

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on January 19, 2011, in Room 785 of the Docking State Office Building.

All members were present except:

Representative Nile Dillmore-excused  
Representative Stan Frownfelter-excused  
Representative Annie Kuether-excused  
Representative Tom Sloan-excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes  
Cindy Lash, Kansas Legislative Research Department  
Corey Carnahan, Kansas Legislative Research Department  
Rena Hansen, Committee Assistant

Conferees appearing before the Committee:

Tom Gross, KDHE  
Steve Swather, Farm Bureau  
Mike Beam, KLA

Others attending:

Thirty one including the attached list.

Informational hearing on:

Kansas Flint Hills Smoke Management Advisory Committee

Tom Gross, KDHE, (Attachment 1), spoke to the committee on the Flint Hills Smoke Management Plan. He gave a background on how this committee came to be and the presentations they have given to legislative committees. Mr. Gross talked about what happens when air quality standards are exceeded. Additionally, he spoke about the plan that they use to monitor the air quality in the state of Kansas. He noted that they are working with K-State on developing a web page that will keep the interested parties updated on the days that are good to burn and those that are not as desirable. Much of that desirability is due to the direction the wind is moving. Mr. Gross walked through the plan step by step and chapter by chapter. Finally, he gave information to the committee on how the plan would be implemented.

Steve Swaffer, Farm Bureau, (Attachment 2), offered testimony explaining their involvement in the planning process for the Smoke Management plan. He also noted how they will be involved in the plan when it is finally implemented. He noted their biggest role is to be educational.

Mike Beam, KLA, (Attachment 3), spoke to the committee on how the Kansas Livestock Association was involved in the planning process. He noted that since 2003, KLA has had conversations with officials from the KDHE and federal EPA about the air quality impact that can result from the burning of the Flint Hills on certain days. He noted the process of creating the plan helped both sides become aware of each others issues concerning the burning and its impacts on air quality.

Questions were asked and comments made by Representatives: Carl Holmes, Vern Swanson, Joe Seiwert, Forrest Knox, Reynaldo Mesa, and Greg Smith.

Mr. Gross, KDHE, tied together the burning issue with the entire EPA air quality issue and how that ties into energy issues. He noted that the bad air quality is a result of one third-background problem, one third-air-transfer, and one third- locally produced.

Update On:

2006 Energy Act

Corey Mohn, Kansas Department of Commerce, (Attachment 4), spoke to the committee on the 2006 Energy Development Act and how that impacts commerce in Kansas. He noted that many of the incentives that are available now for energy industries were initiated and created in the 2006-2007 House

## CONTINUATION SHEET

The minutes of the House Energy and Utilities Committee at 9:00 A.M. on January 19, 2011, in Room 785 of the Docking State Office Building.

Energy and Utilities committee.

Mary Tucker, Kansas Department of Commerce, spoke about the specific utilizers of the tax credits and how they have impacted the Kansas economy.

Questions were asked and comments made by Representatives: Don Hineman, Forrest Knox, Carl Holmes, and Vern Swanson.

Staff Briefing on:

Interim Committee:

Joint Committee on Energy and Environmental Policy

Cindy Lash, Kansas Legislative Research Department. (Attachment 5), spoke to the committee on the basic charge of the Joint Committee on Energy and Environmental Policy. She explained to the committee the specifics of what the committee focused on in 2010. She gave details from the joint committee on their topics of: EPA Tailoring Rule, EPA Transport Rule, Kansas Flint Hills Smoke Management Plan, Water Supply in Kansas, Groundwater Supply Status and Availability, Surface Water Supply Status and Availability, Impact of Water on Energy Generation, Public Water Supply Solutions, Irrigation and Water in Agriculture, Update on Statutory Exception for Abandonment of Water Rights, Creating a Conservation Use Water Right, Groundwater Management District Permitting, Federal Stimulus Funding of Energy and Weatherization, and Deepwater Horizon Impact. She spoke of the committees conclusions and recommendations.

Questions were asked and comments made by Representatives: Carl Holmes, Forrest Knox, Reynaldo Mesa, and Vern Swanson.

Representative Vern Swanson moved to introduce a joint resolution of the Kansas House and Senate to be sent to Congress registering concern over section 316(b) of the Clean Water Act and be co-addressed to the EPA Region 7 Administrator. Seconded by Representative Reynaldo Mesa. Motion passed unanimously.

The next meeting is scheduled for January 20, 2011.

The meeting was adjourned at 10:12 A.M.

# HOUSE ENERGY AND UTILITIES COMMITTEE

## GUEST LIST

DATE: January 19, 2011

NAME	REPRESENTING
Bill Brady	NNG
Colin Curtis	Sandstone Group
<del>Dave Hothaus</del>	KEC
Tom Day	KCC
Lon STANTON	NNG
Shari Albrecht	KDHG
Mike Loeffler	NNG (Northern Natural Gas)
Berend Koops	Hein Law Firm
Tim Engelder	DTFT
Sarah Green	KDA
Paul Havel	KDA
Tom Bruno	ELOGA
Corey Mohr	Commerce
Mari Tucker	Commerce
Nelson Krueger	USC
Shane Lyle	KGS
Phil Wages	KEPCO
Kimberly Sraty	GSPA
Mike Beam	Ks Livestock Assn

# HOUSE ENERGY AND UTILITIES COMMITTEE

## GUEST LIST


DATE: January 19, 2011

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# Flint Hills Smoke Management Plan

January 18 and 19, 2011  
Legislative Briefing


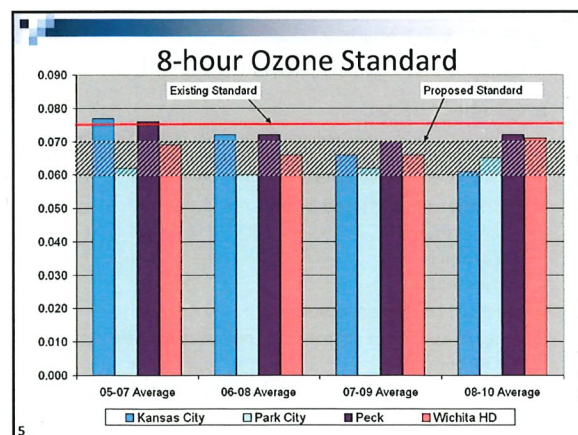
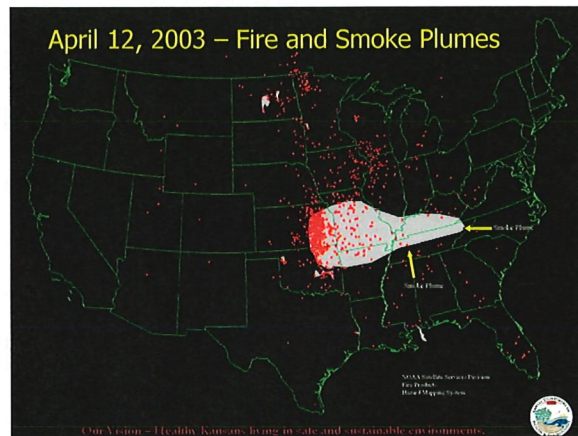
Tom Gross  
Bureau of Air  
Kansas Department of Health and Environment



## Flint Hills Burning and Air Quality

- Flint Hills burning caused ozone exceedances in KC in 2003 and KC and Wichita in 2009 & 2010
- EPA & KDHE have met with agricultural representatives from 2003 to present
  - Research, education, outreach & field training
- EPA denied KDHE's request to flag 2009 ozone exceedance data due to lack of SMP
- KDHE contacted by ag groups in 2009
- Commitment to develop Smoke Management Plan in 2010
- Committee formed and multiple meetings in 2010 on developing SMP


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## Why have a smoke management plan?

