

## MINUTES

### JOINT COMMITTEE ON ENERGY AND ENVIRONMENTAL POLICY

September 9, 2010  
Room 152-S—Statehouse

#### Members Present

Senator Carolyn McGinn, Chairperson  
Representative Carl Holmes, Vice-chairperson  
Senator Janis Lee  
Senator Roger Rietz  
Senator Mark Taddiken  
Representative Mitch Holmes  
Representative Forrest Knox  
Representative Tom Sloan  
Representative Vince Wetta

#### Staff Present

Cindy Lash, Kansas Legislative Research Department  
Raney Gilliland, Kansas Legislative Research Department  
Heather O'Hara, Kansas Legislative Research Department  
Matt Sterling, Office of the Revisor of Statutes  
Renaë Hansen, Committee Assistant

#### Others Attending

See attached list.

The meeting was called to order by Chairperson McGinn at 9:00 a.m.

#### Overview of the Environmental Protection Agency (EPA) Tailoring Rule and Transport Rule

Karl Brooks, EPA Region 7 Administrator (Attachment 1), spoke to the Committee on the EPA's air quality rules. He stated that Congress intended for the individual states to take responsibility for the environmental protection of the land and the air. He commended Senator McGinn for the invitation that was extended to him to speak about the burning of pasture in areas close to urban environments and noted that Kansas always has excelled in enacting the Good Neighbor Rule.

Mr. Brooks stated that EPA regulations are a direct result of the US Supreme Court's rulings on environmental protection issues in the United States. He stated that none of the EPA's rules require regulation of cattle or farm dust. Mr. Brooks noted that Kansas is known for having strong debates to clarify what the correct responses are to legal mandates. He suggested that one should

look at the decision made in May 2010 by EPA Administrator Lisa Jackson. Administrator Jackson summarized the basic science of the Tailoring Rule and concluded that the nation's top scientists have established the connection between greenhouse gases (GHGs) and dangerous levels of air pollution that are changing the earth's atmosphere including the American environment.

Mr. Brooks reiterated that farms and small businesses are not part of the Tailoring Rule. He stated the EPA has followed the law and science to address greenhouse gases by tailoring the Clean Air Act permitting requirements to focus on the right sources at the right time and in a manageable way. Negative health effects and air quality problems are part of the issues that need to be addressed due to emissions in the air.

Questions were asked and comments made by Committee members. In response to questions, Mr. Brooks noted that the baseline figure that the EPA is working from for small emissions is 100,000 tons of emissions or less. He commented that the US Supreme Court directed the EPA to look at the clear science and then generate an endangerment finding. It was clear in the past that to do nothing would have been a violation of the court's order. He noted that Kansas will not be able to issue permits fast enough, based on engineers and science findings, to meet the needs of the national goals issued by Congress. Mr. Brooks commented that the Agency needs to work closely with state environmental agencies on monitoring the air pollutants created in Kansas and those that enter across other state borders. He noted that the Agency has no idea what pollutants are coming from other countries. In addition, he noted that EPA is involved with the US Department of Energy to deal with current and future issues that demand research and funding for that research.

Mark Smith, EPA Region 7 (Attachment 2), also spoke to the Committee on rules that the EPA has enacted to match the legal requirements of the evolving scientific findings. He noted that the Clean Air Act has been a remarkable success. The principal pollutants regulated by the Clean Air Act experienced a reduction of 41 percent. He began by speaking about the Tailoring Rule, which is EPA's approach to regulate greenhouse gas emissions from the largest industrial sources, while shielding millions of businesses that make up the majority of the US economy. He noted that Kansas might not meet the Clean Air Act requirements because its programs currently may not cover greenhouse gas emissions. The EPA believes that the states are best qualified to grant permits based on federal regulations. The next rule Mr. Smith spoke to was the Transport Rule.

Questions were asked and comments made by various Committee members.

In response to questions, Mr. Smith commented that the EPA would send information on the data that is available concerning how Americans' exposure to fine particles and ozone contribute to one out of 20 premature deaths a year and other requests made by members of the Committee. He noted the best available control technology is a case-by-case comparison of the permit and the current control technology available for each industry. The permit is given based on the best available technology when the permit is issued, not when the permit request is submitted. Mr. Smith said the EPA works with the emitting entity from the time of submission to the time of issuing the permit to constantly update the technology and control for the project in question for the permit.

Mr. Brooks noted that the cause of global climate change is due to the human contributions both here and in the rest of world. The EPA representatives stated the agency is in support of keeping jobs in America and that the EPA is forward thinking in making changes now instead of in the future. He believes that international action needs to be taken but in the meantime, the EPA has to uphold the laws that are currently set before them by Congress.

