

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

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

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

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

Others attending:

See attached list.

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

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

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

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

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

Senator Ostmeyer asked about Mt. St. Helens' particulates and how long they stay in the atmosphere to be deposited elsewhere. Mr. Gross said they have ways to flag unexpected events that occur during the course

CONTINUATION SHEET

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of a year so it is not included in the baseline data for that year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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is taken into account.

Senator Taddiken asked whether the contracts and agreements are signed off by the Secretary of KDHE and will there be any opportunity for legislative review before they are signed? Mr. Gross said it would not be required, but certainly could be done.

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

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





K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on Senate Bill 386 to  
Senate Natural Resources Committee  
Presented by  
Thomas Gross, Bureau of Air and Radiation**

**January 27, 2006**

Chairman McGinn and members of the Senate Natural Resources Committee, I am pleased to appear before you today to request your support for passage of a bill related to implementing the federal Clean Air Mercury and Regional Haze rules.

Over the last decade, air pollution control activities in the United States have changed from a focus on controlling air pollutants on a city, county, or multi-county basis to evaluating and making pollution control decisions on a regional or multi-state basis. Many air pollutants can travel long distances and affect air quality hundreds of miles distant. The federal mercury and regional haze rules were a result of this new understanding of the role of transport in air pollution. The changes proposed in this legislative initiative are necessary for the Department of Health and Environment to implement these two federal rules in Kansas.

On March 15, 2005, the Environmental Protection Agency issued a rule to reduce mercury emissions from coal-fired power plants. The Clean Air Mercury Rule limits mercury emissions from both new and existing coal-fired power plants. The rule provides an option for states to participate in a federal market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two phases. The first reductions would be required by 2010. The second phase, due in 2018, requires coal-fired power plants to meet a nationwide cap of 15 tons of mercury emissions. To implement the Clean Air Mercury Rule in Kansas, the Department will be required to adopt the federal regulations regarding the cap and trade program and prepare a State Implementation Plan. The cap and trade program will allow Kansas utilities greater flexibility and cost savings in complying with the federal rule. Under the cap and trade program, each electric generating unit will receive a mercury allowance. Utilities will be able to buy and sell mercury allowances on an open market to comply with the rule. The proposed legislation addresses the participation by Kansas utilities in the cap-and-trade program. The due date for submission of the state implementation plan to EPA is November 17, 2006.

The Regional Haze Program was created by the 1990 amendments to the Clean Air Act. The purpose of the Regional Haze Program is to improve visibility in federally designated Class I areas such as national parks, wilderness areas, national memorial parks, and international parks. There are 156 Class I areas across the country. EPA proposed the regional haze regulations in July 1997 (40 CFR Part 51.308). The rule requires States to establish goals for each affected Class I area to improve visibility on the haziest days and ensure no

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ATTACHMENT I

degradation occurs on the clearest days.

The federal rule requires the State of Kansas to submit to EPA a regional haze State Implementation Plan (SIP) that includes controls on Kansas air pollution sources that affect Class I areas in neighboring states. Kansas may submit its Part 51 SIP utilizing a regional planning process with one or more surrounding states. Kansas participates in the nine-state Central states Regional Air Planning organization (CENRAP). This organization is jointly completing technical analysis and developing emission management strategies for the group. These recommendations will be provided to KDHE for review and use in developing the regional haze SIP. Kansas must submit the regional haze SIP no later than December 2007.

One of the principal elements of the Regional Haze Program is the installation of Best Available Retrofit Technology (BART) for certain existing large air pollution sources placed into operation between 1962 and 1977. The regional haze rule requires each state to develop a list of BART-eligible sources; conduct an analysis of the benefits of installing pollution control equipment on the BART sources; and develop BART emission limits for each source, or an alternative measure such as an emissions trading or offset program for achieving greater emission reductions. The implementation of control strategies, including BART, is to be phased in through 2018 in order to meet the reasonable progress goals established for each Class I area. A periodic report on progress is due every five years.

