Approved: 01/29/2010
Date

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on January 21, 2010, in Room 144-S of the Capitol.

All members were present except:
Senator Steve Morris- excused

Committee staff present:
Raney Gilliland, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Kristen Kellems, Office of the Revisor of Statutes Office
Jill Wolters, Office of the Revisor of Statutes Office
Stan Rasmussen, Senate Fellow U.S. Army
Grace Greene, Committee Assistant

1/21

Conferees appearing before the Committee:
John Mitchell, Director of the Division of Environment, Kansas Department of Health Environment (KDHE)

Others attending:
See attached list.

Chairperson Carolyn McGinn asked for bill introductions.

John Mitchell, KDHE, presented an update on proposed Environmental Protection Agency (EPA) regulations (Attachment 1). John Mitchell reviewed the regulations the EPA currently has under consideration, primarily three topics: air quality, waste, and water qaulity regulations and how the proposed regulations would affect Kansas.

First, p. 1-4, John Mitchell discussed air quality issues, specifically the Clean Air Act which allows the secretary of the KDHE to develop rules and regulations to conserve air quality, set and enforce standards for air quality. Pollutants EPA regulates include: particulate matter, ground level ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and lead.

John Mitchell referenced graph 2, "Kansas Primary Ozone Monitoring Data" with data from four sites from 2008. He noted that in 2008, two of the four sites were already violating the set ozone range standards (.075 PPM) and stated that all four monitoring sites would violate the currently proposed EPA ozone range (.06-.07 PPM). Secondly, John Mitchell referenced graph 3, "Kansas Secondary Ozone Monitoring Data (06-08 average) which indicates that all Kansas monitoring sites, except the Park City site would potentially fail the EPA proposed secondary ozone standard.

John Mitchell discussed how the proposed ozone changes will impact Kansas, specifically, how Kansas would address regional haze and interstate transport of ozone and particulate matter, climate change, and new and reduced emission limits.

Secondly, John Mitchell discussed waste disposal regulations, p.5, specifically coal-combustion waste (CCW) regulations and E-waste or cathode ray tube disposal regulations. EPA is expected to finalize the regulation in late 2010. If CCW is regulated as hazardous, Kansas can expect more stringent regulations of powerplants, in construction, and the possible review of below ground burial of hazardous waste.

Finally, John Mitchell reviewed the issues of water quality, p. 6-10. The EPA currently has regulations under consideration which would effect wastewater, public water supply, KDHE's water programs and Kansans in general. Specifically, John Mitchell focused on pending legislation which would affect KDHE's programs, namely those which would affect the following issues: Clean Water Act Jurisdiction, Chesapeake Bay, Coastal Waters, Drinking Water and Wastewater Infrastructure, and Chemical Security.

Furthermore, John Mitchell discussed federal EPA activities which may affect Kansas, p.6 -13, specifically the Chesapeake Bay Total Maximum Daily Load legislation and the Clean Water Act Jurisdiction - Navigable

Minutes of the Senate Natural Resources Committee at 8:30 a.m. on January 21, 2010, in Room 144-S of the Capitol.

Waters.

John Mitchell took questions from the Committee.

The next meeting is scheduled for January 22, 2010.

The meeting was adjourned at 9:29 a.m

SENATE NATURAL RESOURCES COMMITTEE

Guest Roster

1-21-2010
(Date)

DAVE HOLTHAUS	KEC
Joe Dick	KCBPU
Wayne Penrod	Sunflower
Mark Schreiber	Westar
Steve Swartz	KFB
Karl Mueldener	KDHE
John Mitchell	KDHE
Rick Brunetti	KDHE
W. Y. Eastman	Westar
BRAD HARRELSON	KFB
Kelli Kirkwood	KLA
Scott Brown	MA
Phil Wages	KEPCo
LARRY BERG	MIDWEST ENERGY
PAUL Johnson	Ks. Catholic Conf
Doug Smith	SunFlower Electric Power Corp
Mike Beam	Ks. Livestk. Assn.
Travis Lowe	Little Govt Relations
Kimberly Svaty	GBPA
Scott Jones	KCPL
Leslie Kaufman	Ks Coop Council
Jake Hein	Hein Law Firm
Levi Henry	
Wendy McCoes	KAPA
Chris Cardinal	Sierra Club

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SENATE NATURAL RESOURCES COMMITTEE

Guest Roster

1-21-2020
(Date)

Jesse Smith - Flint Hills Leadership	
Ray Acnord - Flint Hills Leadership	
Lindsey Snider - Flint Hills	Leadership Group
Kayla Oney Flint Hills Regional	Leadership program
Robert Noll - Flint Hills Reg leadership	
CASEY CUBBERTSON - FLINT HILLS R.L.	
Mary Jane Stankiewicz	KARA
Allie Dennis	KLA
Dena Huff Flint Hills Regional	Leadership Program

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KANSAS
DEPARTMENT OF HEALTH
AND ENVIRONMENT

Mark Parkinson, Governor
Roderick L. Bremby, Secretary

www.kdheks.gov

2010 Legislative Update: EPA Regulations

Presented to
Senate Committee on Natural Resources

By
John Mitchell
Kansas Department of Health and Environment
Division of Environment

January 21, 2010

Chairwoman McGinn and members of the committee, I am John Mitchell, Director of the Division of Environment within the Kansas Department of Health and Environment. At your request, I am present today to discuss regulations the Environmental Protection Agency currently has under consideration. I will begin with EPA's proposals for air quality followed by a discussion of regulations affecting waste. I will conclude with regulations EPA is proposing for water quality programs.

Air Quality

KDHE's Bureau of Air implements the Kansas Air Quality Act (K.S.A. 65-3001 *et seq.*) and portions of the federal Clean Air Act (42 U.S.C. §§ 7401 *et seq.*) The Kansas Air Quality Act authorizes the secretary of the Kansas Department of Health and Environment (KDHE) to develop rules and regulations to conserve air quality and to control air pollution in the state of Kansas. In large part, the Kansas air quality regulatory program implements the requirements of the federal Clean Air Act (CAA) as a state program pursuant to the Kansas State Implementation Plan approved by the United States Environmental Protection Agency (USEPA) as provided in CAA Section 110.

I. What pollutants does EPA regulate/propose to regulate?

- CAA Section 109 authorizes EPA to set national primary (public health) and secondary (public welfare) ambient air quality standards (NAAQS).
  - Six criteria pollutants: particulate matter, ground-level ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and lead
- CAA Section 111 authorizes EPA to set and enforce performance standards for new stationary sources (NSPS).
- CAA Section 112 lists Hazardous Air Pollutants (HAPs).