Testimony to the Committee includes letters drafted to the EPA from Kansas (Attachment 3), Iowa (Attachment 4), and Texas (Attachment 5).

Miles Stotts, Environmental Scientist, Kansas Department of Health and Environment (KDHE), Bureau of Air (Attachment 6), spoke to the Committee on the EPA's Greenhouse Gas

Tailoring Rule and how it affects and applies to Kansas. Mr. Stotts gave an overview, listed the previous thresholds for the Clean Air Act, and compared them to the new Tailoring Rule thresholds. He commented on the validity of the previous thresholds for the Clean Air Act. The new thresholds would not require any additional KDHE staff to process the number of permits that would be affected. He presented a timetable of events to take place in order for Kansas to meet the Tailoring Rule time constraints. Mr. Stotts then spoke to the permitting phase-in of different entities, and how they would comply with the requirements of obtaining a permit. He noted that Kansas is on the "A" list for this compliance because of the way the state adopts its laws in reference to a date certain to the federal law. Kansas does not have the authority to issue permits until its laws are changed. The Tailoring Rule allows for 67 percent of the sources to be covered compared to the previous 78 percent, but reduces the sources affected from 6 million to 15,500 sources.

Questions were asked and comments made by several of the Committee members.

In response to questions, Mr. Stotts noted that Kansas will be adopting the Tailoring Rule, but KDHE is still unclear about what this exact rule eventually will look like. He commented that the EPA provides a large portion of the KDHE funding. He noted that Kansas, because of the volume of regulations, has taken great pause before deciding to move forward with adopting the EPA regulations. Mr. John Mitchell, Director of Environment, KDHE, commented that there is a benefit to the citizens of Kansas and the people that are regulated to work through the permitting process. He noted that when it comes to enforcement of the regulations, working through the infractions, and how to work with the individuals to correct the problems to meet the regulations, is a challenge. Mr. Mitchell commented that there is still some question regarding the regulation of emission from ethanol plants. Mr. Rick Brunetti, Director, Kansas Bureau of Air, spoke specifically to the Abengoa Bioenergy question and how the Kansas Bureau of Air will help it meet the permit regulations. KDHE officials are certain that Abengoa Bioenergy will exceed the emission regulations. Mr. Stotts will provide the Committee information on the economic impact results of the Tailoring Rule, with respect to emission thresholds for the various greenhouse gases.

Greg Krissek, Director of Government Affairs, ICM, Inc. ([Attachment 7](#)), presented testimony to the Committee on the effects of the Tailoring Rule on ethanol production from cellulosic and biomass feedstock. Attached with his testimony are comments on the Tailoring Rule by Growth Energy, an ethanol advocacy organization. He acknowledged the vast majority of ethanol plants vent CO<sub>2</sub> into the atmosphere and noted the growing opportunity for them to capture the CO<sub>2</sub> for use in oil recovery. Mr. Krissek believes that the Tailoring Rule thresholds will guarantee that the ethanol plants will be governed by this rule. He also noted that attached to his testimony is the EPA summary of a call for information. Individuals from the industry are hoping that the fact that ethanol in fuel helps reduce greenhouse gas emissions will give ethanol producers some reasonable recognition within the regulation.

Bill Eastman, Director of Environmental Services, Westar Energy, (joint response on behalf of Westar Energy, KCP&L, Empire District Electric Co., Sunflower Electric Cooperative, Kansas Electric Cooperatives, KEPCo, Midwest Energy, and Kansas Municipal Utilities) ([Attachment 8](#)), spoke to the Committee on the impact of the Tailoring Rule on energy companies in Kansas. Mr. Eastman noted that it is an important issue and that they have a number of concerns for the electric utilities.

Questions were asked and comments made by many of the members of the Committee.

In response to questions, Mr. Eastman stated he believes it will be a problem that applicants must present proposals for permits with no knowledge of the technology available for the ending point of the permit process. He noted that plant engineers live their lives trying to find the most efficient way to produce electricity with the least amount of fuel, thereby lowering emission of greenhouse gasses.

Charlie Sedlock, Division Manager, Hamm Waste Services ([Attachment 9](#)), gave information

on greenhouse gas emissions with respect to waste management service. He noted that his company would move from a voluntary market in regard to methane gas collection, to a non-voluntary market organization when the Tailoring Rule goes into effect. He commented that it ultimately would result in higher costs for the consumer for the services his company provides. Mr. Sedlock also noted that it might trigger new permitting requirements at closed Kansas landfill facilities. He believes that waste management facilities need timely and clear guidance from the EPA.

