

Approved: March 7, 2007
Date

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on March 2, 2007 in Room 241-N of the Capitol.

All members were present except:

Vaughn Flora-excused
Dan Johnson-excused

Committee staff present:

Mary Galligan, Kansas Legislative Research
Dennis Hodgins, Kansas Legislative Research
Mary Torrence, Revisor's Office
Jason Long, Revisor's Office
Rena Hansen, Committee Assistant

Conferees appearing before the committee:

Deena Horst, Representative
Tom Thompson, Sierra Club
Joe Spease, Pristene Power

Others attending:

Eighteen including the attached list.

Hearing on:

HB 2479 **Renewable portfolio standard for electric public utilities.**

Proponents:

Deena Horst, Representative, (Attachment 1), presented testimony in support of **HB 2479** explaining reasons why she brought this bill before the committee. She recommended that this bill be passed as it is important for the legislature to have information about the amount of energy being produced from renewable energy sources.

Tom Thompson, Sierra Club, (Attachment 2), offered testimony in support of **HB 2479** noting specific recommendations for the RPS standard incremental increases in the state of Kansas.

Joe Spease, Pristene Power, (Attachment 3), offered supporting testimony for **HB 2479** recommending some changes needed to make this bill actually make a difference in renewable energy.

Written Proponents:

Dan Nagengast, Kansas Rural Center, (Attachment 4), offered written testimony in support of **HB 2479**.

Written Opponents:

John Donley, Kansas Livestock Association, (Attachment 5), presented written testimony in opposition of **HB 2479**.

Questions were asked and comments made by Representatives: Carl Holmes, Don Myers, Annie Kuether, Rob Olson, Forrest Knox, Tom Sloan, Josh Svaty, and Terry McLachlan.

Hearing on **HB 2479** was closed.

Handouts to the committee from KCPL, Paul Snider (Attachment 6).

CONTINUATION SHEET

MINUTES OF THE House Energy and Utilities Committee at 9:00 A.M. on March 2, 2007 in Room 241-N of the Capitol.

Other handouts from yesterdays testimony, (Attachments 7 and 8).

The next meeting is scheduled for March 6, 2007.

Meeting Adjourned.

DEENA HORST
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TOPEKA
 HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIRPERSON: ARTS & CULTURAL RESOURCES
 JOINT COMMITTEE
 CHAIRPERSON: KANSAS COMMEMORATIVE COIN
 COMMISSION
 VICE-CHAIRPERSON: EDUCATION (K-12)
 MEMBER: CORRECTIONS AND JUVENILE
 JUSTICE
 HIGHER EDUCATION
 ECONOMIC DEVELOPMENT
 LEGISLATIVE EDUCATION
 PLANNING

**TESTIMONY
 HB 2479**

Thank you Chairman Holmes, Vice-Chairman Olson, Ranking Minority Member Kuether and other members of the House Energy and Utilities Committee, thank you for giving me a few minutes to visit with you regarding the concept of HB 2479.

I have had a number of individuals in Salina ask me why Kansas doesn't require the electric utility companies which serve the state to have a percentage of the electricity they provide to be generated from renewable sources. It seemed to me that the discussion should take place regarding the concept of renewable fuels, the percentages to be reached and the time frame within which the companies would operate.

The bill requires that each electric public utility is to generate or acquire sufficient electricity that is generated by a renewable source so that beginning in 2009 at least 1.25% of the total electric sales by any given public utility's to their Kansas customers is generated by a renewable source(s). The amount is increased by 1.25% of the utility's total retail sales each year until 2012.

The bill also requires the K.C. to issue an order which details the criteria and standards by which it will measure an electric public utility's efforts to meet the renewable energy objectives, the reliability of the utility's system and economic impact on ratepayers, as well as a weighted scale of how energy produced by renewable source technologies will count toward a utility's objective.

In addition, each public utility is required to report its plans, activities and progress with regard to the objectives in a report submitted to the commission every two years. K.C. then is required to compile the information provided to it by the utilities to the House of Representatives and Senate chairpersons of the committees responsible for energy and utility policy issues. In addition, K.C. is asked to provide recommendations for regulatory or legislative action regarding electricity generated by renewable sources in the report to the committee chairpersons.