- To reduce impacts on public health
  - Emissions include Nitrogen Oxides, Volatile Organic Compounds and particulate matter
  - Nitrogen oxides and volatile organic compounds combine to form ozone
- To help meet national air quality standards
- To receive exceptional event flag in case of air quality exceedance

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## What happens when air quality standards are exceeded?

- State Implementation Plan (SIP) preparation
- Economic development curtailed
- New rules to reduce NO<sub>x</sub> & VOC emissions
- Potential sanctions for failure to meet standard
- Increased costs for fuel, electricity, goods, etc.
- Citizens breathing polluted air

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## About the Plan

- Is voluntary for prescribed burns of rangeland
- Includes restrictions on some types of burning in April
- Includes tools to assist land managers and local fire officials in making burn decisions
- Has a pilot program to evaluate use of a burn checklist
- A web site with a tool to predict smoke plume movement and other burn resources
- Includes plans for outreach and education

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## Chapter 1 - Introduction

- Air Quality Impacts From Flint Hills Burning
  - History
- Flint Hills Ecosystem
  - Topography & geology
  - Climate
  - Animal species & habitats
  - Preservation of tallgrass
  - Historic fire cycles & roll of fire

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## Chapter 2 - Reasons for Having a SMP

- Health Concerns
- National Ambient Air Quality Standards
- EPA Interim Fire Guidance
- Nonattainment Consequences & Costs
  - State Implementation Plans
  - Reasonably Available Control Technology regulations
  - Transportation Conformity, potential loss of federal highway funds
- Maintaining Flint Hills & Ag Economy
  - Description of intensive early stocking
  - Discussion of weight & financial gains
  - Potential for prairie loss for areas not burned

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## Chapter 3 - Reducing Downwind Impacts of Flint Hills Burning

- Review Need for Burning
- Fire Management Practices
  - Air quality, timing, transport wind, mixing height, dispersion
  - Humidity, fuel moisture, temperature
  - Ignition & burn techniques
- Smoke Plan Pilot Project – Spring 2011
  - Greenwood & Chase counties
  - Fire Management Practices booklet

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## Chapter 4 - Restrictions on April Burning

- Counties Affected
  - Butler, Chase, Chautauqua, Cowley, Elk, Geary, Greenwood, Johnson, Lyon, Marion, Morris, Pottawatomie, Riley, Sedgwick, Wabaunsee & Wyandotte
- Examples of restricted burns
  - Crop residue
  - Land clearing
  - Yard waste
- Types of burning allowed
  - Agricultural burning to manage prairie and grasslands
  - CRP burning
  - Other burns approved by local authorities on case-by-case basis

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## Chapter 5-Outreach, Education & Public Notification

- Outreach
  - Fire training events
  - Fire & Smoke Planning Resource website ([www.ksfire.org](http://www.ksfire.org))
  - Broadcast and print media
  - Group presentations
- Audience
  - General public
  - Land managers
  - Fire officials
- Message
  - Health effects
  - Fire management practices
  - April burn restrictions

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## Chapter 6 - Surveillance and Enforcement

- Surveillance
  - Air monitoring
  - Review of Satellite imagery
  - Post burn season survey of land managers
- April Burn Restrictions Enforcement
  - Local fire officials/emergency managers
  - KDHE district offices

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## Chapter 7 - Data Collection, Research Needs & Long Term Strategies

- Data Collection Pilot program for 2011
- Research Needs
  - Characterize emissions & remote sensing
  - Monitoring studies
  - Timing & frequency
  - Management techniques
  - Health impacts
  - Prairie Chicken
- Long Term Strategies
  - Computer modeling of air quality impacts

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## Chapter 8 - Contingency Measures

- Expand April burn restrictions to counties surrounding Flint Hills
- Require fire management practices checklist, notification, & data collection
- Require burn approvals based on weather & pre-existing conditions
- Establish time-of-day windows for burning
- Burn bans based to potential air quality impacts

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## Plan Implementation

- Work with KSU to develop web site, modeling tool, producer brochure and other outreach information
- Draft April burn restriction regulation and share with fire officials and other interested parties
- Prepare for voluntary data collection effort
- Work with KDHE health side officials on health messages for burn season
- Outreach activities by KSU, KDHE, KFS, NRCS, KLA, KFB, EPA, and more
- Gather meteorological and monitoring data during burn season for post season technical report

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## QUESTIONS?

### Contact Information:

Thomas Gross  
Bureau of Air  
1000 SW Jackson, Suite 310  
Topeka, Kansas 66612  
(785) 296-1692  
[tgross@kdheks.gov](mailto:tgross@kdheks.gov)





## ***Kansas Farm Bureau Statement***

### **Kansas Flint Hills Smoke Management House Energy and Utilities Committee**

**January 19, 2011**

**Submitted by:**

**Steve M. Swaffar**

**Director of Natural Resources**

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Chairman Holmes and members of the committee, thank you for this opportunity to provide testimony concerning the development of the Kansas Flint Hills Smoke Management Plan. I am Steve Swaffar, Director of Natural Resources for the Kansas Farm Bureau.

The economy and ecology of the Flint Hills region is directly tied to the ability to burn old growth thatch and young woody growth from the landscape. Livestock producers in the region depend on the new growth following a burn to provide nutritious forage for their livestock as well as maintain the diversity of grass and forbs species.

Burning of the Flint Hills region is also vital to maintain the prairie ecosystem. Burning promotes a diversity of grass and other broadleaf species, but more importantly prevents the invasion of woody and tree species from encroaching on the grass landscape. Our members are the practitioners of these fires and have a long history of managing the prairie for economic and ecological purposes.

As you are well aware, smoke generated from burning of the Flint Hills creates some temporary issues with air quality in local areas and some downwind metropolitan areas, primarily Kansas City, Wichita and the Omaha/Lincoln area. As you have already heard, these ozone air quality violations led to the development of the Kansas Flint Hills Smoke Management Plan.

KFB has been an active participant in the meetings with KDHE and EPA, data review and ultimately drafting of the plan. It has been an educational process for all involved but one that has yielded good results and a greater understanding of both rural and urban needs when it comes to prescribed burning.

KFB is pleased that the plan is voluntary in nature for ranchers and focuses on education, outreach and further data gathering. The key to implementation of the plan now is completing and fine tuning the models; putting in place the data

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gathering infrastructure; and making ranchers aware of the new tools being developed for their use when making burning decisions. It is vitally important ranchers become aware of these tools and begin to use and understand what they mean.

KFB is committed to working with our members, K-State and KDHE to ensure the word gets to these ranchers. We understand it will take time for full adoption and hope both EPA and KDHE exercise patience with the process. Thank you for allowing me to speak on behalf of the members of Kansas Farm Bureau. I would be happy to answer any questions you may have at the appropriate time.



Since 1894

To: House Energy & Utilities Committee  
Representative Carl Holmes, Chairman

From: Mike Beam, Kansas Livestock Association

Re: Statement regarding Flint Hills Smoke Management Plan

Date: January 19, 2011

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.*

Prescribed burning of grasslands is an essential management practice for ecological and economic reasons. While fire is occasionally used on grasslands in central and western Kansas, burning is an annual occurrence each spring on the tallgrass prairie...better known as the Kansas Flint Hills. In the absence of fire, the grasslands in eastern Kansas would convert from prairie to forest...which one can witness in many areas near population centers where fire has been suppressed for safety concerns.