Woody Moses, Kansas Cement Council ([Attachment 10](#)), spoke to the Committee on the effects the Tailoring Rule will have on the cement industry. He gave a brief overview of the process of creating cement. He noted that the new regulation would put CO<sub>2</sub> into the framework of the Clean Air Act and would consider CO<sub>2</sub> a pollutant, which is a position that has never occurred before. Mr. Moses commented that cement is a demographic product in terms of the market. He noted that when the population increases anywhere in the world, more cement is necessary to support the additional demand. If the U.S. cement industry does not produce it, someone else in the world will.

Chris Cardinal, Legislative Director, Sierra Club Kansas Chapter ([Attachment 11](#)), reiterated the finding of the Tailoring Rule and stated the Sierra Club's support of decision. He gave examples of climate change that would affect Kansans through the emission of harmful gases that have been shown to change the climate, according to science relied upon by the EPA.

Questions were asked and comments made by members of the Committee.

In response to questions, Mr. Cardinal commented that he would look into whether the Sierra Club has a position on the outsourcing of jobs to other countries that do not have environmental regulations and the subsequent use of energy to transport the items produced back to the United States. He also will provide studies to show that CO<sub>2</sub> causes harm to human health.

Written testimony was presented from the Portland Cement Association ([Attachment 12](#)) and Kansas Municipal Utilities ([Attachment 13](#)).

## **EPA Transport Rule Regarding Ozone and Fine Particles**

Miles Stotts, Kansas Department of Health and Environment Bureau of Air ([Attachment 14](#)), spoke to the Committee on the EPA's proposed Clean Air Transport Rule (CATR), also known as the Transport Rule. Mr. Stotts provided background information on the history of the Transport Rule as well as an overview of what the proposed rule will do to the current law. The proposed rule would set emissions budgets for NO<sub>x</sub> and SO<sub>2</sub> for 31 states and the District of Columbia, and would require a reduction of emissions from power plants. There are caps for each gas for 2012, with further reductions by 2014. Three implementation options for the proposed rule are being considered: allow intrastate trading and limited interstate trading of allowances but assure each state will meet its budget; allow only interstate trading; and set emission limits for each power plant and allow averaging of emission rates. The EPA proposed the first option, and is taking comments on the other two. Kansas is one of 31 states included in the Transport Rule because it slightly exceeds the ozone threshold under the Rule, and moderately exceeds the fine particulate matter (PM<sub>2.5</sub>) threshold. Mr. Stotts noted KDHE has questions about whether Kansas should be subject to the proposed rule, since it is based on older emissions data and Kansas has reduced emissions since the data was collected, and because Kansas plants already have agreements with EPA to further reduce emission. Finally, Mr. Stotts talked about the next steps KDHE will take regarding the proposed Transport Rule.

In response to questions, Mr. Stotts, commented that the Transport Rule is being pushed forward at about the same rate as other new proposed changes.

Bill Eastman, Director of Environmental Services, Westar Energy, (joint response on behalf

of Westar, KCP&L, Empire District Electric Co., Sunflower Electric Cooperative, Kansas Electric Cooperatives, KEPCo, Midwest Energy, and Kansas Municipal Utilities), ([Attachment 8](#)), slides 4 - 10 addressed the impact of the Transport Rule and concerns it raises for the electric utilities. The most important issue is with the modeling used to project the transport of noxious gases across borders. Electric utility representatives believe that due to inaccurate modeling assumptions, the Transport Rule will require new emission control technology on Kansas plants prior to 2014. The utilities already have spent more than \$1 billion on new equipment; under the Transport Rule they would spend over \$1 billion more. Mr. Eastman also noted that the Reciprocating Internal Combustion Engine (RICE) Rule is important for energy producers in the state. The new National Ambient Air Quality Standards (NAAQS) for ozone may affect Westar Energy significantly, depending on how much the standard is reduced from current levels.

In response to questions, Mr. Eastman commented that he does not know what kind of costs will be incurred to meet the regulations that will be implemented in the next 7 years. He will provide the Committee with an estimated cost to consumers for the industry to comply with the changes. Mr. Eastman noted Kansas is about in the middle of the pack compared to other states affected by the Transport Rule. Some of the eastern states already have made improvements. Mr. Eastman does not know whether the machinery that will be needed to meet the new requirements is made in the U.S. or produced overseas.

Chris Cardinal, Legislative Director, Sierra Club Kansas Chapter, ([Attachment 15](#)), offered testimony regarding the health benefits of implementing the Transport Rule, sometimes called the Good Neighbor Rule.

In response to questions, Mr. Cardinal said he would provide the Committee members additional information about the cause of asthma and the effects on asthma of reductions in pollution.