I am hopeful that discussion will ensue regarding the issue of generating a percentage of electricity by renewable sources and the regulatory procedures which need to be developed for implementation of this or similar legislation.

Thank you again for your time.

Representative Deena Horst, 69th District
 House of Representatives

ENERGY AND HOUSE UTILITIES

DATE: 3/2/2007

ATTACHMENT 1

Testimony before the House Energy and Utility Committee
March 2, 2007
Proponent for H.B. 2479

Chairperson Holmes and Honorable Members of the Committee:

My name is Tom Thompson and I represent the Kansas Chapter of the Sierra Club. I have come today to support of H.B. 2479.

The Sierra Club has a Global Warming Campaign that is aimed at decreasing greenhouse gasses in the atmosphere. To do this it is working to encourage energy conservation and efficiency, the purchasing of automobiles that operate more cleanly and efficiently and decreasing the production of CO2 and its release into the atmosphere.

By setting goals to change energy production from burning coal to using renewable forms, the Sierra Club believes the economy will benefit, CO2 emissions will decrease and jobs will be created.

Energy Efficiency and Renewable Energy with the U.S. Department of Energy lists 24 states with a RPS. These range from 2.2% by 2011 in Wisconsin to 25% in Illinois by 2017 (voluntary). New York, whose RPS is for 25% by 2017 reports that it anticipates only a modest impact on consumers and in fact anticipates that wholesale energy prices are likely to decline.

Closer to Kansas, Colorado voters passed a RPS in 2002 that requires 10% by 2014 with 4% coming from solar. Furthermore, residential rate payers were not to be impacted more than \$.50 a month. It has been projected that this ceiling will not be reached. According to the Union of Concerned Scientists, the U.S. Energy Information Administration reports that when using high estimates for Renewable Energy, a renewable energy standard of 10% by 2020 would have virtually no impact on consumer electric prices.

The Sierra Club supports a RPS being established in Kansas. It also supports a national RPS of 20% by the year 2020. The then Governor of Texas, George W. Bush signed into law a RPS of 2000 megawatts by 2009. The incremental goal of reaching 400 by 2002 was reached and doubled. Kansas has the third best wind energy potential in the country. It is time for it to become one of the states with an RPS.

The Sierra Club would like to see the RPS in HB 2479 be increased. The goal of 20% by 2020 should be looked upon as a minimum. 5% in 4 years is not adequate. The Sierra Club hopes that an improved HB 2479 will pass from the committee favorably. .

Sincerely

Tom Thompson
Lobbyist

ENERGY AND HOUSE UTILITIES

DATE: 3/2/2007

ATTACHMENT 2

To Chairman Holmes and members of the Energy and Utilities Committee,

The RPS bill you're considering doesn't require enough wind power to match even half of what the governor has called for by 2010. Requiring so little wind power to be produced in Kansas is not in the best interest of our farmers and everyone paying electric bills, and certainly does not begin to take advantage of the uniquely great wind resource we have that could contribute so much to reducing carbon dioxide emissions that cause global climate change.

We need more wind power to protect ratepayers in Kansas. The big news this week about the investor acquisition of TXU Corp, the Texas utility company, and the investors' desire to eliminate most of the coal plants scheduled to be built there, points out exactly what we should be concerned about in Kansas and the reason why we need more wind power: **once coal plants are required to pay the carbon tax and install the equipment needed to reduce mercury emissions and sequester carbon dioxide, the electricity they produce is far too expensive when compared to wind power.** The same thing will happen in Kansas to our electric bills and is the reason why we need more wind power and a stronger RPS.

The news of the TXU buyout also brings the challenge we must address with a stronger RPS measure: Texas, Colorado, and many other states, like Minnesota which just passed a tough RPS bill this week, are going to greatly increase their use of wind power. If we don't greatly increase wind power in Kansas, **soon**, our farmers will lose out on the added revenue they would receive from leasing turbines on their land. **How many here want to be the ones to tell the farmers in your districts that we waited too long to support wind power and they (our farmers) won't ever get the revenue benefits that farmers in our neighboring states are hauling to the bank?**

Kansas is blessed with one of the greatest wind resources on the planet. It is our moral duty to make the best use of it and do everything we can to care of God's creation. For that and many other reasons we need a stronger RPS bill. I urge you to match the Governor's stated requirements of 10% wind power by 2010, and increase to at least 25% by 2025.