Since 2003, we've had conversations with officials from the Kansas Department of Health and Environment and federal Environmental Protection Agency about the air quality impact that can result from the burning of the Flint Hills on certain days. It became obvious to our members that we must engage in the process of developing a smoke management plan so that our states ranchers and landowners could continue to burn without a future imposition of state and/or federal regulations.

I've attached an article that appeared in the January 2011 edition of our association's magazine. This article provides readers background on the issue and more detail about the plan. In addition, we'll be cooperating with others in outreach efforts in the next couple of months.

I'd be happy to respond to any questions the committee may have regarding the plan and how it was developed.



**by Mike Beam**  
Senior Vice President

# Flint Hills subject to **New Smoke Plan**

The Kansas Department of Health and Environment (KDHE) soon will implement a smoke management plan for the Flint Hills of Kansas. It is intended to reduce the incidences of smoke from prescribed burns that affect air quality in high population areas.

KDHE officials first alerted KLA of problems after an April 12-13, 2003, smoke event. The agency claimed during this period significant burning in the Flint Hills contributed to increased and abnormal ozone conditions in the greater Kansas City area and states as far away as Tennessee.

In April 2009, officials from KDHE again reported complaints from Kansas City and Wichita about the spike in ozone levels a few days after large acreages of the Flint Hills were burned. Why were these folks concerned about a few extra days of smoke from the Flint Hills?

A Kansas legislative committee, led by state Sen. Carolyn McGinn (R-Sedgwick), held several hearings during the 2010 Kansas legislative session regarding the Environmental Protection Agency's (EPA) air quality regulations. It became clear that urban areas in Kansas struggle to maintain compliance with existing federal air quality standards, especially for ozone levels. For example, Wichita is considered to be in attainment, but occasional spikes of ozone levels are causing this area to bump up against the maximum EPA standards. In April 2010, smoke emissions from the Flint Hills were responsible for the highest ozone reading of the year at one of Wichita's monitoring stations. If one or two days of smoke from the spring burns in the Flint Hills raises ozone levels above the threshold in Kansas City or

Wichita, the higher-than-normal readings count against these cities for regulatory compliance purposes. To compound the situation, EPA is expected to impose lower thresholds for ozone levels in 2011. These more restrictive standards will increase concerns about the impact of smoke drifting from the Flint Hills.

Since the 2003 incident, stakeholders defending the practice of unregulated prescribed burning have urged EPA to adopt a policy that allows urban areas to disregard high ozone monitoring data if it's caused by a few days of burning in the Flint Hills. EPA's response, repeated several times since 2003, is that the agency can't disregard the higher monitor readings unless the state adopts a smoke management plan designed to reduce the incidence of air quality problems.

In April of this year, KDHE formed an advisory committee charged with the task of drafting such a plan. KLA was one of several participants on this committee and was represented on the subcommittee that met at least six times to craft a plan, which eventually became a 35-page document.

To build the case, the plan contains an introductory chapter referencing how this native grass ecosystem was shaped by frequent fires and grazing. There also is documentation on the economic consequences of limiting annual burning in the Flint Hills, as well as examples of the costly practices urban areas incur when forced to lower emissions.

As expected, the plan includes a chapter on "Reducing Downwind Impacts of Flint Hills Burning." This chapter outlines a more robust information system land managers

can use to assess the impact of burning on a particular day. One tool will be a web-based computer model using forecasted weather conditions to predict the direction smoke may travel for a specified burn location. The theory is that with considerable outreach, education and decision-making tools, Flint Hills land managers will reconsider burning on days likely to create air quality problems for high population areas.

The lone regulatory proposal in the plan is a restriction on nonagricultural burning during April. With this proposed regulation, residents of the Flint Hills and Sedgwick, Wyandotte and Johnson counties would be prohibited from burning yard waste, land-clearing debris, crop residue, construction waste and other materials.

It's important to note the plan has contingency measures if there are continued air quality problems in urban areas resulting from Flint Hills burning. Some of the suggested measures include expansion of the non-essential burning restriction, mandatory smoke plans before burning Flint Hills grasslands, burn approvals from the state and burn ban days designated by the state. The plan suggests these contingency measures must be evaluated by stakeholders before being implemented by KDHE.

KDHE intends to implement the new plan prior to the 2011 spring burning season. KLA has pledged to spread the word about the plan and encourage voluntary participation among land managers. If we can avoid burning on days that are likely to create problems for our neighbors in metropolitan areas, we should be able to hold off any future cumbersome, regulatory proposals.

## **ALTERNATIVE ENERGY TAX CREDITS**

### Storage & Blending

The application received to date did not meet requirements (holding tank only);  
One application pending

### Renewable Electric Cogeneration Facility

Two applications to date;  
Great Bend Feeding project installed Nordtank 150 wind turbine; Invested \$170,000;  
Eligible tax credit \$17,000 (10 year payout)

### Biomass-to-Energy

Waste Management Renewable Energy project (Rolling Meadows Landfill); Anticipated investment \$11,000,000  
Eligible tax credit \$1.6 M (10 year payout)

### Coal or Coke Gasification Nitrogen Fertilizer Plant

Continuing discussion on a potential project -- on hold due to extenuating circumstances and current economic conditions

### Refineries

Two applications approved to date;  
Frontier El Dorado Refining project – expansion of existing facility  
Project completed in two phases  
Total investment = \$482 million  
Available tax credit = \$32.5 million

National Cooperative Refinery Assoc. (NCRA) – expansion of crude rate capability  
Total investment = \$852 million  
Available tax credit = \$55.1 million

### Pipelines

Two applications approved  
OneOK – construction of 750 mile pipeline (257 miles in Kansas) from Opal, Wyoming to Conway, Kansas to transport natural gas liquids (NGL)  
Access to NGL facilities in Bushton, Hutchinson, Mitchell & Conway  
Expenditures of \$400 million in Kansas; Available credit = \$32.5 million

TransCanada (Keystone) – construction of pipeline (210 miles in Kansas) from Canadian border to Cushing, OK to transport crude oil  
Access to refineries in McPherson and Coffeyville  
Expenditures of \$740 million in Kansas; Available credit = \$49 million

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# KANSAS Energy Incentives

## Incentives:

### **Ethyl Alcohol Production Incentive**

- \$0.075 for each gallon sold by the producer.
- Producers who were in production prior to July 1, 2001 and who increased production capacity on or after July 1, 2001 by an amount of 5 million gallons qualify for the incentive for a maximum of 15 million gallons sold per year.
- Producers who commenced production on or after July 1, 2001 and who sold at least 5 million gallons qualify for the incentive for a maximum of 15 million gallons sold per year.
- \$875,000 per quarter is added to the fund for distribution. If production exceeds the fund balance, a proration of the distribution is performed.
- Program sunsets July 1, 2011.
- Reference Kansas Statutes 79-34,160-164

*Edie Martin, (785) 296-5327, [edie\\_martin@kdor.state.ks.us](mailto:edie_martin@kdor.state.ks.us)*

### **Biodiesel Fuel Producer Incentive**

- \$0.30 for each gallon sold by the producer.
- \$50,000 per quarter is added to the fund, during fiscal year 2011, for distribution. If production exceeds the fund balance, a proration of the distribution is performed.
- Program sunsets July 1, 2016.
- Reference Kansas Statutes 79-34, 155-159

*Edie Martin, (785) 296-5327, [edie\\_martin@kdor.state.ks.us](mailto:edie_martin@kdor.state.ks.us)*

### **Kansas Retail Dealers Incentive Fund**

- Kansas Retail Dealers Incentive Fund was created for the payment of incentives to Kansas retail dealers who sell and dispense renewable fuels or biodiesel through a motor fuel pump.
- This incentive is currently not funded for fiscal years 2011 and 2012, pursuant to the 2010 Senate Bill 527.
- The provisions of the Kansas Retail Dealers Incentive Fund shall expire on January 1, 2026.
- Reference Kansas Statutes 79-34,170-176

*Edie Martin, (785) 296-5327, [edie\\_martin@kdor.state.ks.us](mailto:edie_martin@kdor.state.ks.us)*

### **Enterprise Zone Incentive**

- Investment tax credit of \$1,000 for each qualified business facility investment starting at \$51,000 or more.
- Jobs tax credit of \$1,500-\$2,500 with a minimum of two jobs created.
- Exemption from state and local sales tax on all tangible personal property or services purchased for the construction, enlarging or remodeling of a business. The sale and installation of machinery and equipment purchased for the installation at the business shall also be exempt from sales tax.
- Credits can be carried forward until used.

