

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 26, 2011, in Room 785 of the Docking State Office Building.

All members were present except:

Representative Annie Kuether-excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes

Cindy Lash, Kansas Legislative Research Department

Corey Carnahan, Kansas Legislative Research Department

Renae Hansen, Committee Assistant

Conferees appearing before the Committee:

Tom Gross, KDHE

Heidi Zimmerman, Legislative Post Audit

Wayne Penrod, Sunflower Electric

Rick Brunetti, KDHE

Others attending:

Thirty including the attached list.

Informational Presentation on:

Issues related to the Permitting Process in the Bureau of Air and Radiation

Heidi Zimmerman, Legislative Post Audit, gave the committee a briefing on the performance audit report on the Department of Health and Environment which reviews issues related to the permitting process in the Bureau of Air and Radiation. This report can be found with Legislative Post Audit. She spent time talking about the permit process and about the history of the Sunflower Power Plants permitting process for the power plant they are seeking to build in Holcomb. She briefed the committee on the post audit questions that were asked and their answers. The two questions they asked were: Have there been significant changes in the process for approving permits in the past year, and are those changes increasing the length of time it takes to approve permits?; How does the basic process of approving the air-quality permits in Kansas compare to the process in a sample of other states?; and How does recent turnover in KDHE's upper-management position compare with previous years? Answers are contained in the report.

Informational Hearing on:

Air Quality Permitting Process and Issues

Tom Gross, KDHE, (Attachment 1), briefed the committee on the transport rule, the tailoring rule and mercury monitoring and how that applies to Kansas. He noted that the transport rule is proposed and would replace the EPA's 2005 Clean Air Interstate Rule (CAIR). The tailoring rule is in effect and requires the state to make the state regulations fit the EPA rules. He noted that KDHE is authorized by K.S.A. 75-5673. His power point included a map that pin pointed where their data is collected from within the state.

Questions were asked and comments made by Representatives: Tom Sloan, Forrest Knox, Carl Holmes, Vern Swanson,

Rick Brunetti, KDHE (Attachment 2), spoke to the committee about the air permitting process and how the different facilities go through the permitting procedure. He talked about the potential-to emit (PTE) and the types of air construction permits that are issued. He walked the committee through the permit issuance timeline goals. Mr. Brunetti gave figures about the Title V active operating permits regarding Class I and Class II.

Status of the Holcomb Air Permit

Wayne Penrod, Sunflower Electric, spoke to the committee about the Sunflower Holcomb power plant permit that was issued. Additionally, there is an impending appeal to the permit, that is being litigated.

CONTINUATION SHEET

The minutes of the House Energy and Utilities Committee at 9:00 A.M. on January 26, 2011, in Room 785 of the Docking State Office Building.

This litigation appeal was began by the Sierra Club. Mr. Penrod walked the committee through the permit process and noted the reason why they were not able to pull through and use the permit that was issued to them in 2002 for the Sand Sage facility. He noted that they submitted a second permit for three power plants in 2006 which was denied by KDH&E Secretary Bremby even though the staff decided that the application met all the requirements for the permit. And now finally, they have been approved for the 895 megawatt facility that has come under litigation.

Questions were asked and comments made by Representatives: Joe Seiwert, Tom Sloan, Reynaldo Mesa, Carl Holmes, and Forrest Knox.

The next meeting is scheduled for January 27, 2011.

The meeting was adjourned at 10:46 A.M.

HOUSE ENERGY AND UTILITIES COMMITTEE

GUEST LIST

DATE: January 26, 2011

NAME	REPRESENTING
JOHN BOTTENBERG	WUSTAR
JUDITH GADD	CAPITAL ADVANTAGE
WADE HARBON	" "
Doug Smith	Sunflower Electric Power Corp
DAVE HOLTHUIS	Kee
LARRY BELL	MIDWEST ENERGY
Colin Curtis	the Sandstone Group
DAVE HOLTHUIS	KEC
PAUL WAGES	KEPCO
Mandy Miller	SC&S
Leslie Kaufman	Ks Co-op Council
Corey Mohn	Commerce
John Mitchell	KDHE
LOIS STANTON	Northern Natural Gas
WAYNE PENROD	Sunflower Electric
MEL MINOR	CAPITAL ADVANTAGE
Nelson Krueger	USC
Clare Gustin	Sunflower Electric
Kelly Navinsky-Wenzel	Kearney & Assoc.
Kimberly Sraty	OSPA

HOUSE ENERGY AND UTILITIES COMMITTEE

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DATE: January 26, 2011

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Transport Rule, Tailoring Rule and Mercury Monitoring

HOUSE ENERGY AND UTILITIES

DATE:

1/26/2011

ATTACHMENT

1-1



Legislative Briefing
January 26, 2011

Thomas Gross
Kansas Department of Health and Environment
Bureau of Air



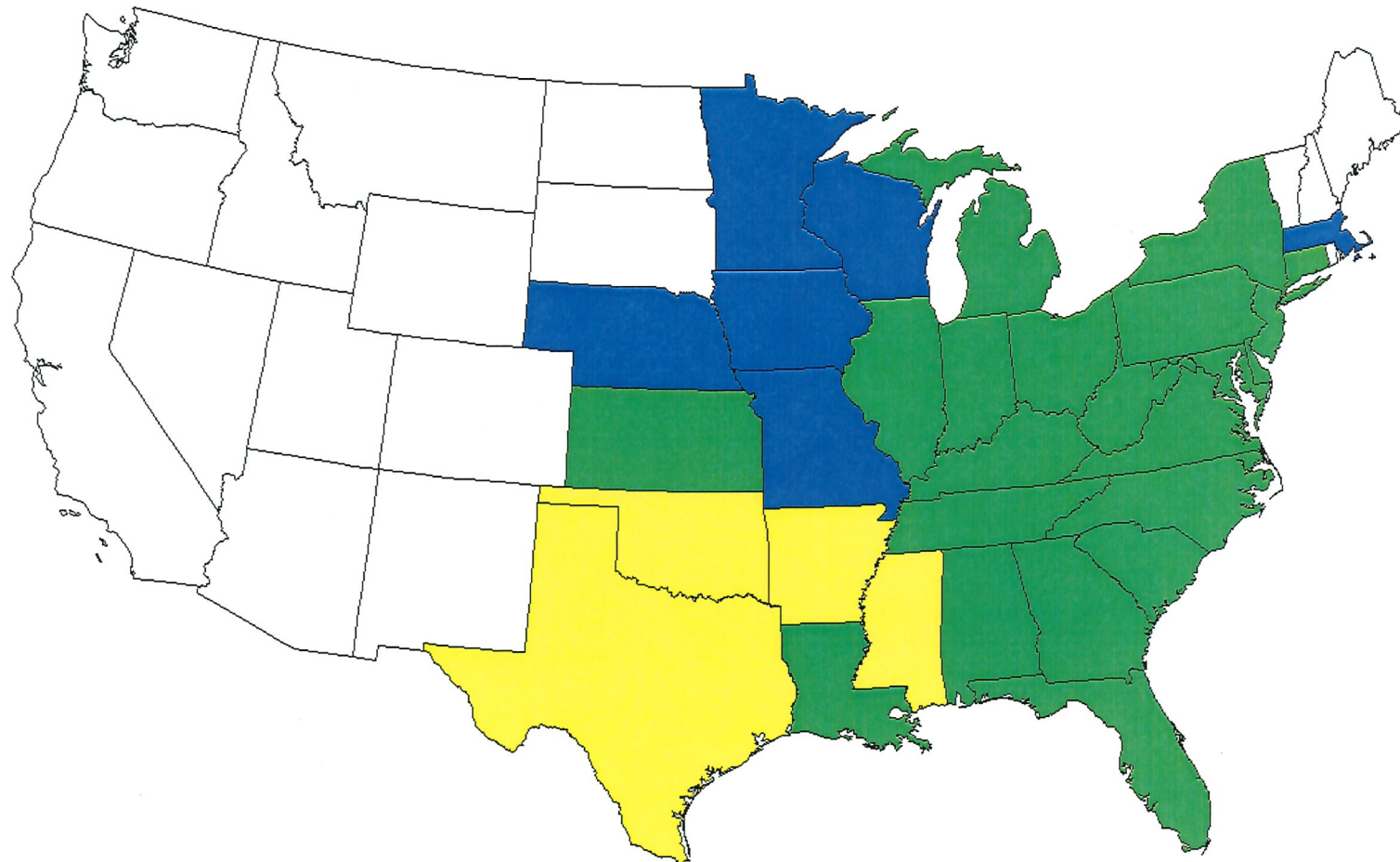
EPA's Proposed Clean Air Transport Rule (CATR)

1-2

- Replaces EPA's 2005 Clean Air Interstate Rule (CAIR)
 - Kansas not part of CAIR
 - CAIR overturned by federal court in 2008
- Reduces NO_x and SO₂ emissions that contribute to nonattainment (ozone, PM_{2.5}) in downwind states
 - SO₂ and NO_x contribute to PM_{2.5}
 - NO_x contributes to ozone
- States proposed for inclusion based on EPA photochemical modeling

1-3

31 States & D.C. Covered by Proposed Rule



- States controlled for both fine particles (annual SO₂ and NO_x) and ozone (ozone season NO_x) (21 States + DC)
- States controlled for fine particles only (annual SO₂ and NO_x) (6 States)
- States controlled for ozone only (ozone season NO_x) (4 States)
- States not covered by the Transport Rule



Overview of Proposed Transport Rule

- States receive NO_x and SO_2 emissions budgets
- Emissions reductions from power plants
- Proposed reduction of 52% in NO_x emissions in 2014 from 2005 baseline
- Proposed reduction of 71% in SO_2 emissions in 2014 from 2005 baseline emissions
- Additional NO_x reductions will be needed to meet proposed ozone standard



Three Options in Proposed CATR

- Preferred Approach
 - Allows intrastate trading and limited interstate trading of allowances, but assures each state will meet its budget
- First Alternative
 - Only intrastate trading
- Second Alternative
 - Emissions limits set for each power plant and allows averaging of emission rates



Kansas Included in Proposed CATR

1-6

- Kansas slightly exceeds ozone threshold for contribution
 - ☐ Kansas has EPA-approved ozone SIP that addresses transport
 - ☐ EPA will request modified ozone SIP
- Kansas moderately exceeds $PM_{2.5}$ threshold
 - ☐ Kansas has submitted $PM_{2.5}$ SIP (not yet approved)
 - ☐ EPA will request SIP $PM_{2.5}$ modification



Transport Rule Issues

- EPA proposed modeling based on 2005/2007 emissions inventory data
 - Significant reductions in Kansas since then
- Proposed CATR calls for reductions by 2012
 - Kansas sources have existing agreements with EPA for reductions by 2013-2014
 - EPA will not give credit for reductions in progress but not yet complete
- Very short timeframe to meet 2012 deadline
- Make decision on SIP submittals

GHG Tailoring Rule - Background

- April 2, 2007 - Massachusetts v. EPA
 - Supreme Court ruled that CAA gives EPA authority to regulate GHGs
- December 15, 2009 – EPA published 2 findings:
 - “Endangerment Finding”
 - GHGs reasonably anticipated to endanger public health
 - “Cause or Contribute Finding”
 - Emissions from motor vehicles contribute to GHG pollution
- May 7, 2010 – EPA issued Light-Duty Vehicle Rule
 - Established controls on GHGs from light-duty vehicles
- May 13, 2010 – EPA issued GHG Tailoring Rule
 - “Tailors” applicability thresholds for GHG emissions