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ATTACHMENT 3

KRC

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www.kansasruralcenter.org*

Testimony Regarding HB 2479 - Renewable Portfolio Standards

Members of the Committee,

Thank you for this opportunity to add some input to the discussion of Renewable Portfolio Standards. I am Dan Nagengast and I am the Executive Director of the Kansas Rural Center (KRC). The Kansas Rural Center strongly supports the development of a Renewable Portfolio Standard for Kansas.

Last year, as Co-Chair of the Governor's Rural Life Task Force, I lead a trip jointly sponsored by the Task Force and the Kansas Energy Council to the Community Wind Energy producing region of Southwestern Minnesota. All those on the trip came back convinced that encouraging development of Community owned wind turbines in Kansas would be an economic boon for our rural areas. Since that time, KRC, the Kansas Farm Bureau, the Kansas Farmers Union and the Kansas Energy Office have undertaken a variety of activities designed to promote and encourage the community owned wind industry in Kansas.

It is very clear to us that other states have achieved success where we have not, because they have required, as a matter of public policy, that utilities begin using energy sources other than coal. The mechanism for this has been, in many cases, a Renewable Portfolio Standard.

Renewable Portfolio Standards

Renewable Portfolio Standards (RPS) are also called Renewable Electricity Standards (RES). An RPS requires electric utilities to gradually increase the amount of renewable energy resources - such as wind, solar and bioenergy in their electricity supplies.

An RPS is a public policy tool that makes utilities take into account the long term effects of their decisions on the environment, human health and local economies. It requires them to decrease their dependence on fossil fuels by increasing their reliance on renewables. An RPS indicates that legislators have found good public policy may require consideration of issues other than the short-term profitability of utilities. A well-planned RPS should not hamper production and delivery of consistent, high quality electrical energy.

Twenty-five states and the District of Columbia have set standards specifying that electric utilities generate a certain amount of electricity from renewable sources. The standards range from modest to ambitious, and definitions of renewable energy vary. Though climate change may not be the prime motivation behind some of these standards, the use of renewable energy does deliver significant Green House Gases (GHG) reductions. For instance, Texas is expected to avoid 3.3 million tons of CO2 emissions annually with its RPS, which requires 2000 MW of new renewable generation by 2009. Increasing a state's use of renewable energy brings other benefits as well, including job creation, energy security, and cleaner air.

Successful examples include Connecticut which increased its RPS in 2003, extending the standard to all utilities in the state; Iowa met its standard in 1999. Many states allow utilities to comply with

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the RPS through tradable renewable energy credits. While the success of state efforts to increase renewable energy production will depend in part on federal policies such as production tax credits, states have shown their considerable efficacy in encouraging clean energy generation.

For more information, including maps indicating current states with RPS and studies focusing on the impact of RPS on customer utility rates, please review these links.

DSIRE Database of State Incentives for Renewables & Efficiency

<http://www.dsireusa.org/summarytables/reg1.cfm?&CurrentPageID=7&EE=0&RE=1>

Pew Center for Global Climate Change

http://www.pewclimate.org/what_s_being_done/in_the_states/rps.cfm

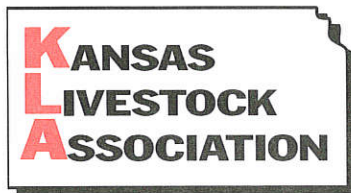
U.S. Dept. of Energy Electricity Delivery & Energy Reliability

http://www.eere.energy.gov/de/renewables_portfolio_standards.html

Evaluating Experience with Renewables Portfolio Standards in the United States

Energy Analysis Department Ernest Orlando Lawrence Berkeley National Laboratory

http://eetd.lbl.gov/ea/EMS/EMS_pubs.html



Since 1894

TESTIMONY

To: House Energy and Utilities Committee
Representative Carl Holmes, Chair

From: John Donley, Kansas Livestock Association

Date: March 2, 2007

Re: HB 2479 – Establishing a renewable portfolio standard

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, grazing land management and diversified farming operations.

