

## MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:33 a.m. on February 4, 2010, in Room 144-S of the Capitol.

All members were present.

## Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes  
Corey Carnahan, Kansas Legislative Research Department  
Raney Gilliland, Kansas Legislative Research Department  
Stanley Rasmussen, Senate Fellow, U.S. Army  
Grace Greene, Committee Assistant

## Conferees appearing before the Committee:

Allie Devine, Kansas Livestock Association (KLA)  
Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau  
Kay Johnson, Environmental Services Director, City of Wichita  
Chris Cardinal, Legislative Coordinator, Kansas Sierra Club

## Others attending:

See attached list.

Allie Devine, (KLA) (Attachment 1) addressed the Committee concerning the Prescribed Burning of the Flint Hills. Ms. Devine stated that the Flint Hills burning tradition is important to all stakeholders and is vital to the maintenance of the ecosystem. Ms. Devine told members of the Committee that on December 1, 2009 Kansas Department of Health and Environment (KDHE) held a briefing issue and KDHE asked the agricultural organizations to develop a smoke management plan to meet the definition of an "exceptional event". Ms. Devine stated there has been litigation to define an "exceptional event" and a prescribed fire can be defined as an "exceptional event." Ms. Devine stated that KLA needs clarification on Environmental Protection Agency's (EPA) regulations for a smoke management plan and the specific definition of an "exceptional event." KLA has begun to meet to address this issue and possibilities for a smoke management plan. In addition, Ms. Devine stated that a potential plan could encourage burning prior to April 1<sup>st</sup> of each year, to avoid the time frame of ozone exceedance. Further, Ms. Devine stated that KLA wants to implement a simple plan that is voluntary and is widely accepted by ranchers and would be cautious to advance a mandatory plan. Lastly, Ms. Devine discussed time frame issues for implementation of a smoke management plan, namely that EPA has scheduled for the plan to be due by August 2010. Ms. Devine stated that this was a tight time frame for developing a plan of this scale.

Allie Devine took questions from the Committee.

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau (Attachment 2) provided testimony on the Flint Hills Prescribed Burning. Mr. Swaffar stated that there are no guarantees that the "exceptional event" exception will be given to the State of Kansas, since the burns take place on a routine basis and is an annual Kansas event. Mr. Swaffar stated that the Kansas Prescribed Fire Association has recently formed to address this issue and to discuss the issues with ranchers. The Association has gained a list of minimal elements for a smoke management plan and is concerned with developing an appropriate approval process for the ranchers.

Secondly, Mr. Swaffar discussed K-State's research on cattle gain, comparing cattle grazed on burned land versus non-burned or rotational burned land. Mr. Swaffar reported that the preliminary data shows evidence that the cattle gained equally in both cases, thus rotational burning might be a potential solution for a portion of the Flint Hills.

Mr. Swaffar took questions from the Committee.

Kay Johnson, Environmental Services Director, City of Wichita (Attachment 3) discussed air quality and agricultural burning. Ms. Johnson discussed how the City of Wichita and the Wichita metropolitan statistical area (MSA) have been faced with the possibility of exceeding the 8-hour National Ambient Air Quality Standard for several decades and are concerned about potential threats to the community's health and

## CONTINUATION SHEET

Minutes of the Senate Natural Resources Committee at 8:30 a.m. on February 4, 2010, in Room 144-S of the Capitol.

economy. Ms. Johnson stated that due to EPA's proposal to further reduce the standards, the City of Wichita and the MSA may face even greater challenges to remain in compliance, although the area is not entirely responsible for the ozone. Specifically, Ms. Johnson described an event on April 8, 2009 when Wichita exceeded the ozone limit by 25%. This event was caused by agricultural burning and wildfires from nearby Kansas and Oklahoma counties. Ms. Johnson provided graphs and photographs of the event to the Committee. Ms. Johnson stated to the Committee that the City of Wichita urges the State of Kansas and KDHE to quickly move forward to develop and implement a smoke management plan.

Ms. Johnson took questions from the Committee.

Mr. John Mitchell, KDHE, took questions from the Committee.

Chairman McGinn requested Mr. Mitchell to provide health data concerning the health impacts of air quality, supporting EPA's recommendations to lower the ambient air quality standards.

Chris Cardinal, Legislative Coordinator, Kansas Sierra Club (Attachment 4) discussed Sierra Club's position on Prescribed Burning. Specifically Mr. Cardinal reported that research supports the following: burning of the prairie is required to maintain the ecosystem, the best regime for maintaining the ecosystem is to burn on approximately a 3-year cycle, and that burning in patches or on a rotational basis within a landowners property is preferred to burning all the property in a single year. Mr. Cardinal stated that the present day ranching industry is damaging on many levels, including the decline of the greater prairie chicken and other grassland birds. Mr. Cardinal stated that it is in the best interest of the private landowners to be in support of a three year burn cycle.

Mr. Cardinal took questions from the Committee.

The following provided written testimony:

Cindy Kemper, Director of Johnson County Environment Department (Attachment 5)

John Mitchell, Director, Division of Environment, Kansas Department of Health & Environment (Attachment 6)

The next meeting is scheduled for February 11, 2010.

The meeting was adjourned at 9:30 a.m.