GHG Tailoring Rule

- “Tailors” applicability of PSD (construction) and Title V (operating) permits on largest GHG-emitting facilities
- Sets thresholds for permitting emissions of 6 GHGs:
 - Methane (CH_4)
 - Carbon dioxide (CO_2) (PFCs)
 - Nitrous oxide (N_2O)
 - Hydrofluorocarbons (HFCs)
 - Perfluorocarbons
 - Sulfur hexafluoride (SF_6)
- EPA will phase in permitting requirements for GHGs in two initial steps



GHG Tailoring Rule Timeline

- August 2, 2010 – Kansas submitted 60-day letter to EPA, outlining plans to implement at state level
- September 2, 2010 – EPA published proposed SIP/FIP calls
- October 4, 2010 – Kansas submitted 30-day letter notifying EPA of time frame for Kansas' GHG PSD SIP revision to EPA
- October 26, 2010 – Public hearing for Kansas regulations to adopt the federal GHG Tailoring Rule
- December 22, 2010 – KDHE submits GHG rule and SIP to EPA
- January 2, 2011 – Step 1 of the Tailoring Rule begins, state and federal rules are effective and KDHE delegation for GHG permits commences



Clean Air Act Thresholds

- PSD (construction)
 - 250 tons/year (or 100 tons/year for some categories)
- Title V (operating)
 - 100 tons/year
- Criteria pollutants:
 - NO₂, SO₂, O₃, CO, PM, Pb,

GHG Tailoring Rule Thresholds

- Step 1 – GHG emissions increase of $\geq 75,000$ tons/year CO₂e
- Step 2 – GHG emissions of $\geq 100,000$ tons/year CO₂e
- GHGs
 - CO₂, CH₄, N₂O, HFCs, PFCs, SF₆



Permitting Phase-In: Step 1

January 2, 2011 – June 30, 2011

- Affects *only* sources already covered by PSD program
- Operating Permits (Title V)
 - ☐ Only sources subject to PSD for GHGs are subject to Title V requirements
- No sources subject to Tailoring Rule requirements *only* for GHG emissions.

Permitting Phase-In: Step 2

July 1, 2011 to June 30, 2013

- PSD permitting requirements
 - New construction projects with GHG emissions \geq 100,000 tons/year CO₂e.
 - Modifications at existing facilities with GHG emissions with \geq 75,000 tons/year CO₂e
 - Annually, average of 3 Kansas sources meet those criteria
- Operating permit requirements
 - ~ 30 existing Title V sources in Kansas affected - 12 ethanol facilities
 - 23 active and 2-6 closed municipal solid waste landfills



Current Status of GHG Permitting

- EPA published intent to review and approve our SIP submittal on October 1
- KDHE currently under Federal Implementation Plan to avoid moratorium on PSD permitting,
- KDHE temporarily accepted delegation of the GHG permitting program in December 2010
- EPA indicates our SIP revision will be approved in February, 2011

Don't Mess With Texas

- On August 2, 2010 – Texas AG sent letter to EPA, stating that Texas
 - "has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emissions."
- Opposition to EPA mostly has been led by Texas, Alabama, and Virginia.
 - Texas and Virginia have focused on the validity of the "endangerment finding" and the "tailoring rule."
- December 23, 2010 – EPA promulgated interim final rule for disapproval of Texas SIP



Mercury Monitoring Network

- Authorized by K.S.A. 75-5673
- Requires at least six sites in Kansas
- Must contract with a proven laboratory
- Participate in the National Atmospheric Deposition Program (NADP)
- Purpose is to quantify atmospheric fate and wet deposition of mercury
- Weekly sample collection
- Data and analysis reports on web sites:
 - <http://www.kdheks.gov/>
 - <http://nadp.sws.uiuc.edu/mdn/>