My name is John Donley, and I serve in the Government Affairs department for the Kansas Livestock Association. I appreciate the opportunity to provide written testimony to discuss KLA's opposition for HB 2479.

KLA is an organization that believes the market should create factors that affect the choices of what an industry provides to consumers, not a governmental mandate. While we recognize that HB 2479 does not create a mandate on the use of renewable energy, it is a step in the direction of mandating its use. Additionally, HB 2479 creates a signal for renewable energy that is not being sent by the marketplace.

KLA has policy in direct opposition of the creation of renewable portfolio standards and believes that it is inappropriate to require such standards that will arguably increase the energy costs to consumers in Kansas while not truly adding a reliable or consistent source of electricity to Kansas consumers. It is one thing to provide tax incentives to grow an industry, but it is a totally different concept to force the use of the product produced by an industry regardless of the cost.

In conclusion, the Kansas Livestock Association opposes HB 2479 and asks you to not vote in favor of HB 2479. Thank you.

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ATTACHMENT 5

Media: Tom Robinson
(816) 556-2902

Investor: Todd Allen
(816) 556-2083

FOR IMMEDIATE RELEASE

KANSAS CITY POWER & LIGHT FILES RATE REQUEST IN KANSAS

Rate increase to support air quality improvement investments and increased fuel and operating expenses

Kansas City, MO (Mar. 1, 2007) – Kansas City Power & Light (KCP&L), a subsidiary of Great Plains Energy (NYSE: GXP), today filed a request with the Kansas Corporation Commission (KCC) to increase rates for electric service in order to help recover costs of air quality improvement investments included in its Comprehensive Energy Plan (CEP), as well as higher fuel and other operational costs. The requested increase would add approximately \$9.11 to a typical Kansas residential customer’s average monthly bill.

The increase reflects the cost of a key CEP component coming online in 2007 that will improve air quality in Kansas City -- the new Selective Catalytic Reduction (SCR) system at La Cygne Generating Station in Linn County, Kansas. This system will dramatically reduce the plant’s emissions of nitrogen oxides (NOx), a contributor to ground-level ozone. While vehicles are the largest contributor to ground-level ozone, the \$80 million SCR system at La Cygne Generating Station is a significant voluntary step in improving Kansas City’s air quality.

KCP&L’s plan to move forward with the environmental upgrade to the La Cygne plant has been applauded by the Mid-America Regional Council’s (MARC) Air Quality Forum.

“This project is the single largest voluntary contribution to helping the Kansas City area maintain its attainment status under the EPA’s eight-hour ozone standard,” said David Warm, executive director of MARC. “Working with existing power plants to reduce emissions is the cornerstone of the MARC Clean Air Action Plan.”

“It is important that projects such as the SCR at our La Cygne Generating Station, which will be in service before the 2007 ozone season, be completed. This technology is the most

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effective method available for reducing nitrogen oxides emissions in plants like La Cygne,” said Michael Chesser, Great Plains Energy Chairman and CEO.

The rate request is also driven by higher fuel, purchased power, and other operating costs expected before the rate increase goes into effect in 2008. Current Kansas residential rates are 25 percent below the July 2006 national average and near what customers paid in 1988. Since that time, KCP&L has invested heavily in system efficiency and reliability, resulting in system reliability being among the top 25 percent of utilities nationwide.

“KCP&L is one of the most efficient utilities nationally and we are continuing to execute our Comprehensive Energy Plan,” said Chesser. “We have made improvements to ensure our customers and the community have affordable, reliable, and clean electric power. At the same time, we project substantial fuel and operating cost increases in 2007 that are not reflected in our current rates. While efficiencies have allowed us to keep rates low, we must address these rising costs now.”

During 2006, KCP&L completed its 100.5 MW Spearville Wind Energy Facility, introduced award-winning energy efficiency and demand response programs, and completed a significant portion of the structural work for the La Cygne SCR equipment. This approach minimized the out-of-service time for La Cygne Unit 1 and ensured the environmental upgrades would be ready ahead of the 2007 ozone season.

“Our decision to invest in emission controls in advance of regulatory mandates helps manage project costs, ensure affordable, reliable, and clean electric power, and supports the community’s bright economic future,” said William Downey, president and chief executive officer of KCP&L.