*Darla Price, (785) 296-1868, [dprice@kansascommerce.com](mailto:dprice@kansascommerce.com)*

### **Notice of Change for Enterprise Zone**

- Due to the expansion of the qualified businesses eligible for the PEAK program, the 2010 Kansas Legislature repealed the Business and Job Development (B&J) tax credits in the metropolitan counties of Johnson, Wyandotte, Leavenworth, Douglas, Sedgwick and Shawnee, effective December 31, 2010. This includes the Enterprise Zone (EZ) job and investment tax credits and the "100/100" job and investment tax credits for retailers. The sales tax project exemption under EZ is still applicable in these metropolitan counties. Non-metropolitan counties are unaffected by this change.
- Visit [www.ksrevenue.org/pdf/rr19201001.pdf](http://www.ksrevenue.org/pdf/rr19201001.pdf) to access Revenue's ruling 19-2010-01.
- Qualified companies with tax credits earned prior to January 1, 2011, may be carried forward until used. Companies applying and receiving a waiver from Revenue may also carry forward tax credits earned during the waiver period prior to January 1, 2013.
- For more information about the ruling or the waiver process, contact Kathleen Smith, Kansas Department of Revenue.

*Kathleen Smith, (785) 296-3070, [kathleen\\_smith@kdor.state.ks.us](mailto:kathleen_smith@kdor.state.ks.us)*

### **CDBG – Economic Development Loans**

- The maximum amount of funding is \$35,000 per created job up to \$750,000.
- At least 51 percent of the jobs must meet HUD's low-and-moderate income (LMI) test for the county in which the project is located.
- The local unit of government must apply for infrastructure funding on behalf of a private for-profit biofuel entity. Funds may be used for water, sewer, road or a rail spur.
- This program requires that half the funds be paid back over a 10-year period at a 2 percent rate. This payment stream is accomplished through a special assessment placed on the property.

*Terry Marlin, (785) 296-4703, [tmartin@kansascommerce.com](mailto:tmartin@kansascommerce.com)*

# KANSAS Energy Incentives

## Incentives (cont.):

### **Agriculture Value Added Loan**

- Loans for feasibility studies, business plans or equity drives are typically funded at the 50 percent level.
- Loans for feasibility studies are forgivable if the project does not move forward. Equity drive loans are typically paid back within 120 days of successful conclusion of the equity drive.
- Other loans are interest-free for two years and 1 percent over prime for the balance of the loan.

*Mari Tucker, (785) 296-6080, [mtucker@kansascommerce.com](mailto:mtucker@kansascommerce.com)*

### **Economic Revitalization and Reinvestment Act**

- The Economic Revitalization and Reinvestment Act is designed to provide new incentives for eligible wind and solar equipment manufacturing projects.
- Eligible projects require a minimum of \$30 million in project costs to be invested in Kansas and must employ a minimum of 200 full time employees within five years. In addition, projects must pay a minimum of \$32,500 of average annual compensation per Kansas employee and must be classified by NAICS code as being in the manufacturing sector.
- Upon approval from the Secretary of Commerce, each project would qualify for up to \$5 million in Kansas Development Finance Authority bonds.
- Bonds are repaid from withholding taxes generated from the new job creation.

*Randi Tveitaraas Jack, (785) 296-7868,  
[rjack@kansascommerce.com](mailto:rjack@kansascommerce.com)*

### **Workforce Training Funds**

- The **Kansas Industrial Training (KIT)** program is designed to help new and expanding companies offset the costs of training workers for new jobs.
- Training funds can be used to reimburse negotiated costs for pre-employment, on-the-job and/or classroom training.
- The average reimbursement level for Kansas Industrial Training is \$300-\$500 per position.
- The **Kansas Industrial Retraining (KIR)** Program is designed to assist companies who are restructuring or retraining their workforce. Firms must show they are restructuring their business operations or retraining their workforce due to one or more of the following:
  - Incorporation of existing technology (unable to pay for training associated with upgrades to existing technology)
  - Development and incorporation of new technology (unable to pay for training associated with upgrades to existing technology)
  - Diversification of production
  - Development and implementation of new production

- A company must show that employees to be trained are likely to be displaced because of obsolete or inadequate job skills and knowledge and must train a minimum of 1 employee.
- KIR requires a dollar for dollar match from the company. In-direct or in-kind expenses are not eligible toward the match requirement.

*Nadira Patrick, (785) 296-8158, [kitkir@kansascommerce.com](mailto:kitkir@kansascommerce.com)*

### **Waste Heat Utilization System**

- Waste heat utilization system means facilities and equipment for the recovery of waste heat generated in the process of generating electricity and the use of such heat to generate additional electricity or to produce fuels from renewable energy resources or technologies.
- Waste heat utilization system shall be exempt from all property taxes levied under the laws of the state of Kansas for 10 taxable years immediately following the taxable year in which construction or installation is complete.
- Reference Kansas Statute 79-231
- In addition to the property tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2006; administered by the Secretary of Revenue.
- Reference Kansas Statute 79-32,250
- Waste heat utilization systems at electric generation facilities shall be exempt from property taxes for the 10 taxable years following completion of construction or installation.
- Reference Kansas Statute 79-231  
*Kathleen Smith, (785) 296-3070, [kathleen.smith@kdor.state.ks.us](mailto:kathleen.smith@kdor.state.ks.us)*
- Waste heat utilization systems at electric generation facilities—The Kansas Development Finance Authority is authorized to issue revenue bonds in amounts sufficient to finance the construction of such a facility.
- Reference Kansas Statute 74-8949d  
*Rebecca Floyd, (785) 357-4445 Ext. 303, [rfloyd@kdofa.org](mailto:rfloyd@kdofa.org)*

# KANSAS Energy Incentives

## Incentives (cont.):

### **Machinery and Equipment Sales Tax and Property Tax Exemptions**

- The sale of machinery and equipment, including repair and replacement parts and accessories, used in Kansas as an essential part of an integrated production operation by a manufacturing or processing facility is exempt from sales tax effective July 1, 2000.
- A manufacturer or purchaser must submit the Integrated Production Machinery and Equipment Exemption Certificate (Form ST-201) to claim exemption from sales tax.
- A property tax exemption exists for all commercial and industrial machinery and equipment that is acquired or leased, or transported into the state after June 30, 2006.
- For the abatement of property tax on real property, the owner must file a request for abatement on forms provided by the county appraiser. The appraiser then recommends the granting or denial of the exemption.
- Reference Kansas Statutes 79-223, 79-3606  
*Ed Serrano, (785) 368-7293, [eserrano@kansascommerce.com](mailto:eserrano@kansascommerce.com)*