## **Kansas Flint Hills Smoke Management Plan**

Rick Brunetti, Director, Bureau of Air, Kansas Department of Health and Environment, ([Attachment 16](#)); spoke to the Committee about the Task Force for the Kansas Flint Hills Smoke Management Plan. He provided information on the history of the issue, Kansas legislative action concerning burning, and Kansas' request that the EPA exclude certain air quality monitoring results when emissions standards are exceeded during prairie burning. He noted that Greenwood, Chase and Butler counties burn the most acreage in Kansas. Mr. Brunetti discussed a chart showing the main health effects from ozone and particulate matter, and discussed the impact of Flint Hills burning on ozone levels as well as the impact of being designated a "nonattainment area" by the EPA. He talked about the smoke management plan requirements and what the Task Force has considered thus far.

In response to questions, Mr. Brunetti noted that not many events in Kansas are "flagged" (removed from the air quality monitoring data), primarily because Kansas does not have that many events. Nationwide, events that qualify for data flagging tend to be such things as a forest fire or a volcanic eruption. He commented that when the levels get in the 90's you begin to see a significant spike in the number of asthma attacks and visits to the hospital because of breathing issues.

Amanda Graor, Senior Air Quality Planner, Mid-America Regional Council, ([Attachment 17](#)) spoke to the Committee about ozone levels resulting from prairie burning and the impact on the Kansas City area. She noted there are more than 90,000 individuals living in Wyandotte and Johnson counties that deal with breathing issues on a regular basis.

In response to questions, Ms. Graor said the Kansas City area is currently not a non-attainment area, but it was in the past and has been in maintenance for about the last 12 years. She will provide the Committee with information summarizing the differences its air quality

management efforts have made to the metro area and a list of rules and policies it has enacted. Ms. Graor noted that high temperatures are a major factor in affecting ozone levels. The high temperatures typically occur from June 15 through September 15. She noted that manufacturing companies that move to the area are encouraged to use the most current technology available to control the emissions.

Chris Cardinal, Legislative Director, Sierra Club Kansas Chapter ([Attachment 18](#)), offered testimony that does not support wholesale burning of the rangeland in the Flint Hills. The Sierra Club believes that the Smoke Management Plan must address the scale and frequency of the burning in a manner that eliminates destruction of grassland bird habitat.

Dr. Clenton Owensby, Professor of Range Management, Kansas State University ([Attachment 19](#)), provided information about the importance of burning in the Flint Hills on a regular basis. He noted that burning in the late spring produces the highest forage yield, the highest livestock weight gain and the best woody plant control. He said without fire, the Flint Hills would not be grasslands. Dr. Owensby said burning in the Flint Hills has an economic impact of \$30-45 million annually due to increased livestock gain and weed and brush control. He noted the state has few rules related to burning, and counties have additional rules.

In response to questions, Dr. Owensby commented that fire and grazing helped maintain the tall grass prairie in its historic state. He noted that most of the burning occurs in April in the Flint Hills, with the earliest burning occurring in the southern part of the state and moving northward.

Michael Collinge, Rancher ([Attachment 20](#)), spoke to the Committee on the reasons why farmers and ranchers have to burn the grass. He also talked about the restrictions (weather, direction of wind, consideration of neighbors) they have when burning grassland. Jeff Davidson, KSU Extension, Butler County, provided supporting written testimony. ([Attachment 21](#))

Kay Johnson and Dale Goter, Environmental Services, City of Wichita, ([Attachment 22](#)) offered testimony on the impacts to the city on the burning of the grasslands.

In response to questions about the effects if Wichita is designated a “non-attainment” zone for ozone, Mr. Goter noted that any industry in the area that produces emissions would have to contain those emissions, including the aircraft industry. City officials estimate the cost of responding to non-attainment status would be \$10 million.

Written testimony was presented by Dr. John Neuberger, KU Medical Center ([Attachment 23](#)) on the health effects of burning.

The Committee also was provided with written testimony submitted by KDHE during the 2010 Legislative Session regarding health effects of air pollution. ([Attachment 24](#))

Mr. Stotts and Mr. Brunetti answered another series of questions regarding the ozone levels in Kansas in the summer. Additionally, they explained the change in types of gasoline used during the summer in urban areas to help reduce ozone levels.

## **Committee Discussion and Recommendations**

Committee members agreed to delay discussion and recommendations until a later meeting.

Senator McGinn made closing comments and noted the next meeting is scheduled for October 7-8, 2010. That meeting will focus on water supply issues in Kansas and the impact on Kansas and its citizens.

The meeting was adjourned at 4:06 p.m.

Prepared by Renae Hansen  
Edited by Heather O'Hara and Cindy Lash

Approved by Committee on:

October 15, 2010  
(Date)