In Kansas, KCP&L is seeking a \$47.1 million or 10.8 percent increase in electric revenues. Approximately 40 percent of the increase is attributable to increased cost of fuel to generate electricity. KCP&L is required to separate fuel cost recovery from its basic charge. This component will appear as a separate item on customers’ bills. Separation of fuel charges from basic charges is in place for other utilities in Kansas. KCP&L expects that any rate changes approved by the KCC including separation of fuel recovery from basic charges will take effect January 1, 2008. KCP&L intends to continue its collaborative approach during the rate process,

which will include public hearings and other opportunities for stakeholder input. KCP&L filed a similar request in Missouri on February 1, 2007.

Headquartered in Kansas City, Mo., KCP&L (www.kcpl.com) is a leading regulated provider of electricity in the Midwest. KCP&L is a wholly owned subsidiary of Great Plains Energy Incorporated (NYSE: GXP), the holding company for KCP&L and Strategic Energy L.L.C., a competitive electricity supplier.

Information Concerning Forward-Looking Statements

Statements made in this release that are not based on historical facts are forward-looking, may involve risks and uncertainties, and are intended to be as of the date when made. Forward-looking statements include, but are not limited to, statements regarding projected delivered volumes and margins, the outcome of regulatory proceedings, cost estimates of the comprehensive energy plan and other matters affecting future operations. In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, Great Plains Energy is providing a number of important factors that could cause actual results to differ materially from the provided forward-looking information. These important factors include: future economic conditions in the regional, national and international markets, including but not limited to regional and national wholesale electricity markets; market perception of the energy industry and Great Plains Energy; changes in business strategy, operations or development plans; effects of current or proposed state and federal legislative and regulatory actions or developments, including, but not limited to, deregulation, re-regulation and restructuring of the electric utility industry; decisions of regulators regarding rates its subsidiaries can charge for electricity; adverse changes in applicable laws, regulations, rules, principles or practices governing tax, accounting and environmental matters including, but not limited to, air and water quality; financial market conditions and performance including, but not limited to, changes in interest rates and in availability and cost of capital and the effects on pension plan assets and costs; credit ratings; inflation rates; effectiveness of risk management policies and procedures and the ability of counterparties to satisfy their contractual commitments; impact of terrorist acts; increased competition including, but not limited to, retail choice in the electric utility industry and the entry of new competitors; ability to carry out marketing and sales plans; weather conditions including weather-related damage; cost, availability, quality and deliverability of fuel; ability to achieve generation planning goals and the occurrence and duration of unplanned generation outages; delays in the anticipated in-service dates and cost increases of additional generating capacity; nuclear operations; ability to enter new markets successfully and capitalize on growth opportunities in non-regulated businesses and the effects of competition; application of critical accounting policies, including, but not limited to, those related to derivatives and pension liabilities; workforce risks including compensation and benefits costs; performance of projects undertaken by non-regulated businesses and the success of efforts to invest in and develop new opportunities; the ability to successfully complete merger, acquisitions or divestiture plans (including the acquisition of Aquila, Inc., and the sale of assets to Black Hills Corporation); and other risks and uncertainties. Other risk factors are detailed from time to time in Great Plains Energy's most recent quarterly report on Form 10-Q or annual report on Form 10-K filed with the Securities and Exchange Commission. This list of factors is not all-inclusive because it is not possible to predict all factors.