### **Carbon Dioxide Capture/Sequestration Tax Deduction**

- A taxpayer shall be entitled to a deduction from Kansas adjusted gross income with respect to the amortization of the amortizable costs of carbon dioxide capture, sequestration or utilization machinery and equipment based upon a period of 10 years. Such amortization deduction shall be an amount equal to 55% of the amortizable costs of such machinery and equipment for the first taxable year in which such machinery and equipment are in operation and 5% of the amortizable costs of such machinery and equipment for each of the next nine taxable years.
- The election of the taxpayer to claim the deduction allowed by subsection (a) shall be made by filing a statement of such election with the secretary of revenue in the manner and form and within the time prescribed by rules and regulations adopted by the secretary.
- The provisions of this section shall apply to all taxable years commencing after December 31, 2007.
- This fund is administered by the Kansas Department of Revenue.
- Reference Kansas Statute 79-32,256

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### **State Energy Sector Partnership Training Grant (SESPT)**

The Kansas Department of Commerce has been awarded a grant to implement an energy sector training partnership supporting its strategies for renewable energy and energy efficiency. A portion of the funds will be granted to the Local Workforce Investment Areas to support training activities in the following five sectors:

- **Renewable Energy Operation and Construction** includes training related to the operation, construction and maintenance of wind farms.
- **Renewable Energy Manufacturing and Supply Chain** includes training related to the production of wind turbine components. It is also inclusive of existing and new manufacturing facilities producing components as part of the supply chain expansion in Kansas, which supports manufacturing locally and in other states.
- **Energy Transmission** includes two sectors: Electrical Power Transmission Technology and Efficient Natural Gas Measurement and Distribution.
- **Biomass** includes training to address the conversion of waste products into energy and a range of byproducts, including energy-producing pellets.
- **Green Construction and Manufacturing Processes** scholarships will be provided for non-Pell-eligible industry certificates in the construction and manufacturing fields for training in green construction and manufacturing techniques.

Any employer wishing to submit a training project for consideration needs to download the [application form](#) at [www.kansascommerce.com/SESPT](http://www.kansascommerce.com/SESPT) and submit it to Joey Frederickson with the KS Department of Commerce-[jfrederickson@kansascommerce.com](mailto:jfrederickson@kansascommerce.com).

*Joey Frederickson, (785) 296-2283,*

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*Susan Nickerson, (785) 625-5654, [snickerson@kansascommerce.com](mailto:snickerson@kansascommerce.com)*

# KANSAS Energy Incentives

## Tax Credits:

### **Alternative-Fuel Fueling Station Tax Credit**

- Expenditures for qualified alternative-fuel fueling stations shall be allowed a credit against the income tax imposed against the owner of such facility.
- For any qualified alternative-fuel fueling station placed in service on or after January 1, 2005 and before January 1, 2009, an amount equal to 40 percent of the total amount expended but not to exceed \$160,000 for each fueling station.
- For any qualified alternative-fuel fueling station placed in service on or after January 1, 2009, an amount equal to 40 percent of the total amount expended but not to exceed \$100,000 for each fueling station.
- This fund is administered by the Kansas Department of Revenue.
- Reference Kansas Statute 79-32,201

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### **Alternative-Fueled Motor Vehicle Tax Credit**

- Expenditures for qualified alternative-fueled motor vehicles shall be allowed a credit against the income tax imposed against the owner of such vehicle.
- For any qualified alternative-fueled motor vehicle placed in service on or after January 1, 1996 and before January 1, 2005, an amount equal to 50 percent of the incremental cost or conversion cost for each qualified vehicle expended but not to exceed \$50,000 (credits based on vehicle weight).
- For any qualified alternative-fueled motor vehicle placed in service on or after January 1, 2005, the credit is 40 percent of the incremental cost or conversion cost for each qualified vehicle expended but not to exceed \$40,000 (credits based on vehicle weight).
- The credit for motor vehicles which are capable of operating on a blend of 85% ethanol and 15% gasoline shall be allowed for taxable years commencing after December 31, 1999, only if the individual claiming the credit furnishes evidence of the purchase of 500 gallons of ethanol and gasoline blend during the period of time beginning with vehicle purchase and ending on December 31 of the next succeeding calendar year.
- This fund is administered by the Kansas Department of Revenue.
- Reference Kansas Statute 79-32,201

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### **Biomass-to-Energy Plant Tax Credit**

- An income tax credit for expenditures in new construction or expansion of the capacity in an existing plant commencing after December 3, 2005 and before January 1, 2011.
- The credit is 10 percent of the taxpayer's qualified investment on the first \$250 million invested, and 5 percent of the taxpayer's qualified investment that exceeds \$250 million.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section apply to all taxable years commencing after December 31, 2006; administered by the Secretary of Revenue.
- Reference Kansas Statutes 79-32, 233-237
- Biomass-to-Energy plant property shall be exempt from all property taxes levied for the 10 taxable years immediately following construction or installation.

Reference Kansas Statute 79-229

*Mari Tucker, (785) 296-6080, [mtucker@kansascommerce.com](mailto:mtucker@kansascommerce.com)*

- For the purpose of financing the construction of a Biomass-to-Energy plant, the Kansas Development Finance Authority is authorized to issue revenue bonds in amounts sufficient to pay the costs of construction or expansion.
- Reference Kansas Statute 74-8949b

*Rebecca Floyd, (785) 357-4445 Ext. 303, [rfloyd@kdfa.org](mailto:rfloyd@kdfa.org)*



# KANSAS Energy Incentives

## Tax Credits (cont.):

### **Storage and Blending Equipment Tax Credit**

- Storage and blending equipment means any equipment which is used for storing and blending petroleum-based fuel and biodiesel, ethanol or other biofuel and is installed at a fuel terminal, refinery or biofuel production plant. This does not include equipment used only for denaturing ethyl alcohol.
  - Income tax credit equal to 10 percent of the taxpayer's qualified investment for the first \$10 million invested and an amount equal to 5 percent of the amount that exceeds \$10 million. Program is for taxable years commencing after December 31, 2006 and before January 1, 2012.
  - Credit shall be taken in 10 equal annual installments.
  - Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
  - In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2006; administered by the Secretary of Revenue.
  - Reference Kansas Statutes 79-32,251-255
  - Storage and blending equipment shall be exempt from all property taxes levied for the 10 taxable years immediately following the installation of such equipment.
  - Reference Kansas Statute 79-232
- Mari Tucker, (785) 296-6080, [mtucker@kansascommerce.com](mailto:mtucker@kansascommerce.com)*

### **Renewable Electric Cogeneration Facility Tax Credit**

- Renewable electric cogeneration facility is a facility owned and operated by the owner of an industrial, commercial or agricultural process to generate electricity for use in such process to displace current or provide for future electricity use.
- Income tax credit equal to 10 percent of taxpayer's qualified investment for the first \$50 million and an amount equal to 5 percent of the amount that exceeds \$50 million. Program is for taxable years commencing after December 31, 2006 and before January 1, 2012.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2006; administered by the Secretary of Revenue.
- Reference Kansas Statutes 79-32,245-249

- A renewable electric cogeneration facility shall be exempt from property taxes for all taxable years commencing after December 31, 1998.
- Reference Kansas Statute 79-201, Section 11  
*Mari Tucker, (785) 296-6080, [mtucker@kansascommerce.com](mailto:mtucker@kansascommerce.com)*
- Renewable electric cogeneration facility—The Kansas Development Finance Authority is authorized to issue revenue bonds in amounts sufficient to finance the construction costs of such facility.
- Reference Kansas Statute 74-8949c  
*Rebecca Floyd, (785) 357-4445 Ext. 303, [rfloyd@kdffa.org](mailto:rfloyd@kdffa.org)*