# SENATE NATURAL RESOURCES COMMITTEE

## Guest Roster

2-4-2010

(Date)

Sarah Hatch	U.S. EPA
Jason Watkins	KS Prescribed Fire Council
Chris Cardinal	KS Sierra Club
Wendy Lawertzen	NPS - Tallgrass Prairie NP
Travis Lowe	Little Earth Relations
Steve Swatton	KFB
Kay Johnson	City of Wichita
Ashley Dopita	Pinegar, Smith & Assoc.
Rick Brunetti	KDHE
Tom Gross	KDHE
John Mitchell	KDHE
Jeff Bottorby	Polsinelli Shyft, P.C.
Jim Payne	KDWP
Al Calderon	KDWP
Dave Snowgrass	US Army
Simon Kang	KDHE
Cvetsovadis	KDA
JERRY MORGENSTERN	FARM BUREAU
Kyle D Schertz	FARM BUREAU
Jason Watkins	Wichita Chamber
Amanda Graor	Mid-America Regional Council
Mark Richardson	Farm Bureau
Mike Beam	Ks Livestock Assn
Kelli Kirkwood	KLA
Allie Devine	KLA
BARB DOWNEY	Flinthills Beef Producer

**Please use black ink only!!**

# SENATE NATURAL RESOURCES COMMITTEE

## Guest Roster

02-04-10

(Date)

Ralph A. Plasser	Farm Bureau
Dolene Jacobsen	Farm Bureau
Font GACHES	GBA
Dale Gote	City of Wichita
<del>Kay Johnson</del>	

**Please use black ink only!!**



Since 1894

## TESTIMONY

To: Senate Committee on Natural Resources  
Senator Carolyn McGinn, Chair

From: Allie Devine, Vice President and General Counsel

Date: January 22, 2010

Subj: **Prescribed Burning of the Flint Hills**

*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.*

The Flint Hills is a magnificent ecosystem and one that is rich with history, economic and ecological benefits. The ranchers of the Flint Hills, many who are members of KLA, are proud and protective of this natural resource. For over a hundred years, ranchers have managed the land and have done so with great care and skill. No one is more committed to its protection than the ranchers/owners of the Flint Hills region.

Also representing KLA today is Barb Downey, Chair of the Kansas Livestock Association Natural Resources Committee and rancher from Wabaunsee County. Representative Tom Moxley is also here to provide you with his personal insights into the need for prescribed fire and its value to the state. Representative Moxley and Barb will provide you with the practical safety and management issues of prescribed fire.

On December 1, 2009 the Kansas Department of Health and Environment invited us and other municipal and agricultural organizations to meet with Region 7 Environmental Protection Agency for a briefing on this issue. At that meeting, KDHE asked that the agricultural organization work with them to develop a smoke management plan to meet the definition of an "exceptional event".

On December 3, 2009, KLA held its annual meeting in Wichita wherein this issue was brought before our members to educate and inform them of the request of KDHE. KLA has long standing policy in support of use of prescribed fire to maintain the Tall Grass Prairie.

Senate Natural Resources  
02-04-10  
Attachment 1 - /

As an association, KLA is committed to working with KDHE, EPA, and the affected communities to resolve these issues. KLA is pleased that NO ONE is suggesting that prescribed fire be eliminated as a management tool in the Flint Hills. We understand that exceedance of air quality standards could mean that additional areas of the state could be designated as nonattainment and/or additional regulation of industries could occur. We understand this would cost money when most industries are struggling.

Implementation of a smoke management plan is not an easy process. Ranchers have been conducting prescribed fires for over a hundred years and believe strongly it is a necessity to maintaining the Tall Grass Prairie. As Representative Moxley and Barb Downey will outline, prescribed fire is a complex process wherein safety and weather often dictate the perimeters of when and where it is conducted. This is not a process that can be “switched on and off”. Putting a regulatory framework around this process will take time, data, education and input from ranchers throughout the region.

On January 7, 2010, KLA County directors from 21 counties met in Emporia to begin discussions. On January 14, and 15, 2010 KLA members, including Barb Downey, participated in discussions of the Prescribed Fire Council. Again, the purpose of those meetings was to educate a larger group on the issue.

Throughout these discussions, a number of issues have arisen that we hope these hearings will help clarify.

- a. What must be included in a smoke management plan?
  - i. Complexity? April 1-October 31?
  - ii. Voluntary/ Mandatory? Flexibility and Simplicity Key to KLA.
  - iii. Administration
    1. What entity?
    2. Permitting?
    3. Enforcement?
    4. Resources?
- b. Is the time frame for implementation flexible?
- c. What assurances do we have that once a smoke management plan is developed it will be accepted by EPA?
- d. Has EPA determined that the practices of prescribed fire meet the definition of “exceptional events” including the provisions of “not reasonably controllable or preventable” and “is an event caused by human activity that is unlikely to recur at a particular location (or natural event).”

There are many more issues. KLA is committed to working through these issues. As we pursue this avenue, we are considering alternatives including federal legislation to allow for prescribed fire in the Flint Hills because of its ecological significance. Thank you for your time and interest in this issue and we look forward to working with the Committee and other interested parties.