FACT SHEET
EPA's Clean Air Mercury Rule

March 15, 2005

ACTION

The Clean Air Mercury Rule

- On March 15, 2005, EPA issued the first-ever federal rule to permanently cap and reduce mercury emissions from coal-fired power plants. This rule makes the United States the first country in the world to regulate mercury emissions from coal-fired power plants.
- The Clean Air Mercury Rule will build on EPA's Clean Air Interstate Rule (CAIR) to significantly reduce emissions from coal-fired power plants -- the largest remaining sources of mercury emissions in the country. When fully implemented, these rules will reduce utility emissions of mercury from 48 tons a year to 15 tons, a reduction of nearly 70 percent.
- CAIR and the Clean Air Mercury Rule are important components of the Bush Administration's plan to improve air quality. The Administration remains committed to working with Congress to help advance the President's Clear Skies legislation in order to achieve greater certainty and nationwide emission reductions, but believes the U.S. needs regulations in place now.
- EPA believes it makes sense to address mercury, SO₂ and NO_x emissions simultaneously through CAIR and the Clean Air Mercury Rule. These rules will protect public health and the environment without interfering with the steady flow of affordable energy for American consumers and business.
- The Clean Air Mercury Rule establishes "standards of performance" limiting mercury emissions from new and existing coal-fired power plants and creates a market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two distinct phases. The first phase cap is 38 tons and emissions will be reduced by taking advantage of "co-benefit" reductions -- that is, mercury reductions achieved by reducing sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions under CAIR. In the second phase, due in 2018, coal-fired power plants will be subject to a second cap, which will reduce emissions to 15 tons upon full implementation.
- New coal-fired power plants ("new" means construction starting on or after Jan. 30, 2004) will have to meet stringent new source performance standards in addition to being subject to the caps.
- Mercury is a toxic, persistent pollutant that accumulates in the food chain. Mercury in the air is a global problem. While fossil fuel-fired power plants are the largest remaining source of human-generated mercury emissions in the United States, they contribute only a small amount (about 1 percent) of total annual mercury emissions worldwide.
- EPA's modeling shows that CAIR will significantly reduce the majority of the coal-fired power plant mercury emissions that deposit in the United States, and those reductions will occur in areas where mercury deposition is currently the highest. The Clean Air Mercury Rule is expected to make

additional reductions in emissions that are transported regionally and deposited domestically, and it will reduce emissions that contribute to atmospheric mercury worldwide.

MERCURY EMISSIONS: A GLOBAL PROBLEM

- Mercury emitted from coal-fired power plants comes from mercury in coal, which is released when the coal is burned. While coal-fired power plants are the largest remaining source of human-generated mercury emissions in the United States, they contribute very little to the global mercury pool. Recent estimates of annual total global mercury emissions from all sources -- both natural and human-generated -- range from roughly 4,400 to 7,500 tons per year. Human-caused U.S. mercury emissions are estimated to account for roughly 3 percent of the global total, and U.S. coal-fired power plants are estimated to account for only about 1 percent.
- EPA has conducted extensive analyses on mercury emissions from coal-fired power plants and subsequent regional patterns of deposition to U.S. waters. Those analyses conclude that regional transport of mercury emission from coal-fired power plants in the U.S. is responsible for very little of the mercury in U.S. waters. That small contribution will be significantly reduced after EPA's Clean Air Interstate Rule and Clean Air Mercury Rule are implemented.
- U.S. coal-fired power plants emit mercury in three different forms: oxidized mercury (likely to deposit within the U.S.); elemental mercury, which travels hundreds and thousands of miles before depositing to land and water; and mercury that is in particulate form.
- Because mercury can be transported thousands of miles in the atmosphere, and because many types of fish are caught and sold globally, effective exposure reduction will require reductions in global emissions.
- The United States is leading an effort within the United Nations Environment Programme to create a program that would establish partnerships designed to help developing countries reduce mercury emissions. The partnerships will leverage resources, technical expertise, technology transfer, and information exchanges to provide immediate effective action that will result in tangible reductions of mercury use and emissions. It accelerates the work of the UNEP Mercury program, originally proposed by the U.S. at the 2003 UNEP Governing Council meeting.

MERCURY AND FISH

- Concentrations of mercury in the air are usually low. However, atmospheric mercury falls to Earth through rain, snow and dry deposition and enters lakes, rivers and estuaries. Once there, it can transform into, methylmercury, and can build up in fish tissue.
- Americans are exposed to methylmercury primarily by eating contaminated fish. Because the developing fetus is the most sensitive to the toxic effects of methylmercury, women of childbearing age are regarded as the population of greatest concern. Children who exposed to methylmercury before birth may be at increased risk of poor performance on neurobehavioral

tasks, such as those measuring attention, fine motor function, language skills, visual-spatial abilities and verbal memory.