### **Coal Gasification Power Plant Tax Credit**

- For the placement of a new integrated coal gasification power plant into service or the expansion of an existing integrated coal gasification power plant.
- Income tax credit equal to 10 percent of the taxpayer's qualified investment for the first \$250 million invested and an amount equal to 5 percent of the amount that exceeds \$250 million. Program is for taxable years commencing after December 31, 2005 and before January 1, 2011.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Kansas Corporation Commission to enter into an agreement for a tax credit.
- Reference Kansas Statutes 79-32,238-241
- Integrated coal gasification power plant property shall be exempt from all property taxes levied for the 12 taxable years immediately following construction or installation of such property.
- Reference Kansas Statute 79-225  
*Kevin Scherich, (785) 271-3198, [k.scherich@kcc.ks.gov](mailto:k.scherich@kcc.ks.gov)*
- Coal gasification power plants—The Kansas Development Finance Authority is authorized to issue revenue bonds in amounts sufficient to finance the construction of such a facility.
- Reference Kansas Statute 74-8947  
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# KANSAS Energy Incentives

## Tax Credits (cont.):

### **Coal or Coke Gasification Nitrogen Fertilizer Plant**

- For the placement into service of a new or the expansion of an existing integrated coal or coke gasification nitrogen fertilizer plant.
- Income tax credit equal to 10 percent of the taxpayer's qualified investment for the first \$250 million invested and an amount equal to 5 percent of the amount that exceeds \$250 million. Program is for taxable years commencing after December 31, 2005 and before January 1, 2011.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new or expanded facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2005; administered by the Secretary of Revenue.
- Reference Kansas Statutes 79-32,228-232
- A coal or coke gasification nitrogen fertilizer plant shall be exempt from all property taxes levied for the 10 taxable years following the construction or installation of such property.
- Reference Kansas Statute 79-228  
*Mari Tucker, (785) 296-6080, [mtucker@kansascommerce.com](mailto:mtucker@kansascommerce.com)*
- Coal or coke gasification nitrogen fertilizer plants—The Kansas Development Finance Authority is authorized to issue revenue bonds in amounts sufficient to finance the construction, purchase and installation of such a system at an electric generation facility.
- Reference Kansas Statute 74-8949a  
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### **Refinery Tax Credit**

- For the placement into service of a new or the expansion of a refinery.
- Income tax credit equal to 10 percent of the taxpayer's qualified investment for the first \$250 million invested and an amount equal to 5 percent of the amount that exceeds \$250 million. Program is for taxable years commencing after December 31, 2005 and before January 1, 2011.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new or expanded facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2005; administered by the Secretary of Revenue.
- Reference Kansas Statutes 79-32,217-222  
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### **Crude Oil or Natural Gas Pipeline Tax Credit**

- For the placement into service of a new or the expansion of an existing crude oil or natural gas pipeline.
- Income tax credit equal to 10 percent of the taxpayer's qualified investment for the first \$250 million invested and an amount equal to 5 percent of the amount that exceeds \$250 million. Program is for taxable years commencing after December 31, 2005 and before January 1, 2011.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new or expanded facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2005; administered by the Secretary of Revenue.
- Reference Kansas Statutes 79-32,223-227  
*Mari Tucker, (785) 296-6080, [mtucker@kansascommerce.com](mailto:mtucker@kansascommerce.com)*

### **High Performance Incentive Program (HPIP)**

- HPIP provides an investment tax credit to companies that pay above-average wages and have a strong commitment to skills development for their workers.
- Employer must invest 2 percent of payroll in training or participate in one of Commerce's workforce training programs.
- A capital investment tax credit equal to 10 percent of eligible investment that exceeds \$50,000.
- A project description must be submitted prior to any commitment of investment.
- Credits can be carried forward 10 years.
- A company can elect to take the High Performance Investment Credits or the Enterprise Zone Investment Tax Credits, but not both.  
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## **Report of the Joint Committee on Energy and Environmental Policy to the 2011 Kansas Legislature**

**CHAIRPERSON:** Senator Carolyn McGinn

**VICE-CHAIRPERSON:** Representative Carl Holmes

**OTHER MEMBERS:** Senators Pat Apple, Janis Lee, Roger Reitz, and Mark Taddiken; and Representatives Mitch Holmes, Forrest Knox, Cindy Neighbor, Tom Sloan, Vince Wetta

### **STUDY TOPICS**

- Study energy and environmental policy in Kansas. In addition, make recommendations concerning the use of moneys received by the state pursuant to the American Recovery and Reinvestment Act (ARRA) for energy efficiency and conservation block grants, state energy programs, the weatherization assistance program, and the alternative fueled vehicles pilot grant program in the joint committee's report to the 2010 and 2011 Legislatures.

# Joint Committee on Energy and Environmental Policy

## REPORT

### CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee makes the following recommendations:

- The Kansas Corporation Commission and the Kansas Housing Resource Corporation should develop targets and measures to demonstrate the value and efficiency of the ARRA programs they administer and should continue to monitor the programs for effectiveness.
- The Kansas Energy Office should promote public awareness of conservation by speaking about conservation more frequently in public forums.
- The Committee should send a letter to the U.S. Environmental Protection Agency (EPA), the Department of Energy, and the Office of Management and Budget urging support for a flexible, rather than restrictive, rule for cooling water intake structures when the EPA issues the rule for sec. 316(b) of the Clean Water Act.
- A Joint Resolution of the Kansas House and Senate should be sent to Congress registering concern over sec. 316(b) of the Clean Water Act. The resolution should be co-addressed to the EPA Region 7 Administrator.

***Proposed Legislation:*** One concurrent resolution.

### BACKGROUND

The Committee was established by enactment of 2008 SB 586 (KSA 46-3701), as an 11-member, bipartisan joint committee whose members serve two-year terms. The Committee's charge is to study energy and environmental policy in Kansas. In addition, the Committee is charged with making recommendations concerning the use of moneys received by the state pursuant to the American Recovery and Reinvestment Act (ARRA) for energy efficiency and conservation block grants, state energy programs, the weatherization assistance program, and the alternative fueled vehicles pilot grant program

in the joint committee's reports to the 2010 and 2011 Legislatures.

### COMMITTEE ACTIVITIES

The Committee met for four days: September 9, October 7-8, and November 9. During the Interim, the Committee gathered information on new rules being issued by the U.S. Environmental Protection Agency (EPA) regarding air quality, the Kansas Flint Hills smoke management plan, issues related to the Kansas water supply, the use of ARRA moneys for energy in Kansas, and the current status of the oil spill in the Gulf of Mexico.



## **Air Quality - September 9**

### **EPA Tailoring Rule**

Karl Brooks, EPA Region 7 Administrator, and Mark Smith, Region 7 Manager, Air Compliance and Permitting Branch, discussed the Tailoring Rule, which “tailors” the federal Clean Air Act permitting requirements so that regulation of greenhouse gas emissions is limited to the largest industrial sources, defined as emitters of at least 100,000 tons per year of carbon dioxide equivalents. Mr. Brooks stated that EPA’s endangerment finding and emission standards for passenger vehicles, which will go into effect in January 2011, trigger the Clean Air Act’s permitting requirements for stationary sources. Without the Tailoring Rule, small business would quickly become subject to the greenhouse gas permitting requirements.