**Author Verlyn Klinkenborg responds: (NATIONAL GEOGRAPHIC – AUGUST 2007)**

“Cutting fire out of the equation because of the carbon it yields to the atmosphere makes no sense—better to cut out the carbon from an equivalent load of automotive emissions.”

**Notes Bob Hamilton of the Nature Conservancy’s Tallgrass Prairie Preserve in Oklahoma,**

“First, North America’s Great Plains have a long evolutionary history of fire and grazing. This dynamic maintains variability on the landscape and supports biodiversity. Second, don’t confuse CO<sub>2</sub> released by burning of fossil fuels and the natural carbon cycle. Burning fossil fuels releases CO<sub>2</sub> ‘fixed’ as hydrocarbon some 250 million years ago, which is surplus CO<sub>2</sub> when released in this era. In contrast, burning grasslands releases carbon fixed in the past few years, all of which is ‘re-fixed’ by the prairie in the growing season after a burn.”

# Smoke Management Plans - EPA

- Include an approval process to conduct prescribed burns
- Provide methods for minimizing air pollutant emissions
- Includes provisions for best management practices related to air quality impacts

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





# Smoke Management Plans - EPA

- Plans to notify the public and reduce exposure should smoke intrusions occur
- Public education and awareness programs
- Procedures for ensuring that smoke management programs are effective
- Procedures for periodically evaluating smoke management programs

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



# Thoughts on a Plan

- Modify KAR 28-19-648 to require local approval for burns
- Provide an exclusion for fires below a certain threshold
- Develop a web tool for local officials
- Work with ag interests to ensure that best management practices address air quality
- KDHE would provide annual health notice prior to burn season



# More Thoughts

- Develop a formal outreach plan including all parties
- Gather field data to characterize burn
- Daily review by KDHE of ozone and PM results during burn season
- Year end summary of monitoring results and burn summary



# More Thoughts

- Phased in over 2 years
- Year one
  - Public notice at start of season
  - Best Management Practices
  - Data gathering
  - Prepare outreach plan
  - Work on draft rule
- Year two
  - Web tool
  - Final rule

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



# Web Tool - Concept

- Provide forecast information on potential air quality impacts of burning
- Provide spatial maps of potential areas impacted
- Available by 5:00 pm each day
- Show peak hourly impact as low, moderate, or high
- About \$20,000 per year cost
- Provide for on line data collection
  - Burn location
  - Size of area burned
  - Timing – Start time and burn duration
  - Biomass Information

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



***Kansas Farm Bureau***  
**INFORMATION STATEMENT**

**Senate Natural Resources Committee**  
**Flint Hills Prescribed Burning**

**January 22, 2010**  
**Submitted by:**  
**Steve M. Swaffar**  
**Director of Natural Resources**

---

Chairperson McGinn and members of the committee, thank you for this opportunity to provide testimony concerning prescribed burning of agriculture rangeland in the Flint Hills region. 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. Producers that custom graze yearlings shipped in from all over the country must burn the old grasses to provide the annual re-growth of the native prairie grasses so often associated with the Flint Hills. The annual revenue generated by these "imported" livestock is in the millions of dollars. Suspension of this management tool would be economically devastating to the region and the State.

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. In turn, maintaining these acres in a prairie ecosystem supports the many grassland dependent species, like greater prairie chickens. 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. Our members are aware of the conditions that occurred during April 2009 and have begun discussions about what could have prevented the situation. We have also participated in discussions with KDHE, EPA, representatives from Wichita

and Kansas City and other agency personnel to explore a mutually acceptable resolution to the situation.

Additionally, I have been participating in meetings and discussions held by the Kansas Prescribed Fire Council regarding smoke management. In fact three meetings were hosted by the Council in the Flint Hills last week to discuss the issue with ranchers. KFB understands the importance of this issue and we are working towards possible solutions and alternatives; but we also need to represent our members' interests in maintaining their livelihood and a significant parcel of native tallgrass prairie. Any form of smoke management plan can't reduce the number of acres already preserved by fire management and cannot create a system that is unworkable for ranchers.

KFB is committed to working with our members, the cities, EPA and KDHE to devise a workable plan for mitigating smoke during future burn seasons, yet still maintaining the economic viability of the region for our rancher members. 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.



**TESTIMONY – Kay Johnson, City of Wichita**  
**SENATE NATURAL RESOURCES COMMITTEE**  
**Air Quality Issues and Agriculture Burning**  
**February 4, 2010**

**Madam Chair and Committee Members:**

**I am Kay Johnson, Environmental Initiatives Manager for the City of Wichita. Our city and Metropolitan Statistical Area (MSA) Counties of Sedgwick, Butler, Harvey and Sumner have been faced with the possibility of exceeding the 8-hour National Ambient Air Quality Standard for Ozone for several decades. Because these ground-level ozone (or smog) levels are close to the limit, they threaten our community's health and, because of increased regulatory burden, they threaten our economy.**

**Our industries have spent millions of dollars to control and reduce their hazardous chemical use. We've asked our community to voluntarily change personal behaviors including those for operating their vehicles and mowing their yards. In 2009 our community just barely met the ozone standard and yet it still is not enough. The US Environmental Protection Agency (EPA) recently announced intentions to further reduce the health-based ozone limit because of the nation-wide increase of asthma cases and respiratory illnesses.**