Mercury Wet Deposition Network

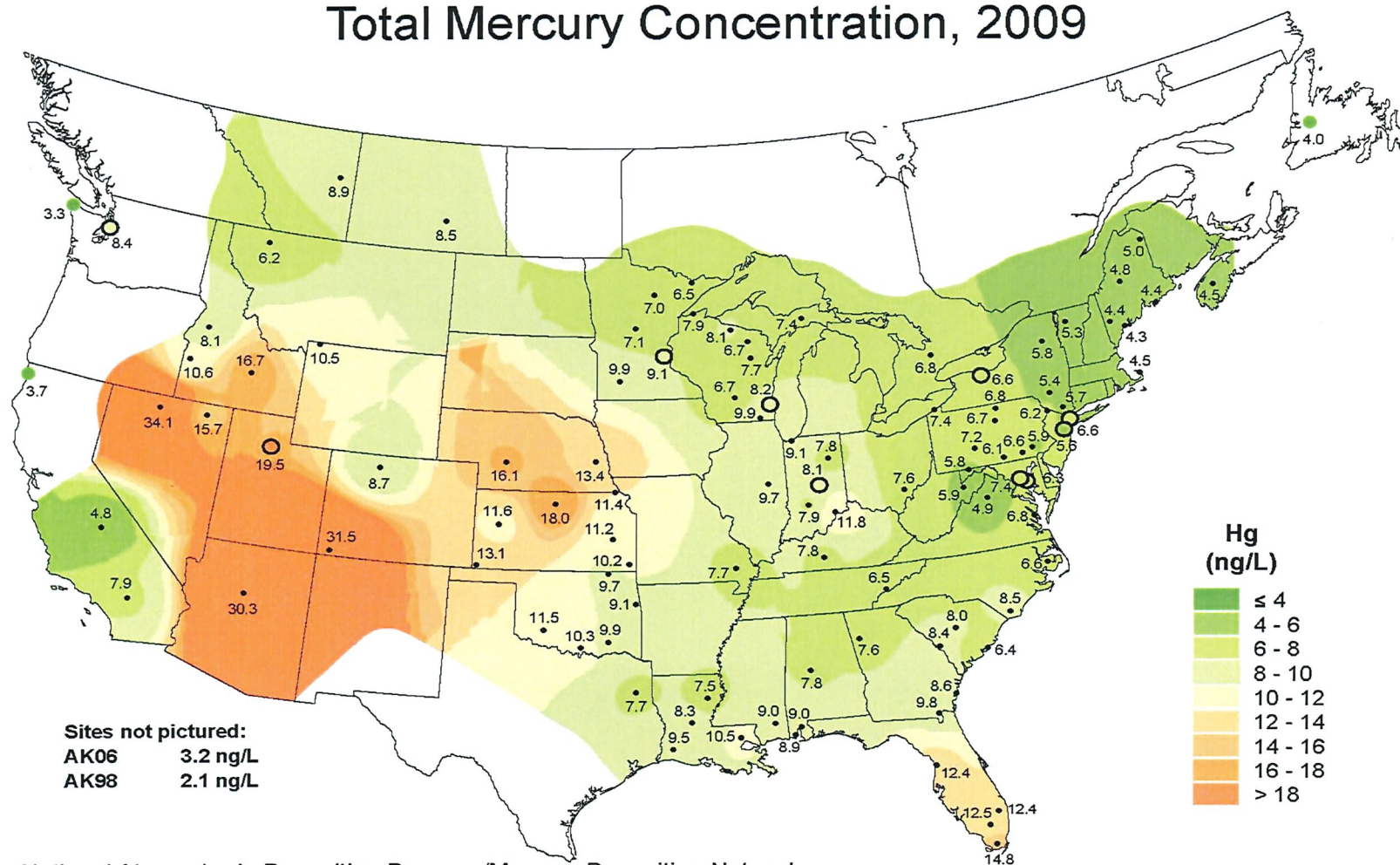


Reserve Monitoring Site



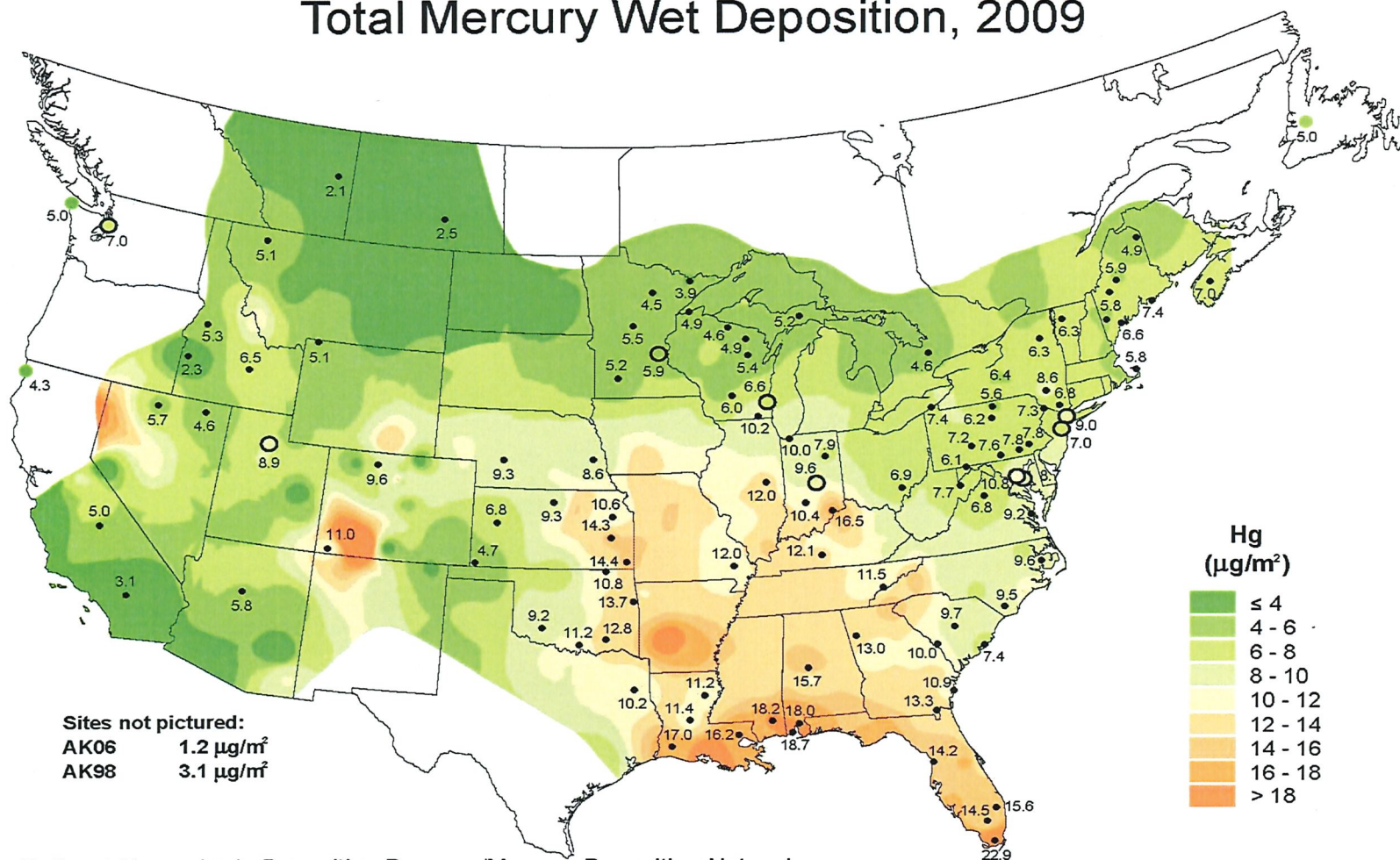
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Total Mercury Concentration, 2009