- 187 toxic air pollutants

- Pursuant to *Massachusetts v. EPA,* 549 U.S. 497 (2007) and CAA Section 202(a), EPA issued a Finding of Endangerment for mobile sources, 74 FR 66496 (Dec. 15, 2009) for six greenhouse gases (GHGs).
  - Carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)
  - September 15, 2009 – Proposed Light-Duty Vehicle GHG Emissions Standards (Final – March 2010)

II. What NAAQS changes have been or are proposed to be made?

- **Ozone NAAQS**
  - March 12, 2008 – EPA revised primary & secondary standards
    - Lowered standards from 0.08 ppm to 0.075 ppm
    - Kansas City violates due to Missouri monitor
  - September 16, 2009 – EPA announced reconsideration of 2008 Standards
  - January 10, 2010 – EPA proposed new standards
    - Primary "public health": 0.06 – 0.07 ppm (8-hr)
    - Secondary "public welfare": 7 – 15 ppm-hours
    - See **Attachments 2 and 3** for Kansas impacts

- **Particulate Matter NAAQS**
  - September 21, 2006 – EPA promulgated new NAAQS for particulate matter.
  - The final standards address two categories of particle pollution:
    - fine particles (PM2.5), which are 2.5 micrometers in diameter and smaller; and;
    - inhalable coarse particles (PM10) which are smaller than 10 micrometers.
  - EPA strengthened the 24-hour fine particle standard from the 1997 level of 65 micrograms per cubic meter (µg/m3) to 35µg/m3, and retained the current annual fine particle standard at 15µg/m3.
  - The Agency also retained the existing national 24-hour PM10 standard of 150µg/m3.
  - The Agency revoked the annual PM10 standard.
  - See **Attachment 4** for Kansas impacts

- **Lead NAAQS**
  - Old NAAQS - 1978 to 2008 = 1.5 µg/m3
  - New NAAQS - November 12, 2008 = 0.15 µg/m3
  - July 22, 2009 – Revised monitoring requirements
    - Point sources emitting 1.0 ton per year (Salina - Exide)
    - Urban areas with populations greater than 500,000 (KC)
  - December 23, 2009 – EPA proposed to revise monitoring requirements
    - Lowered threshold to 0.50 ton per year (tpy)
      - Wichita – Mid Continent Airport
    - Monitoring at "NCore Network" sites
      - Urban: KC – JFK site

- **NO2 and SO_2 NAAQS**
  - June 26, 2009 – EPA proposed new primary NO_2 standard
    - Add a 1-hour standard between 80 – 100 parts per billion (ppb)
    - Retained the annual average of 53 ppb
    - Changes to air quality monitoring network
      - Near major roads in urban area
      - No data to evaluate – Potential Impacts
  - November 16, 2009 – EPA proposed new primary SO_2 standard
    - Replaced existing annual and 24-hour standards with new 1-hour between 50 – 100 ppb
    - See **Attachment 1** for Kansas impacts
  - Regarding secondary standards - a joint review of the welfare effects associated with deposition of SO_2 and NO_2 is proposed for completion in 2012.

III. How do the changes to the Ozone NAAQS affect Kansas?

- The changes will require revising the State Implementation Plan (SIP) as follows:
  - Emissions Inventory and Modeling
  - Interstate Transport Analysis
  - Contingency Measures
  - Transportation Conformity Consultation
    - Collaborate with Kansas Department of Transportation
    - Avoid funding sanctions
  - New and/or reduced emission limits

IV. How do the changes to the Particulate Matter NAAQS affect Kansas?

- How other states affect Kansas and how Kansas affects other states
- Regional Haze – SIP submitted to EPA
- Clean Air Interstate Rule (CAIR) – vacated
  - Being replaced by Clean Air Transport Rule
- $PM_{2.5}$ Interstate Transport SIP
- Flint Hills Burning
  - Smoke Management Plan
  - Working with Kansas Agriculture Industry

V. What changes has EPA made to New Source Performance Standards?

- Recent Final NSPS Rules that regulate criteria pollutants from stationary sources:
  - Stationary Spark Ignition Internal Combustion Engines
  - Nonroad Spark-Ignition Engines and Equipment
  - Petroleum Refineries
  - Mineral Processing Plants
  - Medical Waste Incinerators

VI. What changes has EPA made to requirements for Hazardous Air Pollutants?

- Recent Final Maximum Achievable Control Technology (MACT) Rules that regulate HAPs from stationary sources:
  - Oil and Natural Gas Processing
  - Paint Stripping, Coatings & Autobody Refinishing
  - Gasoline Distribution & Dispensing Facilities
  - Reciprocating Internal Combustion Engines – New and Reconstructed
  - Prepared Feeds Manufacturing

- Proposed Rules:
  - Reciprocating Internal Combustion Engines – Existing sources
  - Portland Cement Manufacturing

VII. What Greenhouse Gas regulations have been or are proposed to be made?

- **Mandatory Reporting of Greenhouse Gases** (to identify where GHGs are coming from to inform development of best policies and programs)
  - September 22, 2009 – EPA issued final rule
  - Reporting Thresholds for stationary sources
    - Actual emissions of 25,000 MT CO_2e per year
    - 85% of total U.S. GHG emissions are covered by the rule
  - Impacts in Kansas
    - Based on 2007 data, ~80 existing facilities will be subject to the rule:
      - Electric Generating Units
      - Cement Kilns
      - Refineries
      - Landfills
      - Natural Gas Compressor Stations
      - Confined Animal Feeding Operations (CAFOs)

- **Proposed Greenhouse Gas Tailoring Rule**
  - September 30, 2009 – EPA Proposed new thresholds under Prevention of Significant Deterioration (PSD) and Title V
    - Existing thresholds are 100/250 tpy
      - Proposed 25,000 tpy CO_2e threshold
    - Six GHGs covered:
      - Carbon dioxide (CO_2), Methane (CH_4), Nitrous oxide (N_2O), Hydrofluorocarbons (HFCs), Perfluorocarbons (PFCs), Sulfur hexafluoride (SF_6)
  - Impacts in Kansas
    - ~20 new or modified PSD sources per year
    - ~110 Title V permits (~30 new, ~80 existing)

Waste

The KDHE Bureau of Waste Management is responsible for implementing the provisions of the Kansas solid waste and hazardous waste regulatory programs including authorization from the U.S. EPA to administer the hazardous waste regulations and Subtitle D landfill regulations, both authorized by the Resource Conservation and Recovery Act. These programs regulate all waste generation, transportation, treatment or processing, destruction, and disposal. Permits are issued to a wide variety of facilities including landfills, transfer stations, compost facilities, household hazardous waste facilities, reclamation facilities, waste tire processors, used oil recyclers, hazardous waste storage and combustion facilities, and contaminated soil land treatment facilities.