The proposed statutory changes will add regional haze to the definition of the term "air pollution" and will add a new definition for the term "regional haze". The changes will also add to the powers of the Secretary of KDHE by providing authority to develop a State Implementation Plan that would provide for controls on sources of air pollution in Kansas when those sources affect air quality in other states. The changes also add the authority for the Secretary to develop or participate in cap and trade or offset programs to provide for a more cost-effective means of achieving air pollution reduction goals. This provision would be used in implementing the mercury rule and could also apply to the regional haze rule.

The Department has held numerous meetings and conference calls with the industries that will be affected by these two rules to obtain their input into the implementation process. I have a slide show with graphics that will allow me to better illustrate some of the concepts that I have discussed. I thank you for the opportunity to appear before the Senate Natural Resources Committee and will gladly stand for questions the committee may have on this topic.

**Senate Natural Resources Committee**

**January 27, 2006**

# **Senate Bill 386 Regional Haze Rule and Clean Air Mercury Rule**

Thomas Gross  
Bureau of Air and Radiation  
Kansas Department of Health and Environment

## **Why address regional haze?**

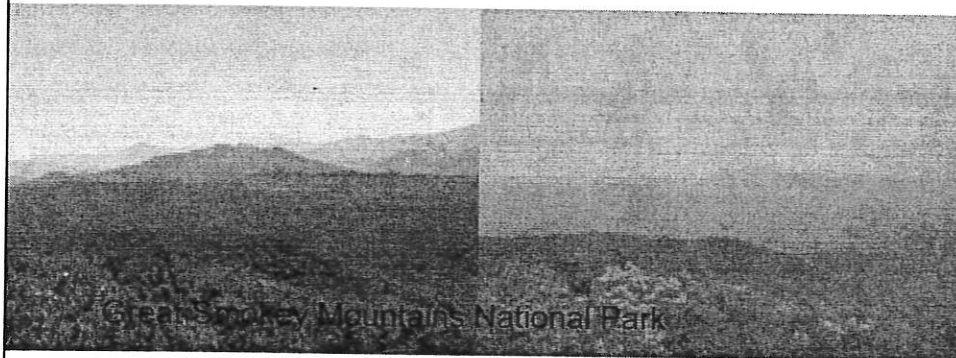
- **Section 169A, federal Clean Air Act:**

“Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.”

- **Preamble to 40 CFR Part 51**

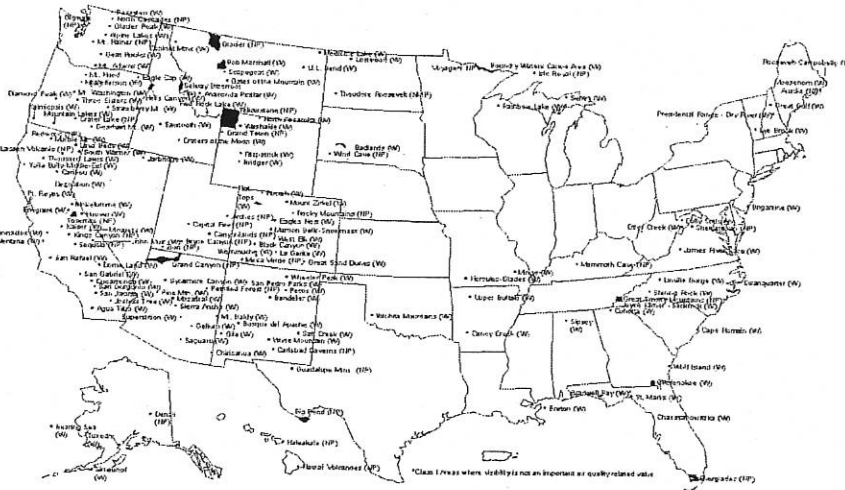
“EPA has concluded in today’s final rule that all States contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area and, therefore, must submit regional haze SIPs.”