Miles Stotts, Kansas Department of Health and Environment (KDHE), described how the Tailoring Rule applies to Kansas. He reviewed the timeline of events leading up to the Tailoring Rule, beginning with the 2007 ruling by the U.S. Supreme Court in *Massachusetts v. EPA* that concluded the Clean Air Act gives the EPA authority to regulate greenhouse gases. KDHE expects to have sufficient staff to handle additional permitting required by the Tailoring Rule, but Kansas will need to make changes to administrative regulations in order to maintain authority to issue federal air quality permits.

Greg Krissek, Director of Government Affairs, ICM, Inc., presented testimony on the effects of the Tailoring Rule on ethanol production from cellulosic and biomass feedstock. He anticipates most of the state’s ethanol plants will be subject to regulation under the Tailoring Rule. The ethanol industry is concerned that the final rule did not make separate provisions for combustion carbon dioxide and biogenic carbon dioxide, which results from the fermentation process.

Bill Eastman, Director of Environmental Services, Westar Energy, provided comments on behalf of several electric utilities and organizations representing electric utilities in Kansas. He cited a number of concerns about the Tailoring Rule, including the lack of a commercially-available, utility-scale technology to control greenhouse gas emissions from power plants.

Charlie Sedlock, Division Manager, Hamm Waste Services, said compliance with the Tailoring Rule will cause his company to increase rates to its customers, most of whom are cities and counties. In addition, the Rule may trigger new permitting requirements at closed landfill facilities.

Woody Moses, Kansas Cement Council, described the effects of the Tailoring Rule on the cement industry. The industry operates in an unregulated market on a worldwide basis. Regulation in the U.S. will result in Kansas cement production being replaced by other sources.

Chris Cardinal, Legislative Director, Sierra Club Kansas Chapter, expressed the Sierra Club’s support for the EPA’s efforts to reduce greenhouse gases that contribute to global warming. The Tailoring Rule is a practical approach that focuses on the largest emitters first.

### **EPA Transport Rule**

Karl Brooks and Mark Smith, EPA Region 7, presented information on the EPA’s proposed Transport Rule that implements the “good neighbor provisions” of the Clean Air Act. Kansas is one of 31 states included in the Transport Rule that requires the states to reduce NO<sub>x</sub> and SO<sub>2</sub> emissions from power plants to reduce downwind air pollution in other states.

Miles Stotts, KDHE, said Kansas was included in the Transport Rule because the state slightly exceeds the Transport Rule’s ozone threshold and moderately exceeds the

fine particulate matter threshold. KDHE is attempting to have Kansas removed from the Transport Rule, because Kansas's inclusion was based on EPA's use of older emissions data that did not reflect significant reductions achieved in recent years.

Bill Eastman, Director of Environmental Services, Westar Energy, provided comments on behalf of several electric utilities and organizations representing electric utilities in Kansas. The utilities believe that inaccurate modeling assumptions used by the EPA will result in Kansas utilities spending more than \$1 billion on emission control technology, in addition to the \$1 billion they already have spent.

Chris Cardinal, Legislative Director, Sierra Club Kansas Chapter, expressed the Sierra Club's support for the EPA's efforts and offered testimony regarding the health benefits of implementing the Transport Rule.

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

Rick Brunetti, Director, Bureau of Air, KDHE, discussed the history of burning in the Flint Hills, which has resulted in ozone exceedances in 2003, 2009, and 2010. The Kansas Legislature and KDHE have requested the EPA exclude certain air quality monitoring results when emissions standards are exceeded during prairie burning. Mr. Brunetti described the activities of the Task Force for the Kansas Flint Hills Smoke Management Plan.

Amanda Graor, Senior Air Quality Planner, Mid-America Regional Council, spoke to the Committee about ozone levels resulting from prairie burning and the impact on the Kansas City area.

Chris Cardinal, Legislative Director, Sierra Club Kansas Chapter, provided testimony that does not support wholesale burning of rangeland

in the Flint Hills. The Sierra Club is concerned about destruction of grassland bird habitat.

Dr. Clenton Owensby, Professor of Range Management, Kansas State University, reported on research regarding the importance of burning the Flint Hills on a regular basis. Burning in the Flint Hills has a positive economic impact of \$30-\$45 million annually.

Michael Collinge, rancher, discussed why farmers and ranchers burn the prairie. Jeff Davidson, Greenwood County Extension Agent, provided written testimony on the extent of burning in Greenwood county and the estimated economic benefit from the weight gain in cattle following burning.

Kay Johnson and Dale Goter, Environmental Services, City of Wichita, offered testimony on how air quality in Wichita is affected by burning of the grasslands.

#### **Water Supply in Kansas - October 7-8**

Tracy Streeter, Director, Kansas Water Office, provided an overview on the status of the public water supply in Kansas. Of the water used in Kansas in 2008, about 66 percent was used for irrigation, 16 percent was used for water power, 8 percent for municipal uses, and 10 percent for other uses.

#### **Groundwater Supply Status and Availability**

Brownie Wilson, Manager of Geohydrology Support Services, Kansas Geological Survey, discussed the Kansas High Plains Aquifer, which contains 85 percent of the groundwater wells in the state.

Deb Ary, Superintendent of Production and Pumping, Wichita Water Utilities, described Wichita's aquifer storage and recovery program for the Equus Bed Aquifer, which involves recharging the Aquifer with water from the

Little Arkansas River. Brian Meier, Associate Environmental Engineer, Burns and McDonnell, provided technical information about the project.

### **Surface Water Supply Status and Availability**

Earl Lewis, Assistant Director, Kansas Water Office, spoke to the Committee about Kansas's surface water supply, which relies on a series of reservoirs to provide storage. Two-thirds of the Kansas population receives its water from surface water. However the reservoirs are rapidly filling in with sedimentation, which reduces the volume available for storage. The estimated cost of dredging the John Redmond Reservoir to remove sedimentation is about \$500 million.

John Grothaus, Chief of the Plan Formulation Section, Kansas City District, U.S. Army Corps of Engineers, stated the Corps built reservoirs across the country primarily for flood control and to enhance navigation. He described the Corps' studies comparing actual capacity in the reservoirs to the capacity that was anticipated to be available.

Dr. Ed Martinko, Director, Kansas Biological Survey, described the Reservoir Assessment Program operated by the Survey. He suggested Kansas needs to think about upkeep on reservoirs in the same way it thinks about upkeep on roads and highways. A comprehensive, online repository of reservoir information would allow for better planning and management.

Dan McDougal, President and Chief Executive Officer, Dredge America, discussed dredging as an option for increasing surface water availability. Dredging can improve water depth, water quality, wildlife habitat, and water storage capacity. It probably is cheaper to create a new lake, if you do not consider the farm ground taken out of operation, the impact on local communities, and the effect on water rights.

Weir Labatt, Board Member, Texas Water Development Board, said that by 2060 Texas will have 18 percent less water than it does now, but twice as many people. The state will need an additional 8.9 million acre feet of water. Texas is looking to build new reservoirs, rather than dredge existing reservoirs, because of the cost.

### **Impact of Water on Energy Generation**

Paul Ling, Manager of Environmental Services, Kansas City Power and Light, reported on challenges the company faces with the cooling lake associated with its coal-fired power plant at LaCygne. Anticipated changes in the EPA's requirements will require the consumption of more water.

Wayne Penrod, Executive Manager of Environmental Policy, Sunflower Electric Power Corporation, described how Sunflower uses water at its facilities, and stated the Clean Water Act section 316(b) rules will not affect Sunflower because it does not use surface water for cooling.

Bill Eastman, Director of Environmental Services, Westar Energy, described the company's water usage at its various generating plants. They anticipate a limited impact from the Clean Water Act section 316(b) rules, but have concerns about other EPA rules.