I. What waste disposal regulations is EPA considering?

- Coal combustion waste (CCW) disposal regulations:
  - EPA action was prompted by a release of CCW from a facility in Tennessee.
  - Regulation will address how CCW will be regulated:
    - either under Subtitle D as non-hazardous waste; or
    - under Subtitle C as hazardous waste.
  - States and industry unanimously commented in support of regulating as non-hazardous waste using existing state permitting programs as currently done in Kansas.
  - EPA has been pressured by Congress to regulate under Subtitle C because EPA cannot take enforcement actions if regulated under Subtitle D.
  - Most environmental interest groups want the most stringent rules to be applied largely because it relates to "coal" generating power plants.
  - EPA was supposed to finalize this regulation by early 2010 but has delayed the decision indefinitely due to complexity and controversy.
  - A decision is likely in 2010.
  - If CCW is regulated as hazardous, Kansas impacts include:
    - More stringent regulation of power plant waste streams;
    - beneficial use of CCW in construction could be limited or prohibited;
    - review of the state law (K.S.A. 65-3458) that prohibits burial of hazardous waste.

II. On what other waste disposal issue might EPA take regulatory action?

- E-waste or cathode ray tube (CRT) rules
  - The Bureau of Waste Management allows CRTs to be disposed in monitored MSW landfills. BWM strongly encourages recycling and even provides financial support for collection of e-waste for recycling and recycling options are growing.
  - EPA considers CRTs to be hazardous when disposed but allows households to landfill them.
  - Elimination of landfill disposal option for CRTs could lead to open dumping in areas where recycling services are unavailable, limited, or expensive.

Water Quality

EPA has approved KDHE to implement the federal Clean Water Act (CWA) and the federal Safe Drinking Water Act (SDWA), enacted in 1972 and 1976, respectively. The CWA generally addresses protection and restoration of the nation's streams and lakes and the SDWA addresses drinking water quality. States may impose stricter requirements than required by the federal law and regulations, but state requirements can be no less stringent than federal requirements. Legal challenges over implementation and interpretation of these Acts, especially the CWA, can result in new EPA regulations. States implement many of these Acts' requirements with oversight by EPA.

I. What regulations affecting wastewater does EPA currently have under consideration?

- **Numeric Nutrient Criteria**
  - EPA is working to develop numeric nutrient criteria for Florida, and activists are pressing for a similar effort in Wisconsin.
  - A federal district court recently upheld EPA's effort in Florida, clearing the way for the agency to issue its own numeric water quality criteria for nutrients in the state, which activists say could set a national precedent.
  - Criticisms of EPA's nutrients guidance document from the Science Advisory Board (SAB) could form a hurdle for the agency. SAB says the agency's guidance on how to develop nutrient criteria for water pollution limits is neither defensible nor adequate, leading industry officials to call on the agency to withdraw pollution limits set with the use of the guidance.
  - EPA issued the criteria in January 2010.
  - **NOTE:** Kansas has recently undertaken its triennial review of water quality standards. KDHE staff is currently developing white papers on six issues identified by a focus group of primary stakeholders, one of which is nutrient criteria for protection of drinking water reservoirs. See **Attachment 5**.

- **Power Plant Cooling Water Intake Structures**
  - After the Supreme Court backed the Bush EPA's use of cost-benefit analysis to loosen restrictions on existing power plants' cooling water intake structures, the Obama EPA is beginning work on a replacement regulation that could be a key early test for how it will consider the cost of strict rules it develops even when not required by law to do so.
  - EPA notes in the unified agenda that the high court did not require cost-benefit analysis, but rather merely permitted it against activists' attacks that it was prohibited by the Clean Water Act (CWA). Activists are now fighting to minimize the cost considerations the Obama EPA takes in proposing its rule governing the structures.
  - EPA is preparing to propose the new rule in 2010.

- **Recreational Boats-Clean Boating Act**
  - Congress passed the Clean Boating Act exempting small recreational vessels from regulation after the U.S. Court of Appeals for the 9th Circuit upheld a lower court ruling that ships are required to obtain CWA permits, invalidating a decades-old exemption.
  - The law requires EPA to develop regulations to:
    - identify classes of discharges from those boats for which it is reasonable and practicable to develop management practices to mitigate the adverse impacts of the discharges;
    - identify the management practices, including performance standards.
  - The Coast Guard is then to promulgate implementing regulations for the performance standards.
  - EPA is planning to propose the regulation in April 2010.

- **Airplane De-icing Effluent Guidelines**
  - EPA has proposed first-time effluent limitations guidelines (ELG) for airport de-icing operations after the Bush administration delayed their release in 2008.
  - According to EPA, the discharges have the potential to cause fish kills, algae blooms and contamination to surface water or groundwater.
  - The proposed rule generally requires large airports (8 in Kansas) to:
    - collect 60 percent of the deicing fluid used on planes and runway pavement and;
    - either treat the fluid or reuse it to deice other planes.
  - The proposal has drawn some safety concerns from its phase-out of the pavement deicer urea and limit on the amount of deicing fluid that can be used for taxiing purposes.
  - EPA extended the comment period on the proposal until Feb. 26.

- **Construction Site Stormwater Runoff Effluent Guidelines** (40 CFR 450)
  - EPA published new effluent guidelines on December 1, 2009, addressing stormwater runoff from construction sites.
  - The new guidelines set a technology based "floor" of minimum requirements applicable nationally.
  - EPA's intent is to implement control measures to reduce pollutants (sediment, turbidity, nutrients, etc.) in stormwater runoff from construction sites.
  - New requirements include:
    - addressing the method of dewatering sediment basins;
    - more stringent requirements for soil stabilization; and
    - establishing discharge limits and monitoring the turbidity of stormwater discharges.
      - A numeric turbidity limit (280 NTUs) will be implemented in two phases.
        - For sites disturbing 20 or more acres at any one time the turbidity limit becomes effective August 2, 2011.
        - For sites disturbing 10 or more acres at any one time the turbidity limit becomes effective February 2, 2014.