# What is regional haze?



Very fine particles and gases that scatter or absorb light – Sulfates, Nitrates, Carbon....

# Class I areas subject to Regional Haze Rule



Map of 156 National Park and Wilderness Areas



## Timeline

- State implementation plan due Dec, 2007
- First round controls implemented by 2013
- Show reasonable progress through 2018
- Baseline for current visibility 2000–2004
- Natural visibility conditions by 2064



## **Regional haze reductions in three ways**

- Credit for controls from other regulations
  - Motor vehicles
  - Fuels
  - Clean Air Interstate Rule
  
- BART – best available retrofit technology
  
- “Just in case” controls
  - Everything that’s not BART

## **Best available retrofit technology**

- BART sources--large industrial sources built between 1962 and 1977 that emit haze causing pollutants
- 18 potential BART sources in Kansas
- BART control requirements based on:
  - Cost
  - Visibility improvement
  - Current controls in place
  - Remaining useful life of source
  - Energy and non-air quality impacts

## Clean Air Mercury Rule

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- Creates mercury limits for new and existing coal-fired power plants greater than 25 megawatts
- Optional market-based cap and trade program in 2 phases:
  - Phase 1 (2010-2017) cap = 38 tons nationwide -- 1446 lb for Kansas
  - Phase 2 (2018 and beyond) cap = 15 tons nationwide -- 570 lb for Kansas
- States have flexibility on how to achieve the required reductions

### EPA Role

- Set state budgets
- Establish trading program
- Administer tracking system
- Define allowance allocation parameters

### KDHE Role

- Prepare and submit state implementation plan by November, 2006
- Prepare administrative regulations with mercury allocation program
- Allocate mercury allowances

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**Testimony in Favor of S.B. 386**  
Concerning air contaminant emission sources  
**On behalf of the Kansas Chapter of Sierra Club**  
Before the Kansas Senate Committee on Natural Resources  
January 27, 2006

Madam Chair, members of the Committee, thank you for the opportunity to testify in favor of S.B. 386 on behalf of the Sierra Club – the largest grass roots environmental organization in the world with over 750,000 members, including over 4,000 in Kansas. Sierra Club strongly supports public policies that reduce man-made air pollutants, whatever their source, that contribute to lung diseases such as asthma and lung cancer to which our most vulnerable citizens, children and the elderly, are most susceptible. Air pollution problems are particularly acute in the larger cities of Kansas - Wichita and the Kansas City metro area.

S.B. 362 does several things. First it amends the definitions section of K.S.A. 65-3002(c) that defines “air pollution” to include airborne contaminants that contribute to the formation of “regional haze.” Second, a definition of “Regional haze” is added to the statute. Third, K.S.A. 65-3005 is amended to allow the KDHE Secretary to develop comprehensive plans for the prevention, abatement and control of air pollution not only in Kansas (as in current law) but also that originates in Kansas or that affects air quality in Kansas or in other states. This is a particularly critical change in law since it recognizes that air pollution knows no state boundaries. Fourth, the bill amends K.S.A. 65-3005 to allow the KDHE Secretary to enter into contracts with all local units of government in Kansas, other states and interstate and interlocal agencies to deal with air pollution issues. Again, this change in law recognizes the complexity of dealing with the air pollution problem and gives the KDHE Secretary the authority she or he needs to get the job done to reduce sources of air pollution.

Perhaps the most innovative part of S.B. 386 is the provision that allows the KDHE Secretary to enter into intrastate or interstate “emissions trading programs” that demonstrate “equivalent air quality benefits for the prevention, abatement and control of air pollution in Kansas or in other states or both.” Many federal environmental laws enacted by Congress in the 1970’s, such as the Clean Water Act and the Clean Air Act, are now criticized for being inflexible “command and control” mechanisms for dealing with water and air pollution. Emissions trading is another approach that seeks to resolve air and water problems in a more flexible manner. The legislature should give the KDHE Secretary this tool to use, when appropriate, to achieve what we all desire – healthier air for our families and our future. The Kansas Chapter of Sierra Club respectfully urges your support for S.B. 386.