**It is well known that the Wichita MSA is not entirely responsible for the ozone that is measured by local air monitors. Ground-level ozone is transported into our area by many sources including chemical emissions from Oklahoma industry and vehicles as well as smoke from other Kansas areas and states. Because of this fact, any significant addition of ozone emissions poses a problem for our community. On April 8, 2009, Wichita experienced such an event and our 8-hour ozone limit was exceeded by 25%. Agricultural burning and wildfires from nearby Kansas and Oklahoma counties were the cause of the extreme levels. Photos and graphs depicting Wichita area and Kansas conditions of April 7 and 8 are provided as an attachment to this testimony.**

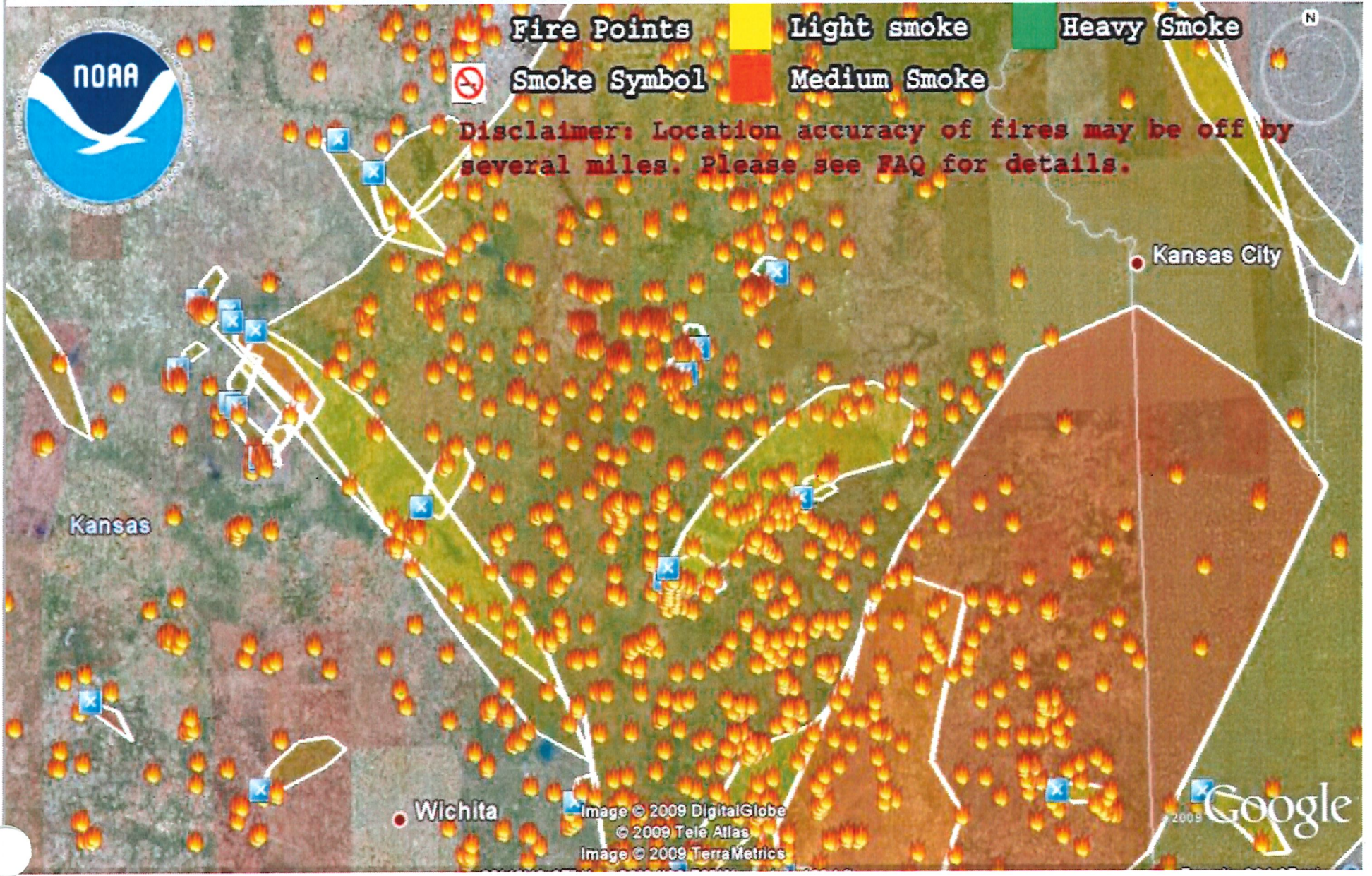
**Because of these high-level conditions, the USEPA told us that an acceptable, state-wide Kansas Smoke Management Plan is required this year if rangeland burning episodes like the one in April are to be excluded from future "nonattainment" or noncompliance determinations. As a result, Wichita urges the state of Kansas and KDHE to quickly move forward to develop and implement this plan. It is required to protect citizen's health and economic well-being of the Wichita MSA.**

**That said, however, Wichita acknowledges the importance of periodic prescribed burning for the benefit of the biologically-important grassland ecosystem of the Flint Hills and other rangeland and agricultural areas in Kansas. To support these needed efforts, we agree to work closely with the USEPA, state legislators, KDHE, other state agencies and universities, the Kansas Livestock Association, the Kansas Farm Bureau and others to develop a required statewide Kansas Smoke Management Plan that will be beneficial to all parties.**