- The EPA regulations allow States to continue operating under the current program until such time as the State NPDES Stormwater Construction Runoff General Permit is reissued, which for Kansas is December 31, 2011.
- The new turbidity limit will require contractors and developers to utilize a combination of conventional erosion and sediment controls along with some form of chemical addition (coagulation, flocculation, or polymer addition) employed with solids settling. Chemical addition has not typically, if ever, employed at construction sites in Kansas to control stormwater runoff quality.
- EPA estimates that implementation of the new regulations on a national basis will be: $8 million in 2010, $63 million in 2011, $204 million in 2012, and $935 million annually thereafter.

- **Steam Electric Power Effluent Guidelines**
  - EPA has been studying the sector for possible revisions for several years, and late last year began collecting detailed information from industry after a coalition of 39 environmental, academic, religious and other groups urged the agency to revise its "outdated" rules for steam electric power generation.
  - Activists say the revisions are necessary to:
    - address more than 20 toxic metals found in coal waste effluent;
    - set zero-discharge limits for certain coal waste handling systems; and
    - require best management plans to control unpermitted leakage and runoff from coal disposal sites.
  - The comment period on the information collection request for the steam electric power generating sector ended Dec. 28.

II. What regulations affecting public water supply does EPA currently have under consideration?

- **Public Water Supply: Groundwater Rule**
  - This regulation is intended to prevent exposure to virus contamination. Detection of coliform bacteria in the distribution system triggers sampling of raw well water for indicators of fecal contamination.
  - Kansas will use E. coli as the indicator. If the well is contaminated, corrective action must be taken.
  - Corrective action ranges from removal of contamination source to repairing construction deficiencies, or adding treatment to kill 99.99% (4 log) of the virus. A water system providing 4 log virus treatment would not have to sample its raw well water for contamination.
  - The primary impacts in Kansas will be monitoring and reporting. Kansas regulations require disinfection/chlorination, although not at a 4 log level. KDDHE anticipates few systems will identify fecal contamination in their wells.

- **Public Water Supply: Surface Water Treatment** (Long Term Part 2 Rule)
  - Part 1 required drinking water systems to provide a level of treatment assuring removal of Cryptosporidium (Crypto).
  - Part 2 requires additional treatment for Crypto if indicated by raw water monitoring. Systems serving over 10,000 were required to test for Crypto while smaller systems only tested from Crypto if their raw water exceeded a threshold of E. coli.
  - Nineteen (19) large systems completed Crypto testing for an estimated cost of $182,000 with no additional treatment required for seventeen (17). The two systems appear to be able to meet the additional treatment requirements through operational controls without major financial commitments.
  - Testing has been completed at 23 of 65 smaller systems and none have required further testing. This testing cost was estimated at $420,000. Crypto testing continues for the smaller systems and the total implementation costs are not yet known. KDHE estimates few systems will be required to add or improve treatment.
  - A second round of monitoring under this rule begins in 2015.

- **Public Water Supply: Disinfection Byproducts**
  - This rule changes how compliance with standards for disinfectant byproducts is calculated.
  - Averaging was previously allowed of samples collected at various points in the distribution system.
  - Now each sampling point is required to meet the standard. KDHE does not anticipate this change will cause any issues.
  - The primary impact of this rule was analytical costs, estimated at $464,000 to identify distribution system sampling points.

III. What federal legislation is pending that may affect KDHE's water programs?

- **Clean Water Act Jurisdiction**
  - Both houses of Congress have legislation intended to clarify and codify the scope of the Clean Water Act (CWA). The legislation is intended to clarify what waters are subject to, or exempted, from the CWA under the terms "navigable" and "waters of the nation."
  - The Senate bill is S 787 and Rep. Oberstar has promoted the House effort.
  - See **Attachment 6** for the Kansas Natural Resources Sub-Cabinet statement on this issue.
- **Chesapeake Bay**
  - Two bills (SB 1816 and HR 3852) address bay management issues including funding cleanup and nonpoint source management, fishing management, and Total Maximum Daily Loads (CWA).
  - The bills require EPA to set a TMDL for nutrients by the end of 2010, which EPA is already planning. The bill requires states and municipalities to restrict nutrient in runoff in new construction.

- **Coastal Waters**
  - The Beach Act will likely be reauthorized (HR 2093 and S 878) requiring rapid testing of pollution and toxics on shorelines and beaches in order to prevent health risks. EPA was required to study the impacts of nutrients and develop criteria.
  - Although Kansas is not a beach state, KDHE has found the Beach Act requirements tend to be transferred inland.
- **Drinking Water and Wastewater Infrastructure**
  - The Senate has stalled on reauthorization of the revolving loan program. A bill was passed out of the Environment & Public Works Committee (SB 1005) last May and the House version (HR 1262) was passed last March.
  - Senate debate is expected in February 2010.
  - $2 billion would be authorized.
- **Chemical Security**
  - Sen. Lautenberg (NJ) is proposing legislation related to chemical facilities anti-terrorism standards. A controversial provision allows Homeland Security to require facilities to switch production technology in order to reduce risk to the public. The concept is called inherently safer technology (IST).
  - Chemical facilities would include water and wastewater treatment.

IV. What other federal activities might affect Kansans?

- **Chesapeake Bay Total Maximum Daily Load (TMDL)**
  - EPA is moving to establish a TMDL on the Chesapeake citing a lack of progress by the States in improving the Bay's water quality.
  - EPA is proposing restrictions on nutrient loading to the Bay preventing the issuance wastewater permits unless the water quality is improved and loading reduced. The planned actions include:
    - trading nutrient loads between point and non-point contributors and
    - requiring states to develop a plan to demonstrate how compliance will be achieved.
  - This action appears to be forcing states to deal with non-point sources in a regulatory manner. The nutrient issue in the Chesapeake, Florida, and Wisconsin are likely to be trend setting for rest of the nation.
- **Phosphorus Loading**
  - The Natural Resources Conservation Service (NRCS) is proposing to modify their standards for nutrient management in soils.
  - The NRCS 590 Standard to manage phosphorus in soils has been adopted by reference in EPA and state regulations and permits.
  - NRCS is proposing to lower to 20 ppm the level where no phosphorus may be applied to soil. This is a several-fold reduction of the existing standard and will restrict the amount of animal wastes being applied to land.

- **Wet Weather Flows**
  - EPA proposed a blending regulation in 2005 which addressed municipal wastewater processing of increased flows during wet weather. The regulation was proposed after years of wrangling on the issue and based on an agreement between a leading

environmental group and the municipal lobby. However, due to continued opposition to the proposed blending rule, including Congressional intervention, EPA dropped the initiative.