REVISION OF DECEMBER 2000 FINDING

- Also on March 15, 2005, in a separate but related action, EPA revised and reversed its December 2000 finding that it was “appropriate and necessary” to regulate coal- and oil-fired coal-fired power plants under section 112 of the Clean Air Act. We are taking this action because we now believe that the December 2000 finding lacked foundation and because recent information demonstrates that it is not appropriate or necessary to regulate coal- and oil-fired utility units under section 112.
- EPA nevertheless believes it is important to regulate mercury emissions from coal-fired power plants. For that reason EPA has signed two complementary rules – CAIR and the Clean Air Mercury Rule, issued under sections 110(a)(2)(D) and 111 of the law, respectively. These rules will allow us to more effectively limit mercury emissions from these plants.

CAP AND TRADE BASICS

- Today’s rule establishes a cap-and-trade system for mercury that is based on EPA’s proven Acid Rain Program. The Acid Rain Program has produced remarkable and demonstrable results, reducing SO₂ emissions faster and at far lower costs than anticipated, and resulting in wide-ranging environmental improvements.
- In the Clean Air Mercury Rule, EPA has assigned each state and two tribes an emissions “budget” for mercury, and each state must submit a State Plan revision detailing how it will meet its budget for reducing mercury from coal-fired power plants. Two tribes that have coal-fired power plants that will be affected by this rule also have been assigned a mercury emissions budget.
- Today’s rule includes a model cap-and-trade program that states can adopt to achieve and maintain their mercury emissions budgets. States may join the trading program by adopting the model trading rule in state regulations, or they may adopt regulations that mirror the necessary components of the model trading rule.
- Although states and tribes are not required to adopt the EPA-administered cap-and-trade program, the Agency believes most will do so. The state and tribal emission budgets are permanent, regardless of growth in the electric sector.
- The mandatory declining emissions caps in the Clean Air Mercury Rule, coupled with significant penalties for noncompliance, will ensure that the rule’s mercury reduction requirements are achieved and sustained. At the same time, stringent emission monitoring and reporting requirements ensure that monitored data are accurate, that reporting is consistent among sources – and that the emission reductions occur. The flexibility of allowance trading creates financial incentives for coal-fired power plants to look for new and low-cost ways to reduce emissions and improve the effectiveness of pollution control equipment.

The Benefits of Cap-and-Trade Regulation over MACT

- For both a cap-and-trade system and a MACT, emissions limits are established and must be achieved.
- However, under a cap-and-trade system reductions and caps emissions are capped permanently and nationwide emissions can only go down. The ability to bank unused allowances for future use can lead to early reductions of mercury. A trading approach is forward-looking in its assessment of technology because it provides a continuous incentive for technology innovation.
- A traditional Section 112(d) MACT approach sets standards based on technology performance. Each plant subject to a MACT must meet a specific emissions limit. However, benefits of MACT are not always permanent: With shifts in coal use and with economic growth, nationwide emission reductions could erode over time. In addition, a MACT approach would not create as much continuous incentive for the development of new mercury control technology.

FOR MORE INFORMATION

- More information about mercury, EPA's efforts to reduce mercury emissions, and today's rule is available at www.epa.gov/mercury.
- More information about EPA/FDA's fish advisory go to website www.cfsan.fda.gov/~frf/sea-mehg.html

May 31, 2006

FINAL RULE RECONSIDERING TWO MERCURY ACTIONS:

**(1) RECONSIDERATION OF RULE REVISING EARLIER REGULATORY FINDING
AND REMOVING CERTAIN ELECTRIC STEAM GENERATING UNITS FROM THE
LIST OF SOURCE CATEGORIES;
AND (2) RECONSIDERATION OF THE CLEAN AIR MERCURY RULE**

FACT SHEET

ACTION

- On May 31, 2006, the U.S. Environmental Protection Agency (EPA) took final action on petitions to reconsider two actions regarding the air pollutant Mercury:
 - Its determination that regulation of electric utility steam generating units under section 112 of the Clean Air Act was neither necessary nor appropriate (the section 112 rule); and
 - The Clean Air Mercury Rule (CAMR)
- EPA's March 2005 Clean Air Mercury Rule is the first of its kind - and the U.S. is the first nation in the world - to regulate mercury emissions from coal-fired power plants. The rule creates a market-based cap-and-trade program that will permanently cap utility mercury emissions in two phases:
 - The first phase of the rule sets a cap of 38 tons per year and due to incentives created by the cap and trade program EPA projects that emissions will decrease from 48 tons to 31 tons beginning in 2010;
 - Emissions will continue to decline thereafter until they are reduced to the second phase cap of 15 tons when the program is fully implemented.
- The mandatory declining caps, coupled with significant penalties for noncompliance, will ensure that mercury reduction requirements are achieved and sustained.