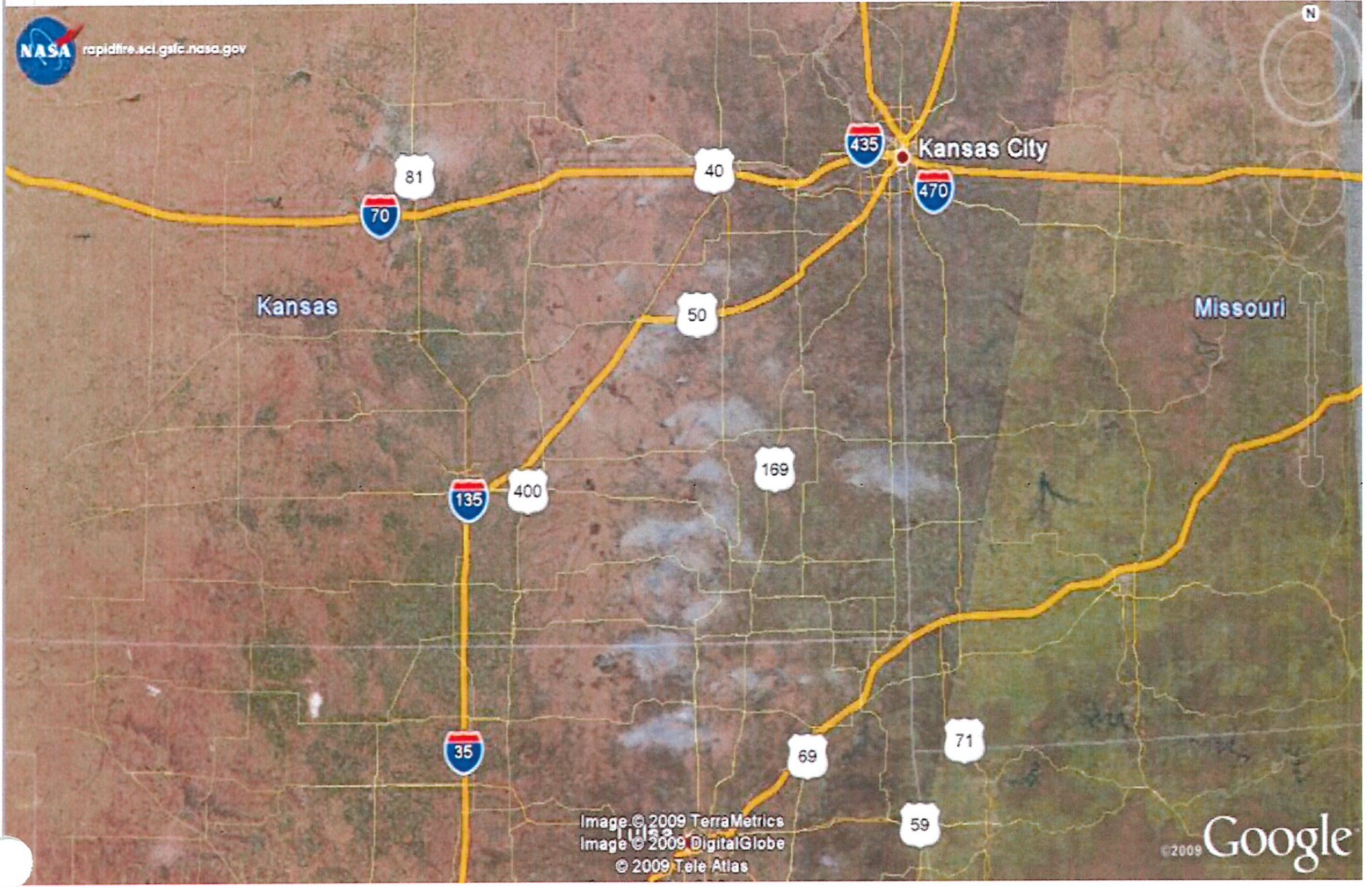
**I appreciate this opportunity to provide comments to the Committee on this important topic and will answer any questions you may have.**