- EPA has proceeded with permitting and enforcement action under the old regulations with changes in interpretation. The result is national confusion regarding how to handle municipal wet weather flows including permitting, reporting, and treatment of peak storm flows.
- Key points in the debate are the definition of "bypass" and the details of blending flows at a treatment plant.
- This issue is delaying the reissuance of municipal wastewater permits in Kansas. KDHE has requested EPA to review and resolve the issue nationally.

V. What EPA litigation activities may affect Kansans?

- **Clean Water Act Jurisdiction -Navigable Waters**
  - In an ongoing suit in the U.S. District Court for the District of Columbia, *National Association of Home Builders, et al. v. EPA, et al.*, industry is challenging the agency's ability to determine so-called "traditionally navigable waters" (TNWs), which can play a role in determining CWA jurisdiction.
  - At issue in the case is a Dec. 3, 2008, designation from EPA and the U.S. Army Corps of Engineers that two portions of the Santa Cruz River in Arizona are TNWs.
  - EPA has said the high-profile case could be precedent-setting for jurisdiction issues in the arid West.
  - Parties are waiting on the court to rule on an April 10, 2009 motion filed on behalf of EPA and the Corps to move the case to federal district court in Arizona.
- **Anti-degradation**
  - In *Cook Inletkeeper, et al. v. EPA and Union Oil Company of California, et al.*, environmentalists are charging that Alaska has failed to appropriately provide implementation plans for anti-degradation standards in water act permits – an issue with a dearth of court precedent.
  - Environmentalists, industry, and the administration have been in negotiations since June 2009.
- **Wisconsin Nutrients**
  - On Nov. 23, 2009, nine environmentalist groups filed a notice of intent to sue EPA charging the agency had failed to force the state of Wisconsin to develop numeric nutrient criteria in the decade since EPA proclaimed they were necessary to bring the state's waters into compliance with the water act.
  - This action follows a settlement between EPA and environmentalists in Florida to set numeric nutrient criteria there.
  - The groups are expected to file suit in the U.S. District Court for the Western District of Wisconsin in early January 2010.
- **Permitting: Pesticide Applications**
  - In December 2006 EPA was sued over the agency position that pesticide application in and around water does not need an NPDES permit. EPA's position was that the application would have to follow FIFRA but it is not be subject to NPDES permitting.

- EPA lost the lawsuit. In April 2009, the Court granted EPA a two-year stay to enable the agency to develop an NPDES permit and to work with states.
- As of April 10, 2011, discharges into a water of the U.S. from pesticide applications will require coverage under an NPDES permit.
- Examples of pesticide applications that would require an NPDES permit include mosquito larval, adult mosquito, lamprey eel, algae, and nuisance aquatic weed control practices.
- EPA estimates that nationally there will be a need to issue approximately 365,000 NPDES permits for this activity, a 70% increase in the total number.
- An industry group is seeking Supreme Court review of whether pesticide applications are subject to discharge permitting.

- **Wetlands**
  - On Nov. 18, 2009, the U.S. District Court for the Eastern District of Louisiana in *Robinson, et al. v. USA, et al.* found the U.S. Army Corps of Engineers liable for just under $720,000 in damages to six properties as a result of the Corps' shipping channel maintenance practices used on the Mississippi River Gulf Outlet. The case could have major ramifications for future wetlands restoration and protection efforts.
  - **Status:** The Corps is considering appeal of the case to the U.S. Court of Appeals for the 5th Circuit.
- **Total Maximum Daily Loads (TMDLs)**
  - Environmentalists in *Anacostia Riverkeeper, et al. v. EPA* are testing EPA's interpretation of a 2006 ruling from the DC Circuit Court of Appeals that found regulators must calculate daily, rather than monthly or seasonal, discharge limits in setting TMDLs because "daily means daily."
  - Activists charge the TMDLs for sediment and total suspended solids in Anacostia River in Maryland and Washington, DC, are unlawful because they are set at a level necessary to meet water quality criteria on a seasonal basis rather than meeting these criteria on a daily basis.
  - Parties are awaiting a ruling in the U.S. District Court for the District of Columbia on motions for summary judgment.
- **Clean Water Act Permits**
  - In *Friends of the Everglades v. South Florida Water Management District*, environmentalists are charging that water transfers in the Everglades must receive National Pollutant Discharge Elimination System (NPDES) permits. Environmentalists say the CWA requires NPDES permits because by transferring more polluted water into less polluted water, the transfers are adding pollution to the less polluted waters.
  - Industry argues the CWA prohibits EPA from regulating the transfer because in transferring water, no pollution is ever "added" to the water.
  - EPA, though it fought the lawsuit previously, has said it will review the rule. Parties are awaiting a response from the 11th Circuit on whether the court will rehear the case *en banc*, at the request of industry.