National Atmospheric Deposition Program/Mercury Deposition Network

Total Mercury Wet Deposition, 2009



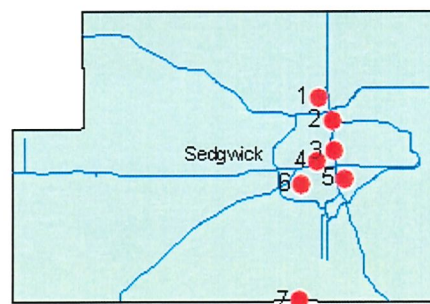
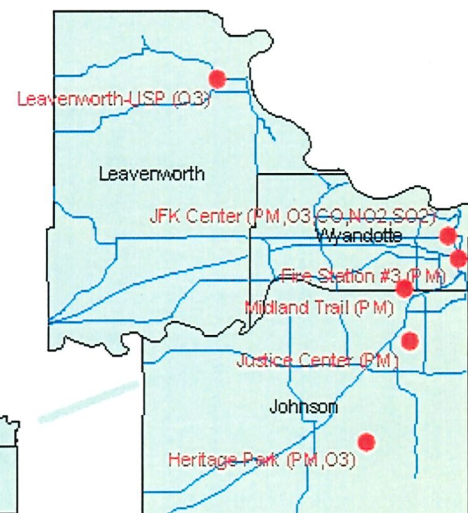
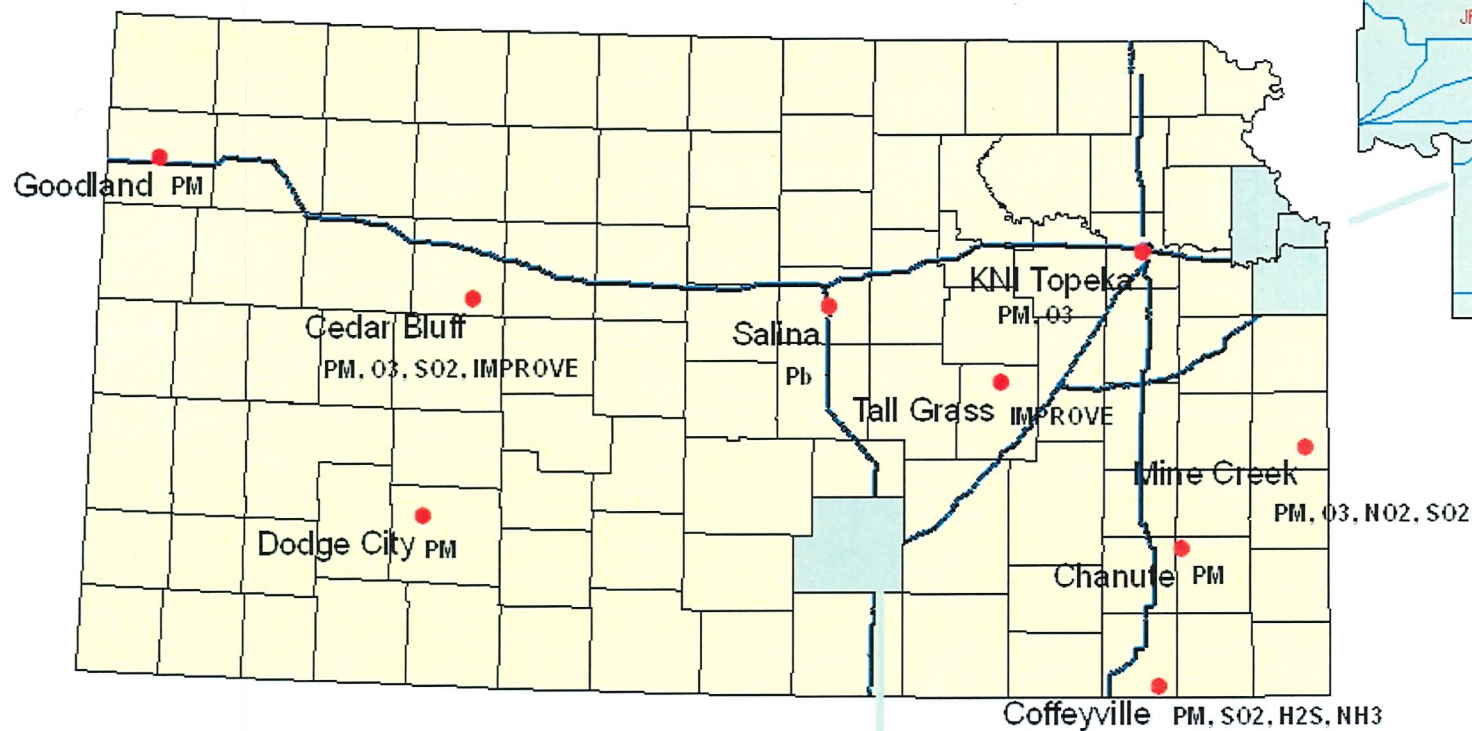
National Atmospheric Deposition Program/Mercury Deposition Network

Factors Affecting Mercury Deposition

- Chemical form of mercury - Hg^0 or Hg^{2+} .
- Higher temperatures cause more rapid chemical conversion.
- More oxidants present in atmosphere – O_3 and OH^-
- Higher concentrations of Hg^0 from increased power generation, etc
- More precipitation flushes mercury out of the air more efficiently
- The atmosphere contains particulate matter

Kansas Ambient Air Monitoring Network

2011



1. Park City O₃
2. K96 & Hydraulic PM
3. Health Dept. PM, O₃, NO₂
4. Douglas & Main CO
5. George Washington & Skinner PM
6. Glenn & Pawnee PM
7. Peck O₃, NO₂, SO₂, PM

QUESTIONS?