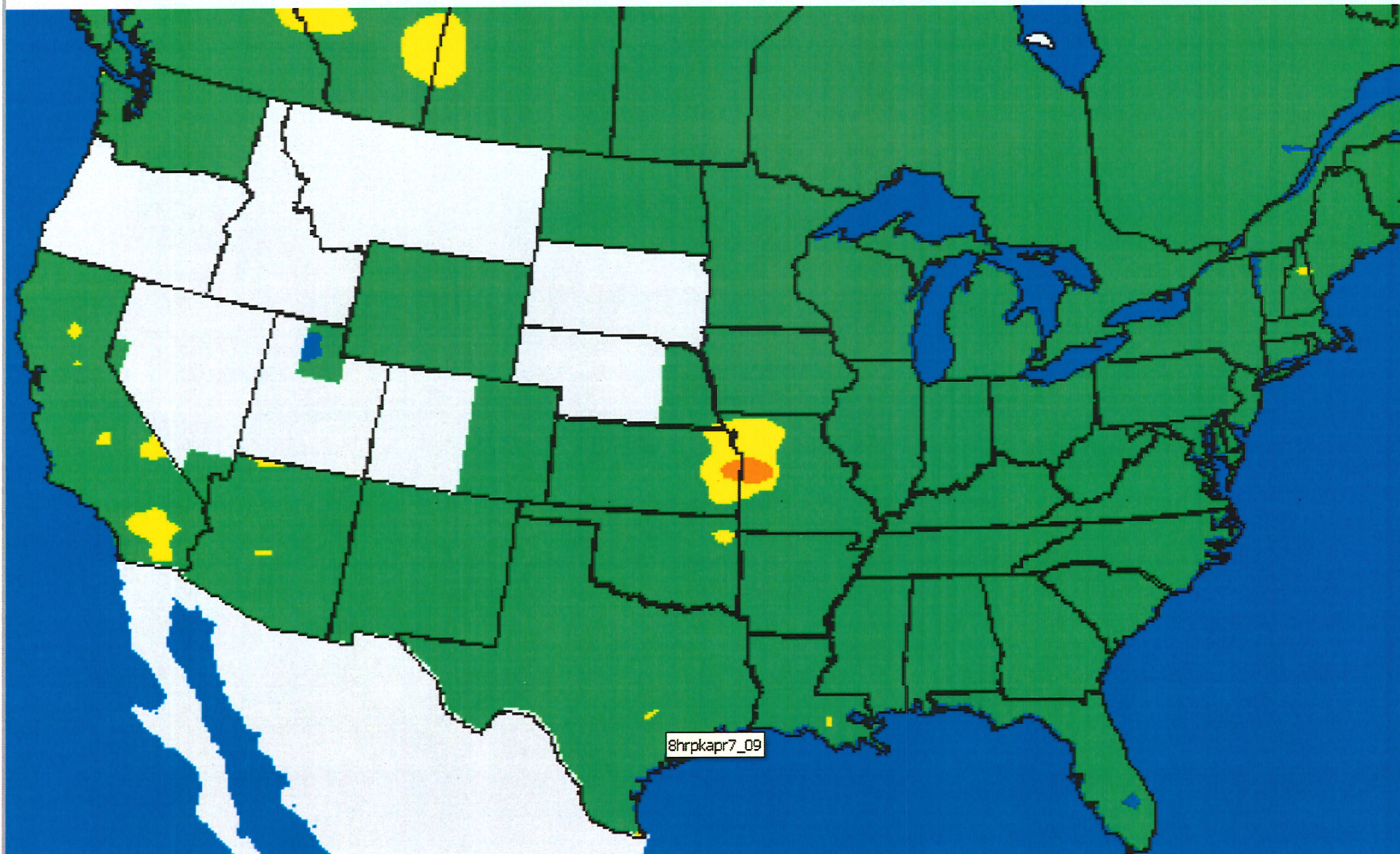
# April 7, 2009 Fire and Smoke Plumes



# April 7, 2009 Smoke Plumes



# 8 Hour Ozone Daily Maximum



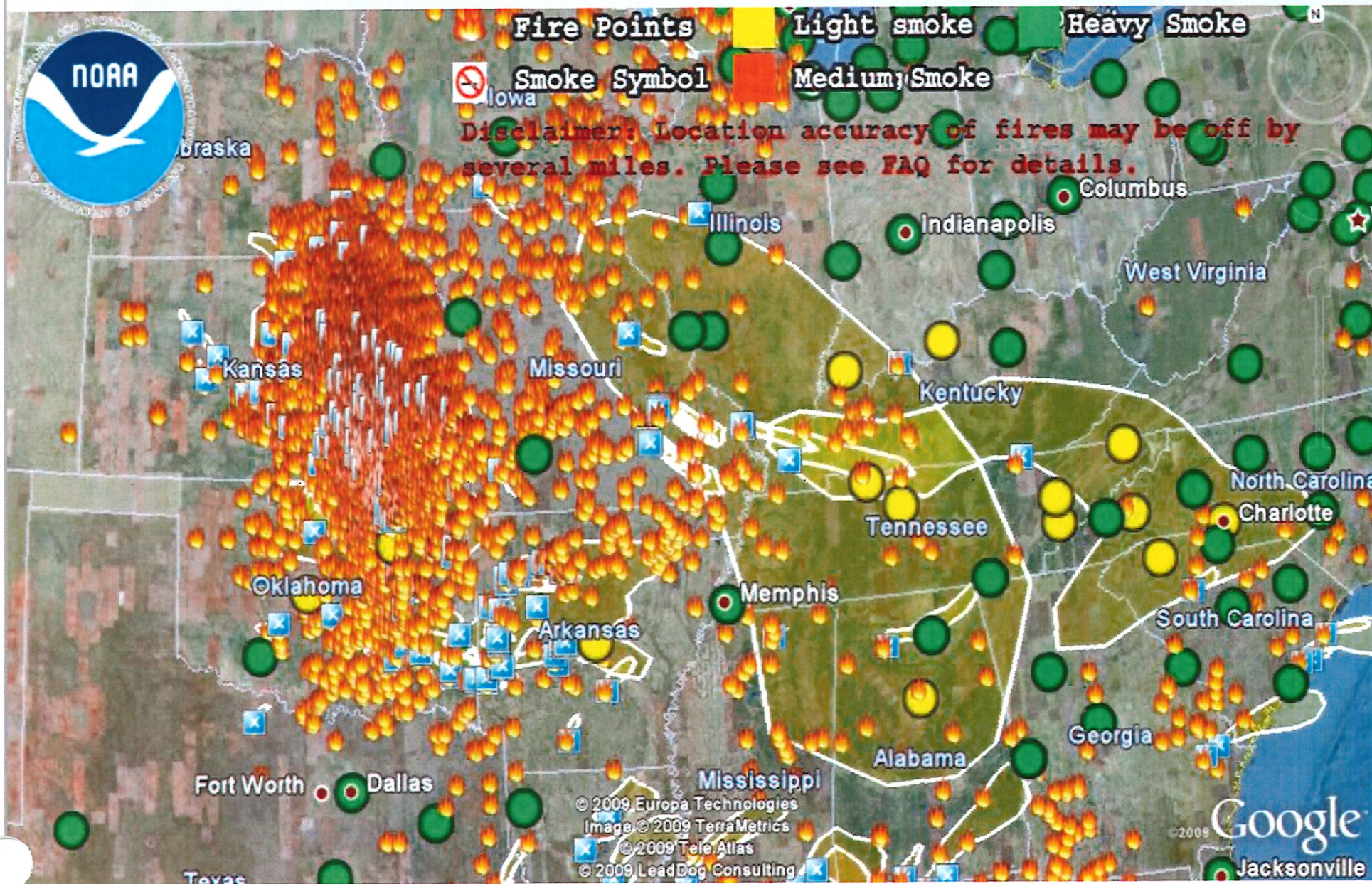
**April 7, 2009**

# April 7, 2009 - Ozone

KC Area Sites		Wichita Sites	
JFK:	0.061	Health Dept.:	0.048
<i>Heritage Park:</i>	<i>0.079</i>	Park City:	0.044
Leavenworth	0.064	Sedgwick:	0.050
Mine Creek	0.071	Peck:	0.051