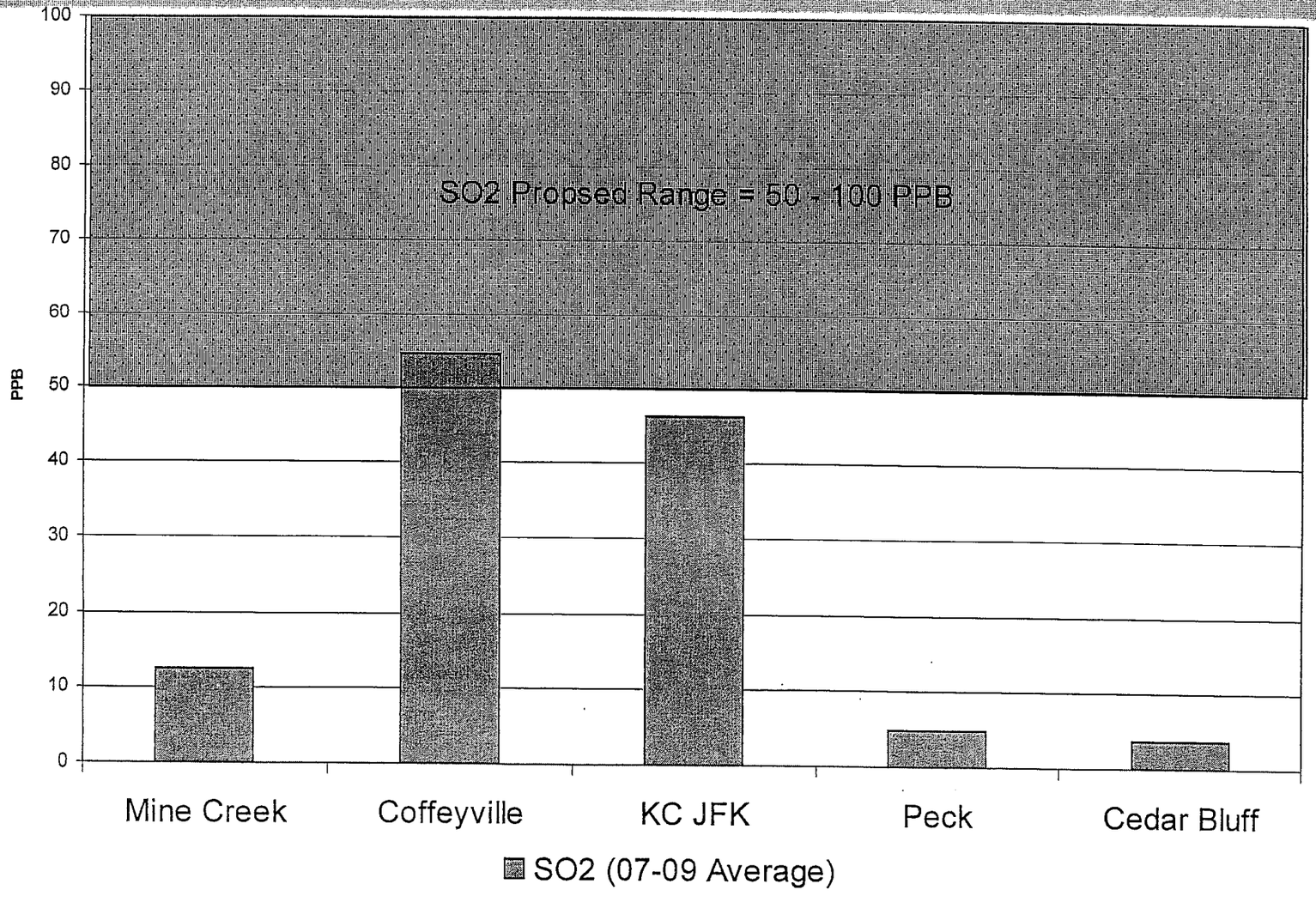
- ***CropLife America, et al., v. Baykeeper, et al.***

- The pesticide industry is seeking Supreme Court review of a 6th Circuit ruling subjecting pesticide spraying to CWA permitting requirements. In the 6th Circuit, the case was known as *National Cotton Council, et al. v. EPA, et al.*
- CropLife America, a pesticide industry group, filed a *writ of certiorari* Nov. 2. Parties are waiting to hear from the Supreme Court whether it will grant cert in the case.

- **CAFO Permitting**
  - Industry is fighting a push by environmentalists and EPA to settle the activists' suit over a Bush-era rule governing discharges from large factory farms. Industry groups say they were not party to a quiet settlement brokered between activists and EPA in *National Pork Producers Council, et al. v. EPA.*
  - On Dec. 8, 2009, the 5th Circuit Court of Appeals issued an order granting the environmentalists' motion to sever.
  - An industry source says industry groups have filed to prevent the motion and the matter is still under consideration.

Thank you for the opportunity to provide information on the scope of upcoming EPA regulations and ongoing activities. I would be happy to stand for questions.