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www.kdheks.gov

HOUSE ENERGY AND UTILITIES

DATE: 1/26/2011

ATTACHMENT 2-1

Air Permitting

**Rick Brunetti, Director
KDHE - Bureau of Air
January 26, 2010**

House Committee on Energy and Utilities

Our Vision – Healthy Kansans living in safe and sustainable environments.



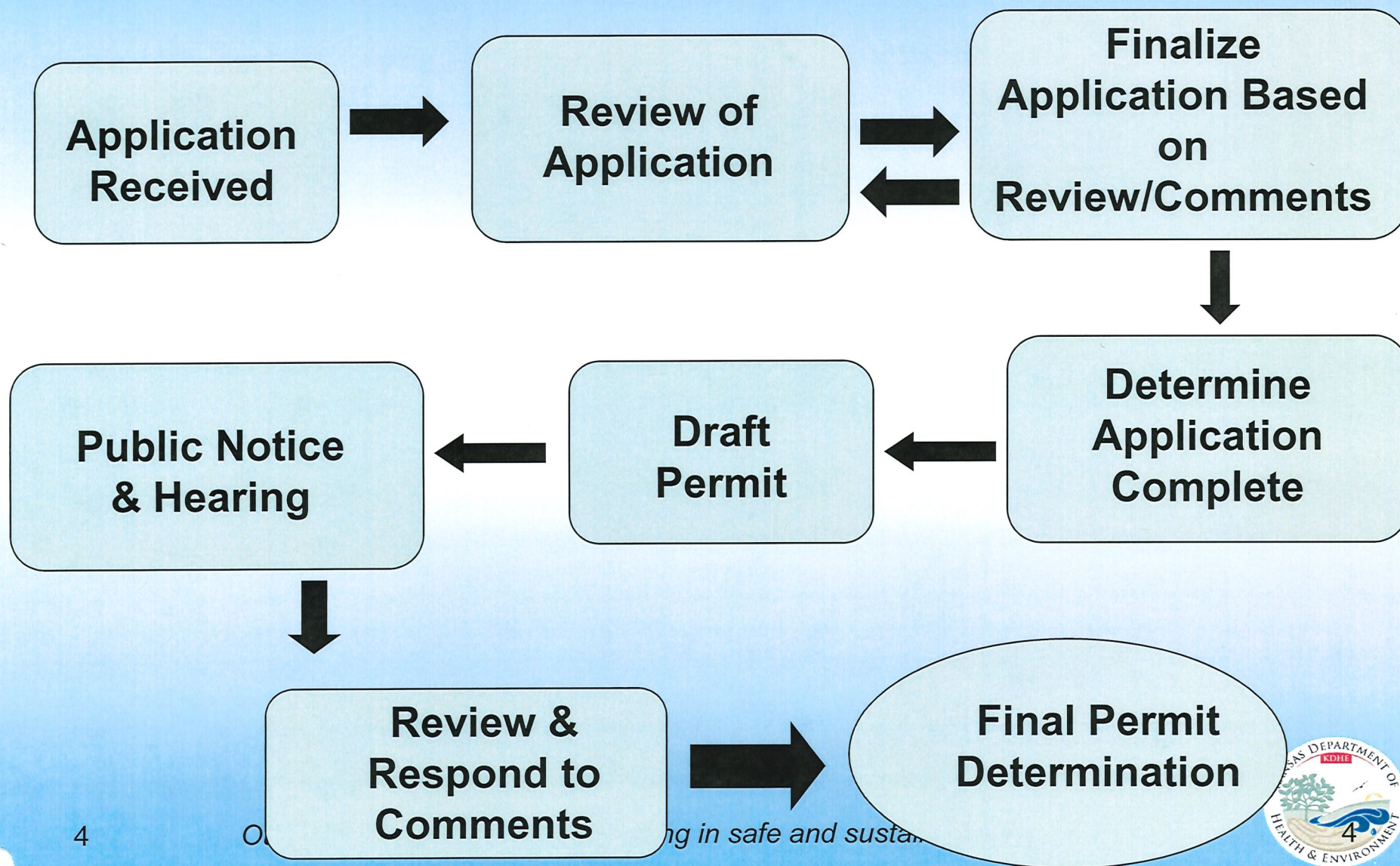
Air Permit Section

Four Permit Units

- VOC Sources / Refineries
- Power Plants
- Natural Resources / Natural Gas Facilities
- Dispersion Modeling



Generalized Permitting Process



Air Permitting Basics

- Definition of a Facility
- Potential-To-Emit
- Construction Permits
- Operating Permits



Definition of a Facility

Must meet all 3 of the following criteria to be permitted as one source:

- Common Owner or Common Control
- Same Major SIC Code or Support Facility
- Contiguous or Adjacent Property



Potential-To-Emit (PTE)

- Defined as the Maximum Capacity of a Stationary Source to Emit a Pollutant Under Its Physical and Operational Design
- Can Include Limitations if Federally Enforceable
 - Limits in an air permit
 - Limits included in a federal regulation
- Example Limitations
 - Use of control equipment
 - Production/usage limit
 - Hours of operation limit
 - Emission limit required by a regulation



Types of Air Construction Permits

- Prevention of Signification Deterioration (PSD) Permits
- Construction Permits
- Construction Approvals