EPA'S FINAL DECISION ON THE SECTION 112 RULE

- Following the promulgation of the final *section 112 rule*, EPA received two petitions for reconsideration.
- One petition was submitted by 14 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin.

- The other petition was submitted by five environmental groups and four Indian Tribes: the Natural Resources Defense Council, the Clean Air Task Force, the Ohio Environmental Council, the U.S. Public Interest Research Group, the Natural Resources Council of Maine; the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Penobscot Indian Nation, and the Passamaquoddy Tribe of Maine.
- EPA agreed to reconsider certain aspects of the final section 112 rule, including:
 1. Legal issues underlying the decision; and
 2. The methodology used to assess the amount of utility-attributable mercury levels in fish tissue and the public health implications of those levels.
- After carefully considering the petitions and the information that was submitted during the public comment period, EPA has determined that its original determination as presented in the final Section 112(n) Revision Rule was correct. EPA is reaffirming its action.

EPA'S FINAL DECISION ON THE CLEAN AIR MERCURY RULE

- Following promulgation of the final Clean Air Mercury Rule, the EPA Administrator received four petitions for reconsideration. Petitions for reconsideration were filed by:
 1. 14 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin.
 2. Five environmental groups: the Natural Resources Defense Council, the Clean Air Task Force, the Ohio Environmental Council, the U.S. Public Interest Research Group, and the Natural Resources Council of Maine.
 3. Jamestown Board of Public Utilities.
 4. Integrated Waste Service Association.
- EPA agreed to reconsider the following seven aspects of the final rule:
 1. The method used to apportion the national caps to individual states;
 2. The definition of "designated pollutant;"
 3. EPA's subcategorization for new subbituminous coal-fired units subject to New Source Performance standards (NSPS);
 4. The statistical analysis used for the NSPS;
 5. The highest annual average mercury content used to derive the NSPS;
 6. The definition of covered units as including municipal waste combustors; and
 7. The definition of covered units as including some industrial boilers.
- In response to these requests for reconsideration, EPA is making the following changes to the Clean Air Mercury Rule:

- Adjusting the heat input values for a single unit in Alaska and making the appropriate adjustment to the State of Alaska budget. Based on the change to this one unit, EPA has recalculated the mercury allocations made to each State. The change resulted in very small decreases to the mercury budgets for six States.
 - Changing the NSPS limit for coal refuse-fired units from 1.4 to 16×10^{-6} lb/MWh.
 - Amending regulatory language to clarify that the Clean Air Mercury Rule does not apply to municipal waste combustors. Emissions from these facilities are controlled under a separate rule.
 - Correcting a number of technical aspects to clarify each of the final rules.
- In response to the remaining issues under reconsideration, EPA has determined that its decisions were reasonable and should not be changed.

BACKGROUND

- On October 21, 2005 EPA agreed to reconsider certain aspects of both these rules.
- The final rule, titled “Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section List,” was published in the Federal Register on March 29, 2005.
- EPA determined that the December 2000 finding lacked foundation and that recent information demonstrated that it is not appropriate or necessary to regulate coal- and oil-fired utility units under section 112 of the Clean Air Act. Based on the revised finding, EPA removed those utility units from the section 112(c) list of source categories.
- The final rule, “Standards of Performance for New and Existing Stationary Sources: Electric Steam Generating Units,” was published in the Federal Register on May 18, 2005. The rule, also called the Clean Air Mercury Rule, establishes standards of performance for emissions of mercury from new and existing coal-fired electric utility steam generating units.

FOR MORE INFORMATION

- To download the reconsideration notice and the final rules from EPA's website, go to the following address: <http://www.epa.gov/air/mercuryrule/rule.htm>

2005 Kansas Mercury Emissions