SO_2 Impact on Kansas



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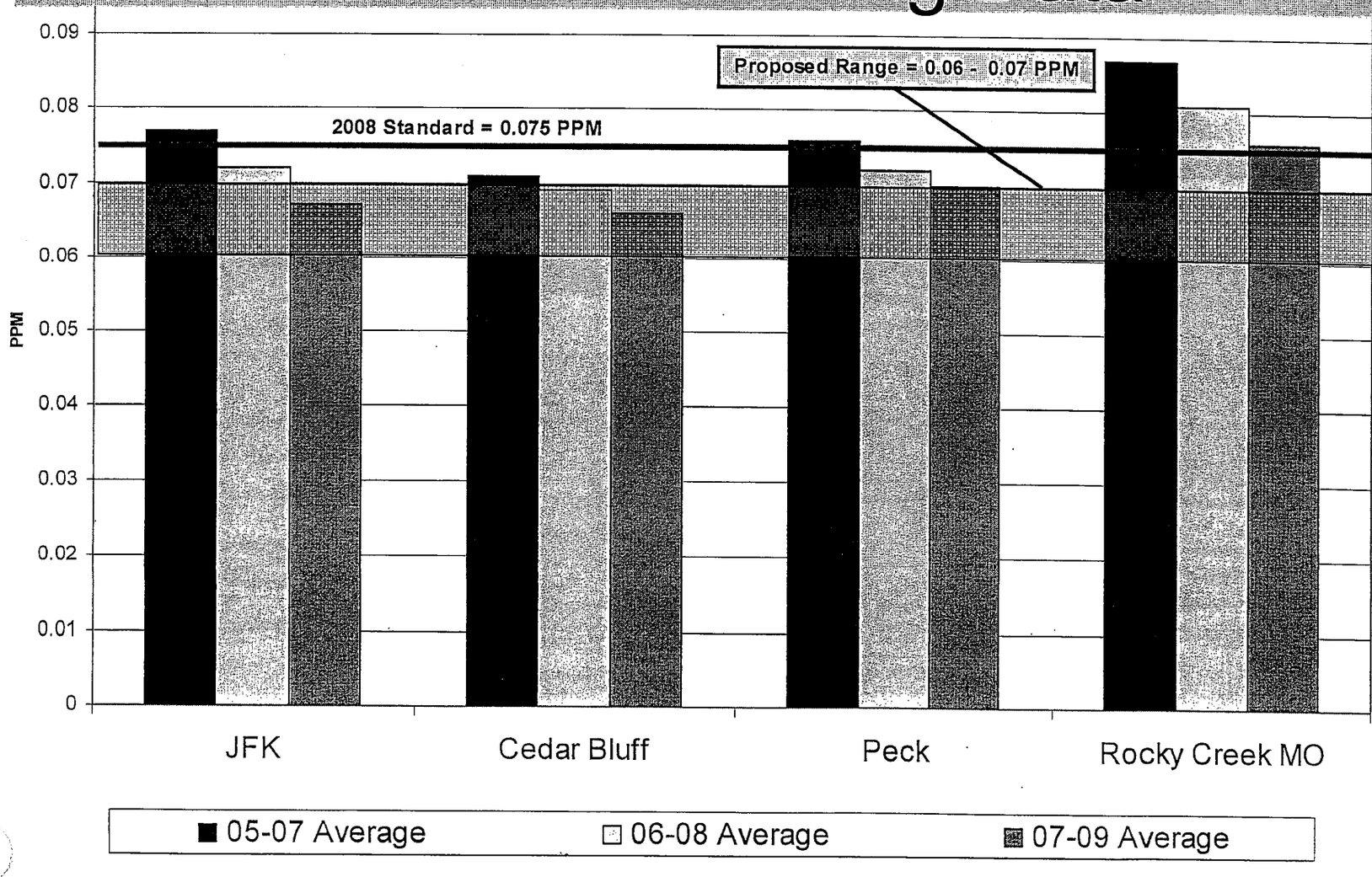
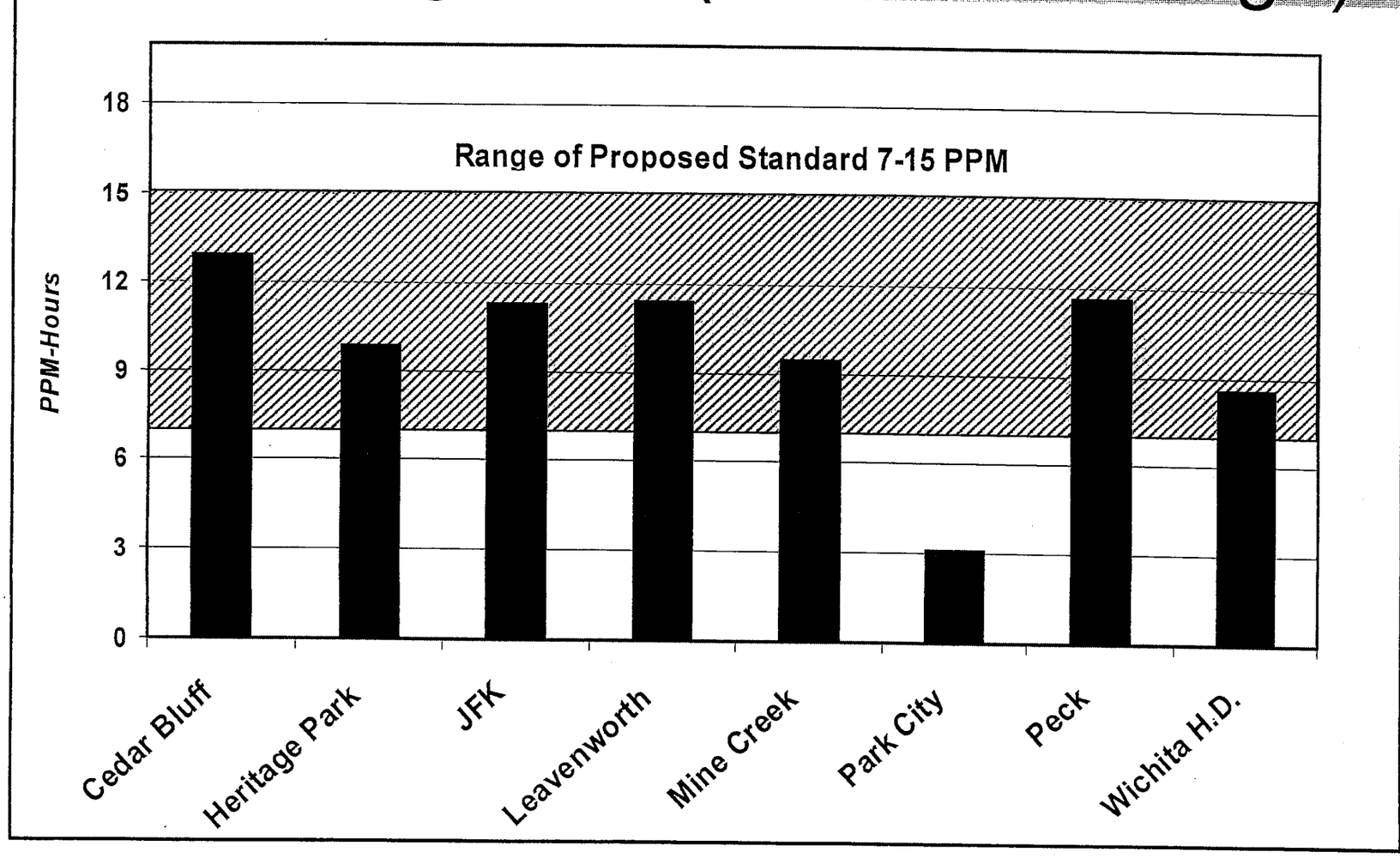
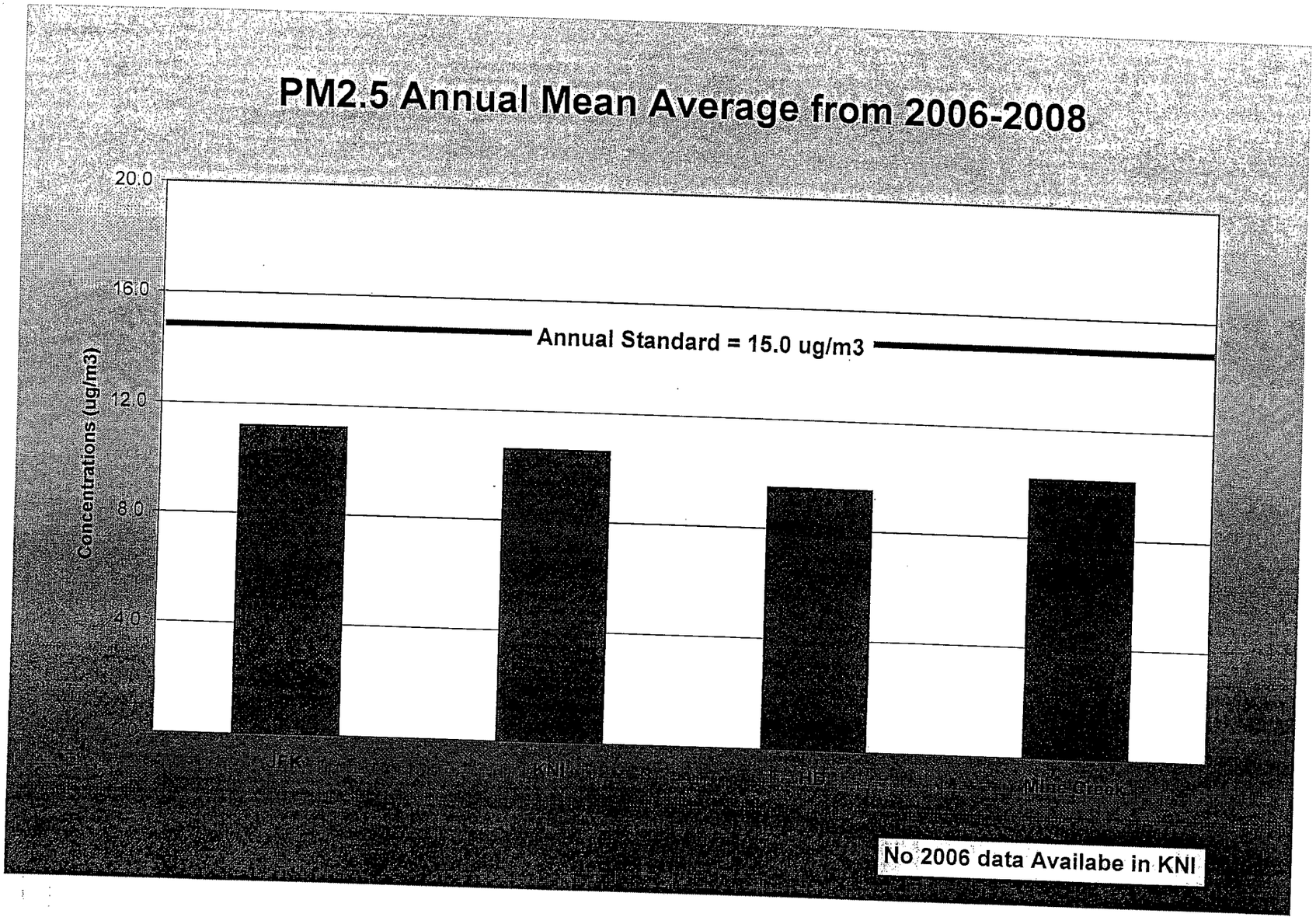
Kansas Primary Ozone Monitoring Data