Joe Dick, Government Affairs Officer, Kansas City Board of Public Utilities, discussed the Board's use of water for its three generating units. The Clean Water Act section 316(b) rules could require installation of expensive retrofits at the water intakes.

### **Public Water Supply Solutions**

Dennis Schwartz, Public Water Supply Chair, Kansas Water Authority, described the Reservoir Roadmap, which quantifies the issue statewide, covers the statutory and budget considerations, and provides a basin approach to

reservoir sustainability. He also encouraged the Committee to promote water conservation, and to support work to prevent the spread of zebra mussels.

Mike Armstrong, General Manager, Water District Number One of Johnson County, described the everyday workings of a water supply service. Water One spent \$15 million to build a weir to maintain reliability of its Kansas River intake process, and is requesting money from the Kansas Legislature for a study to determine the best solution to the degradation of the Missouri River.

Henry Schwaller IV, City Commissioner, City of Hays, reported on the short- and long-term initiatives the city developed to deal with ongoing water shortages. The current water usage rate is down 45 percent from peak demand, and consumption level is the same as in 1972.

### **Irrigation and Water in Agriculture**

Dr. Dan Rogers, Professor of Biological and Agricultural Engineering, Kansas State University, testified that nearly 85 percent of water used in Kansas is used for irrigation. Municipal usage accounts for about 11 percent of the water consumed. He noted that plant growth, and therefore food production is water intensive; it takes 1,400 gallons of water to make a hamburger, french fries, and a soft drink. Dr. Rogers described trends in amounts and systems of irrigation.

### **Update on Statutory Exception for Abandonment of Water Rights**

Lane Letourneau, Water Appropriation Program Manager, Kansas Department of Agriculture, reported on implementation of 2010 H. Sub for SB 316, which allows an exception to statutory abandonment requirements for water rights under certain conditions. To date, the Department of Agriculture has not identified any situations that qualify for the new exemption.

### **Creating a Conservation Use Water Right**

Burke Griggs, Staff Attorney, Kansas Department of Agriculture, recommended to the Committee that conservation be recognized as a beneficial use of water. This was the subject of 2010 SB 510. "Conservation use" reserves the use of water for future generations.

Paul Tobia, Conservation Subcommittee Chairperson, Kansas Water Congress discussed the Conservation Subcommittee's goal of developing consensus on the long- and short-term direction of water conservation, while protecting water rights in Kansas.

Wayne Bossert, Manager, Northwest Kansas Groundwater Management District No. 4, presented six issues needed to create a workable replacement for the Water Rights Conservation Program, which was eliminated in late 2009.

Toby Dougherty, City Manager, City of Hays, testified that the City believes there should be a program that allows the owner of water rights to set aside those rights for five to ten years in order to use the rights when the need is greater.

John Donley, Assistant General Counsel, Kansas Livestock Association noted that some parties want reinstatement of the Water Rights Conservation Program as it was originally written, while other parties think SB 510 represents a better resolution to the problem. The Livestock Association would like to see the parties achieve a consensus.

Leslie Kaufman, Executive Director, Kansas Cooperative Council, commented that SB 510 was a more cost-effective means of addressing water conservation than other plans proposed in the past.

Steve Swaffar, Natural Resources Director, Kansas Farm Bureau, stated the Farm Bureau continues to be opposed to the concept of non-use as a beneficial use. It is fundamentally opposite



to the intent of the Kansas Water Appropriation Act.

### **Groundwater Management District Permitting**

Lane Letourneau, Water Appropriation Program Manager, Kansas Department of Agriculture, described the Department's water right permitting process within groundwater management districts. Permits are issued by the Chief Engineer, who works with the district to ensure local concerns are addressed. When the Department decides whether to issue a permit, it considers area, rate of recharge, and amount already appropriated.

### **Presentations on Follow-Up Issues**

Staff presented follow-up responses received from the EPA, the Mid-America Regional Council, and the Sierra Club.

Bill Eastman, Director of Environmental Services, Westar Energy, provided requested information about the new scrubbers installed at the Jeffrey Energy Center, and the \$360-\$380 million upgrades at the Lawrence Energy Center.

John Mitchell, Director of Environment, and Rick Brunetti, Director of the Bureau of Air and Radiation, KDHE, described the status of the permitting process for Sunflower's proposed coal plant at Holcomb.

Dr. Ingrid Garrison, Environmental Health Officer and State Public Health Veterinarian, KDHE, reported on a 2006 study conducted by KDHE and the Centers for Disease Control on the health impacts of large-scale agriculture burning. Another study may be available within a year.

### **Federal Stimulus Funding for Energy**

## **and Weatherization - November 9**

### **Energy Initiatives**

Ray Hammarlund, Director, Kansas Energy Office, KCC, provided an overview of the ARRA-funded initiatives overseen by the KCC.

Ryan Freed, Energy Efficiency Programs Manager, Kansas Energy Office described many of the programs. The Kansas Energy Office received \$9.8 million in Energy Efficiency and Conservation Block Grant funds, which was distributed to local units of government through four grant programs: Renewable Energy Incentives Grants, Public Projects Grants, Energy Managers Grants, and the Take Charge Challenge. In addition, the Energy Office received \$38 million for Efficiency Kansas, a revolving loan fund created to provide low-cost financing for energy-efficiency improvements to homes and small businesses.

Liz Brosius, Outreach and Education Manager, Kansas Energy Office, reported on the Kansas Energy Efficiency Building Codes Initiative, which encourages voluntary adoption of energy efficient building codes. Legislators questioned whether Kansas will have to return federal stimulus funds received for energy if the state does not adopt a statewide building code incorporating energy efficiency.

Janet Buchanan, Senior Managing Research Analyst, KCC, described the comprehensive utility rate design project, which involves evaluation of various rate designs. A preliminary assessment will be provided in January 2011. There are competing interests in restructuring rate design and the goal is to find a solution acceptable to both the electric providers and the utility customers.

### **Weatherization**

Steve Weatherford, President, Kansas Development Finance Authority, discussed

ARRA funding for the Kansas Weatherization Assistance Program, which provides energy efficiency improvements to homes of income-eligible individuals to reduce their utility bills. The program, which receives an average of \$5.6 million per year, received an additional \$56 million in ARRA funding for the three-year period ending July 2012. Kansas also received \$2.7 million for an appliance rebate program, which was available to low-income consumers who purchased certain Energy Star appliances.

### **Deepwater Horizon Impact**

Representative Carl Holmes presented information on the impact of the oil spill in the Gulf of Mexico, based on his tour of the area with The Energy Council. He shared photos of the rescue effort, and provided an overview of the spill and its present impact. Gulf oil accounts for 30 percent of US total crude oil production. Kansas refineries reduced their Gulf oil usage several years ago because of hurricane activity and have switched to Canadian oil.

### **CONCLUSIONS AND RECOMMENDATIONS**

The Joint Committee makes the following recommendations:

- The Kansas Corporation Commission and the Kansas Housing Resource Corporation

should develop targets and measures to demonstrate the value and efficiency of the ARRA programs they administer and should continue to monitor the programs for effectiveness.

- The Kansas Energy Office should promote public awareness of conservation by speaking about conservation more frequently in public forums.
- The Committee should send a letter to the U.S. Environmental Protection Agency (EPA), the Department of Energy, and the Office of Management and Budget urging support for a flexible, rather than restrictive, rule for cooling water intake structures when the EPA issues the rule for sec. 316(b) of the Clean Water Act.
- A Joint Resolution of the Kansas House and Senate should be sent to Congress registering concern over sec. 316(b) of the Clean Water Act. The resolution should be co-addressed to the EPA Region 7 Administrator.