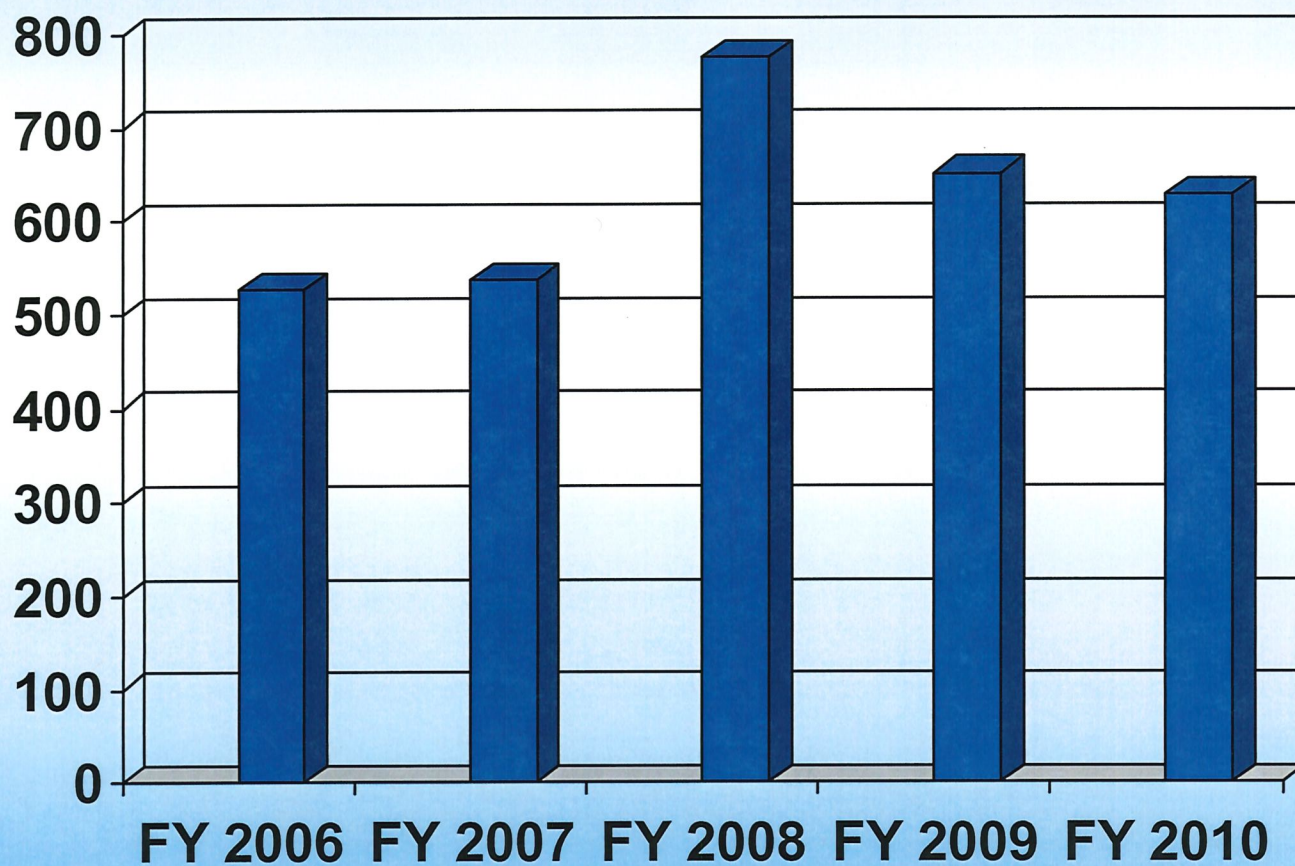


General Construction Permit Issues

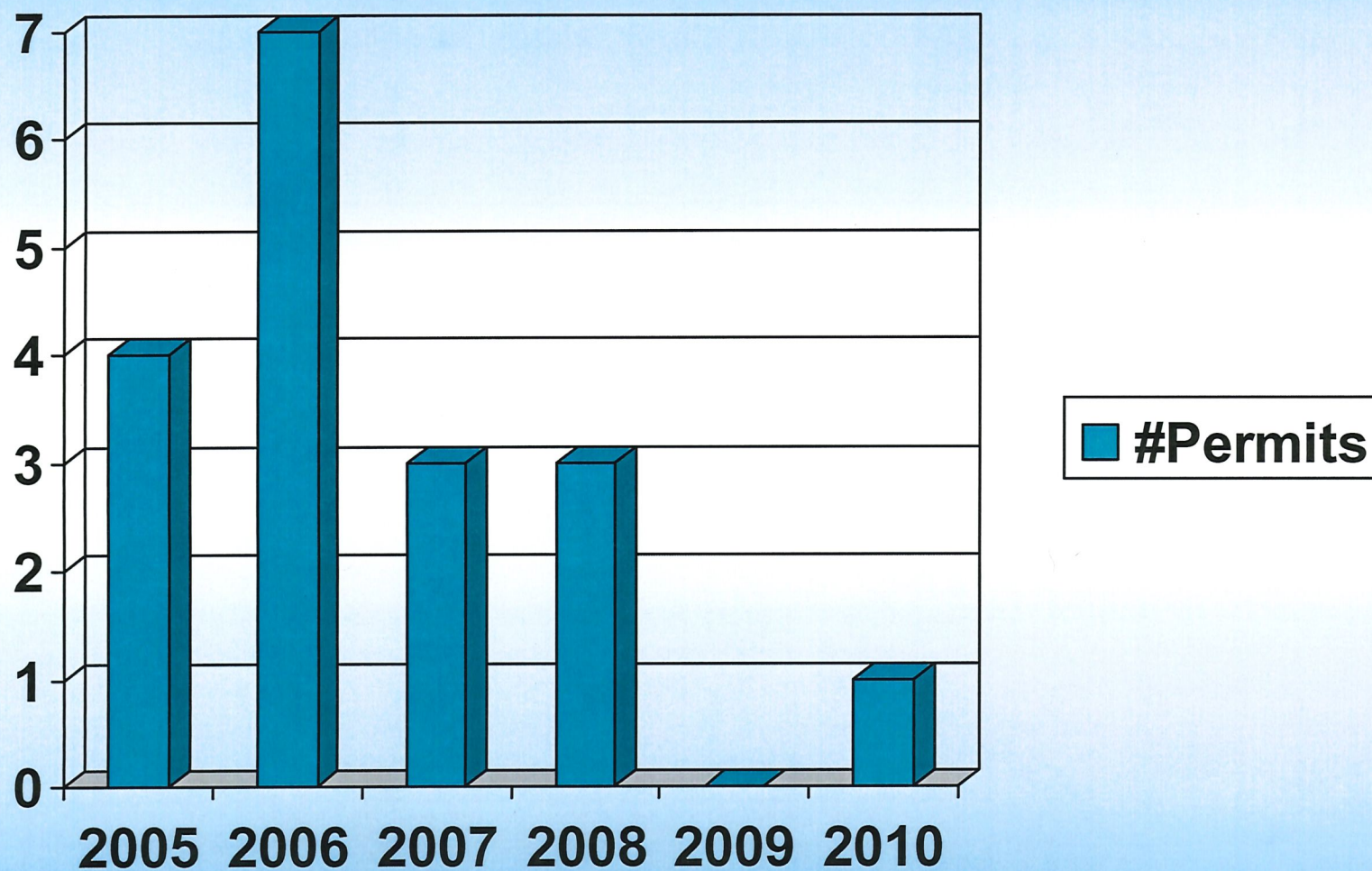
- Only the Project is Evaluated
- Project Typically Involves New Emission Unit or Modification of Existing Emission Unit
 - Typical units include boilers, tanks, engines, rock crushers, & paint booths
- Change in the Method of Operation
- Obtained Prior to Beginning Construction



