review KLA's exposure.

Senator Pyle asked what the bill would do to biodiesel, and Ms. Devine responded that she did not know the answer.

Chairperson McGinn asked Mr. Gross about particulates being categorized by micron size, and Mr. Gross stated that EPA groups them into three sizes and the sizes will apply in urban areas, but not rural areas. Chairperson McGinn asked for that information to be made available to her.

Chairperson McGinn advised the Committee that next Thursday would be a full day with Wildlife and Parks and she will try to bring this issue back at the Friday, February 3 meeting. She asked for bill introductions.

Senator Huelskamp asked about contracts entered into with other states, if they are based on federal standards, and if there are penalties for not participating in the regional program. Mr. Gross explained there is a national cap and trade program. He said EPA could step in and do this for us, and that other states have expressed concern about states working together to prevent this intervention.

Senator Teichman stated her appreciation for Allie Devine bringing up the feedlot haze issue and KLA taking time to thoroughly research this issue. She asked if the haze over Oklahoma and Texas caused by wildfires plays into this regional haze issue, and Mr. Gross said if the state has its plan in effect then that type of event is taken into account.

Senator Taddiken asked whether the contracts and agreements are signed off by the Secretary of KDHE and

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will there be any opportunity for legislative review before they are signed? Mr. Gross said it would not be required, but certainly could be done.

Steve Miller was asked to clarify the three-mile issue concerning the disposition of mercury in the air and apologized to the Committee for his error. He told the Committee that the largest depositor in the United States is Yellowstone National Park.

Seeing no further questions, Chairperson McGinn adjourned the meeting at 9:20 a.m.