Kansas Secondary Ozone Monitoring Data (06 – 08 Average)




PM2.5 Annual Mean Average from 2006-2008
Concentrations (ug/m3)
20.0
16.0
12.0
8.0
4.0
0
Annual Standard = 15.0 ug/m3
J-K
KNI
No 2006 data Availabe in KNI

BACKGROUND

ıe Clean Water Act requires states to ..eview their water quality standards (WQS) through a public process. The language of the Act requires States "from time to time (but least once each three year period beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972) hold public hearings for the purpose of reviewing applicable water quality standards...". Based on the public process, a state may choose to propose modifications to their water quality standards. Kansas has held hearings on water quality standards revisions every year since 2004. The majority of those hearings applied to use designations. The last comprehensive review of water quality standards was held in 2004. The majority of those changes were approved by EPA in April 2005.

In 2007, KDHE along with representatives from Iowa, Nebraska, Missouri, EPA Region 7, and EPA Headquarters participated in a *Kaizen Event* in order to provide better definition and transparency to the State WQS adoption process and EPA's subsequent approval. The Kaizen Event produced a process agreed to by the States and EPA that should result in more consistent results with few surprises at the end. Kansas will be the first State to review the entire suite of WQS under the Kaizen process. IA and MO have used the process for specific WQS changes.

As a first step in the Kaizen process, KDHE met with EPA R7 to discuss anticipated changes in the Kansas WQS. The time has ..me to invite stakeholder input into the ..es KDHE and EPA identified and to seek ..ddditional topics from the stakeholders.

2009 REVIEW METHODOLOGY

For the public involvement portion of the 2009 Triennial Review, a methodology similar to that used in the previous review is proposed. The methodology is intended to draw focus on a few key issues that can be discussed in detail, while allowing any part of the WQS to be reviewed and commented on. The methodology has five basic steps

- Identify a Focus Group to determine the top five or six key issues. The Focus Group consists of 15 individuals representing groups who have previously shown an interest in WQS.
- Prioritize the Focus Group's key issues using a structured prioritization protocol that will objectively rank the key issues.
- KDHE develop a series of *white papers* presenting an overview of the Focus Group's top key issues.
- Publish the white papers for public review after consensus on content is achieved by the Focus Group.
- Conduct public meetings which will focus discussion on the white paper issues, plus allow for input on any other issues the public wishes to address.

Again, the rationale for this proposed methodology is to focus public attention on a few key issues raised by the Focus Group. Often, it seems easier for the public to comment on issues put before them, rather than generating the issues and putting forth proposed changes themselves.

KDHE wants to make clear the public will not be precluded from having an opportunity to comment on issues outside those addressed in the white papers. They will have that opportunity during the public meetings. The primary focus, however, will be on the white papers.

SCHEDULE

The approximate schedule for completing the Triennial Review is as follows:

- Early October 2009 - Contact Focus Group organizations and request single representative to participate.
- Early November, 2009 - Convene first Focus Group meeting. Review Kaizen Process, discuss KDHE/EPA review items, and gather initial Focus Group ideas.
- Late November, 2009 - Convene second Focus Group meeting. Prioritize issues.
- Late January, 2010 – Convene third Focus Group meeting. Review KDHE white papers, make corrections and additions.
- Spring 2010 - Convene public meetings for input on the WQS.

FOCUS GROUP

The Focus Group is proposed as a task force comprised of an odd-number of primary stakeholders in WQS. Each stakeholder would be limited to one representative. Those stakeholders are proposed to include:

Government

- Kansas Dept. of Wildlife & Parks
- Kansas Dept. of Agriculture
- Kansas Water Authority

Regulated Community

- League of Kansas Municipalities
- Kansas Chamber of Commerce
- Kansas Farm Bureau
- Kansas Livestock Association
- Kansas Corn Growers Association

Environmental Community

- Kansas Sierra Club
- Kansas Natural Resources Council
- League of Women Voters
- Audubon of Kansas
- Kansas Riverkeeper

Technical

- Kansas Society of Professional Engineers
- Kansas Biological Survey

Additionally, a representative of the Kansas Water Office will be invited to attend as well as selected KDHE management staff. These staff will be available as resources, however are not expected to lead discussion. Other members of the public are invited to attend, however discussion will be limited to the Focus Group members.

FACILITATION

Meetings will be facilitated by Shari Feist Albrecht. Shari is an attorney who works in the Office of the Director of the Division of Environment, and serves on KDHE's legislative team. Shari is also the Kansas representative on Central Interstate Low-Level Radioactive Waste Commission. Prior to her current work, Shari served in a number of legal and management roles with the Kansas Corporation Commission and was a hearing officer for KDHE.

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2009 - 10 REVIEW OF KANSAS WATER QUALITY STANDARDS

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