Permit Issuance Operating and Construction



PSD Permits Issued



Permit Issuance Timeline Goals:

- Complex 180 days
- Routine 60 days
- Expedited 10 days

Factors Affecting Issuance Rates:

- Completeness of Application
- Responsiveness of the Applicant
- Complexity of Project
- Public Notice/Hearing Requirements
- Permitting Staff Vacancies
- In 2010, BOA met these goals 87% of the time for construction permits and 91% of the time for operating permits.



Title V

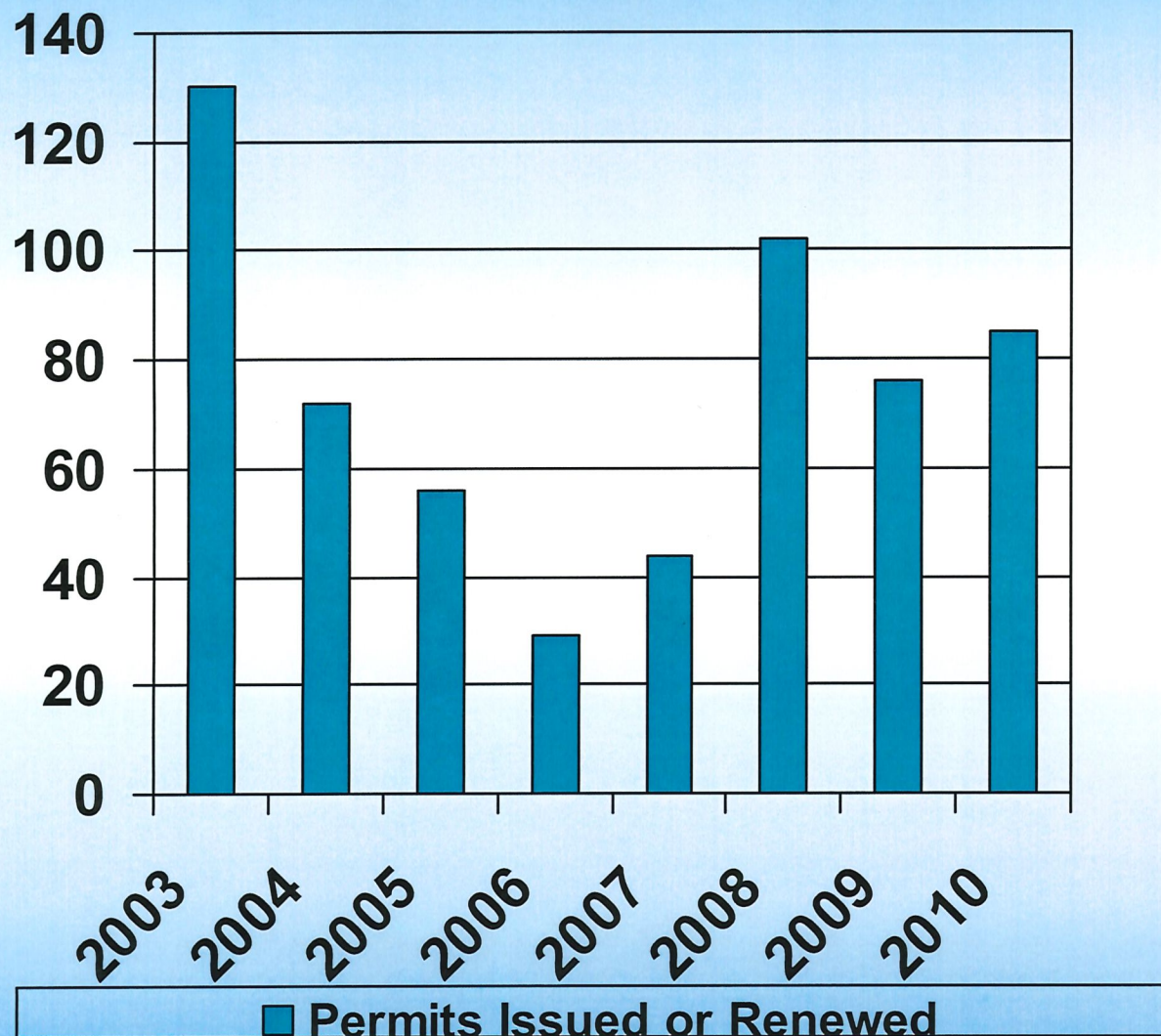
Active Operating Permits

- Class I - 293 Active Permits
- Class II - 737 Active Permits



2-14

Title V Operating Permits





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