*Senate Natural Resources  
1-27-06  
Attachment 2*

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**TESTIMONY**

TO: The Honorable Carolyn McGinn  
And Members Of The  
Senate Committee on Natural Resources

FROM: Whitney Damron  
On Behalf Of  
The Empire District Electric Company

*And*

Aquila Corporation  
Board of Public Utilities (BPU)  
KCPL  
Kansas Electric Cooperatives, Inc.  
Sunflower Electric Power Corporation  
Westar Energy

RE: SB 386 - An Act concerning air contaminant emission sources.

DATE: January 27, 2006

Good morning Madam Chair McGinn and Members of the Senate Committee on Natural Resources. I am Whitney Damron and I appear before you today on behalf of my client, The Empire District Electric Company, and six other electric utilities which are listed above, in support of SB 386 that would allow the Kansas Department of Health and Environment to adopt rules and regulations relating to regional haze.

Representatives of all seven utilities have worked together over the past few months with KDHE and come together to support this legislation.

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Attachment 3

Regional haze is a national problem caused by multiple sources over a wide area. Visibility is affected by different sources at different times of the year and under different weather conditions. Some significant contributors to visibility impairment include car and truck emissions, power generation plants, wildfires, agriculture fires and wind-blown dust. To reduce haze, and to meet requirements of the Clean Air Act, in April of 1999, the Environmental Protection Agency (EPA) issued a regional haze rule aimed at protecting visibility in 156 Federal areas. The rule seeks to reduce the visibility impairment caused by many sources over a wide area. Federal areas that may be affected by Kansas emissions are wilderness areas located in several surrounding states.

Under EPA requirements, states must develop their implementation plans by December, 2007. States will identify facilities that will have to reduce emissions under Best Available Retrofit Technology (BART) and then set BART emissions limits for those facilities.

SB 386 provides rule and regulation authority to the Kansas Department of Health and Environment to implement the regional haze rule. Absent this authority, the Environmental Protection Agency would take the lead. The signators to this testimony believe KDHE has the capability to implement the regional haze rule in an appropriate manner.

In closing, I would note that representatives of the co-sponsors of this testimony are present and available to respond to your questions, as am I. And also, we would all like to express our appreciation to KDHE for working with the electric industry to bring this legislation forth.

We urge the Committee to adopt SB 386.

Thank you.

WBD



Since 1894

### Testimony

To: Senate Natural Resources Committee  
Senator Carolyn McGinn, Chair

From: Allie Devine, Vice President and General Counsel

Date: January 25, 2006

Re: SB 386

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 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, grazing land management and diversified farming operations.*

The Kansas Livestock Association appreciates the opportunity to comment on SB 386. SB 386 addresses air quality issues. Air regulation is complex and has far reaching impacts for the Kansas and all states. In short-the regulation of air has evolved to the same complexity and significance as water regulation.

Over the past five years, the National Cattlemen's Beef Association (NCBA) has spent hundreds of thousands of dollars on legal research defining the air regulatory perimeters of open pen cattle operations and other agricultural operations. NCBA staff has followed closely the actions against livestock and agricultural operations in Arizona and California. I have participated in numerous conference calls relating to air emissions (including dust) from agricultural operations and the potential regulatory frameworks that result.

Given the complexity of the issue, I would respectfully request an opportunity to ask the NCBA staff to review the bill and comment on its legal affects to Kansas agriculture and in particular livestock operations including feedyards and rangeland burning. I have discussed the bill with KDHE staff and have received their assurances that it is not their intention to regulate agricultural operations at this time. However, the potential of future regulation is there and KLA would like the opportunity to fully understand our legal exposure.

Thank you.

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Attachment 4