**8 Hour Standard: 0.075 PPM**

# April 8, 2009 Fire and Smoke Plumes



# April 8, 2009 Smoke Plumes

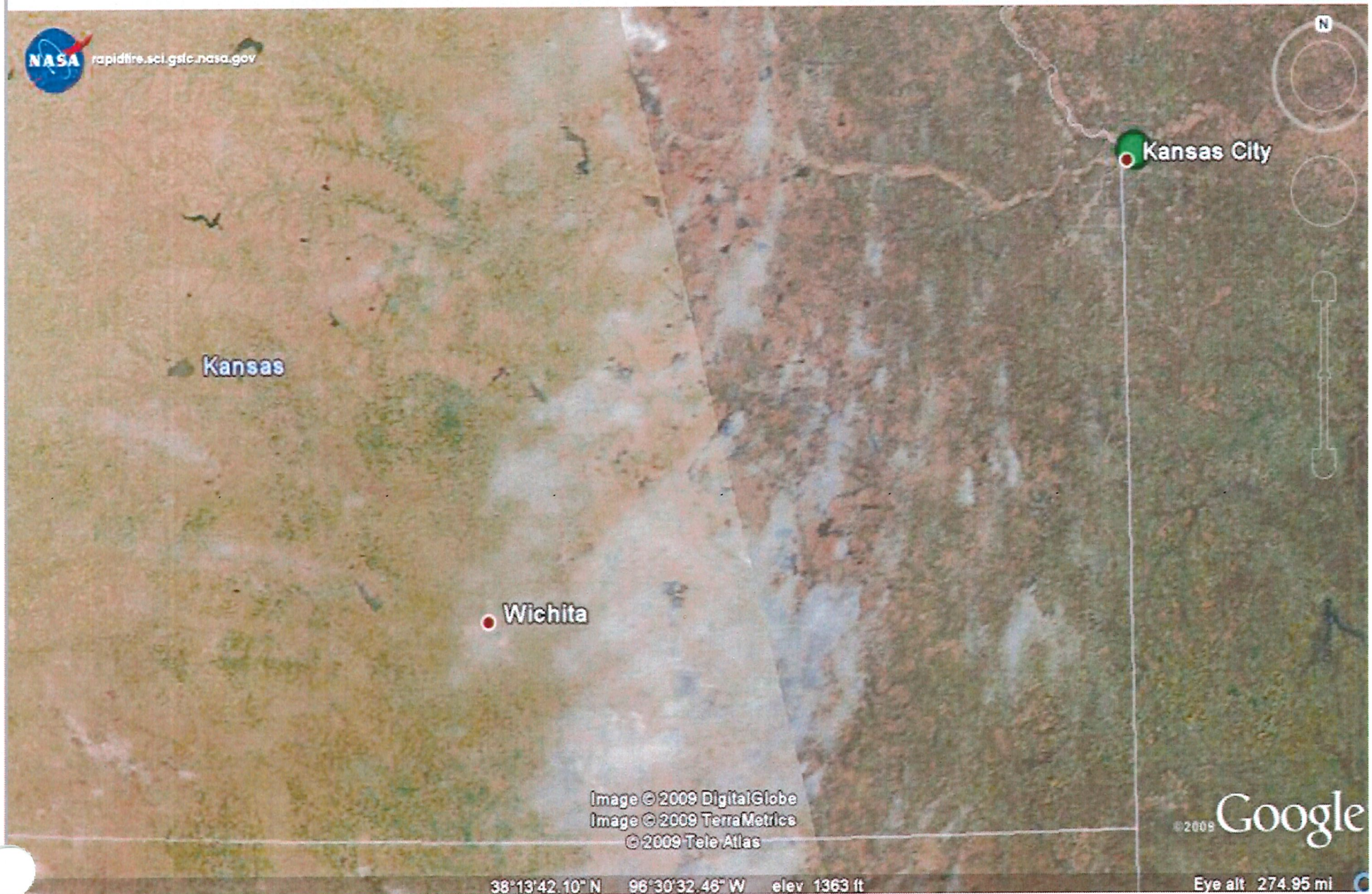
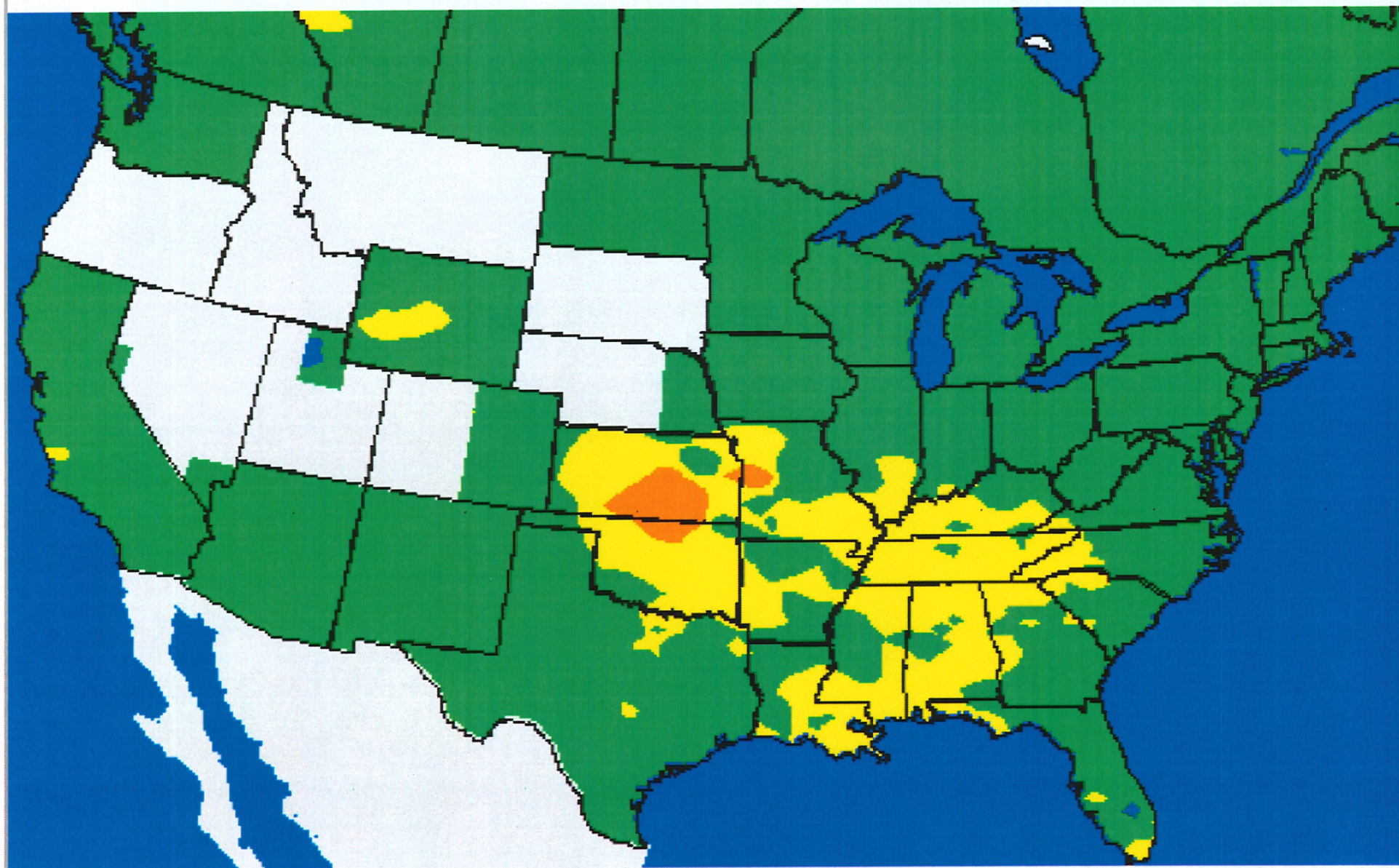


Image © 2009 DigitalGlobe  
Image © 2009 TerraMetrics  
© 2009 Tele Atlas

38°13'42.10" N 96°30'32.46" W elev 1363 ft

Eye alt 274.95 mi

# 8 Hour Ozone Daily Maximum



**April 8, 2009**

# April 8, 2009 - Ozone

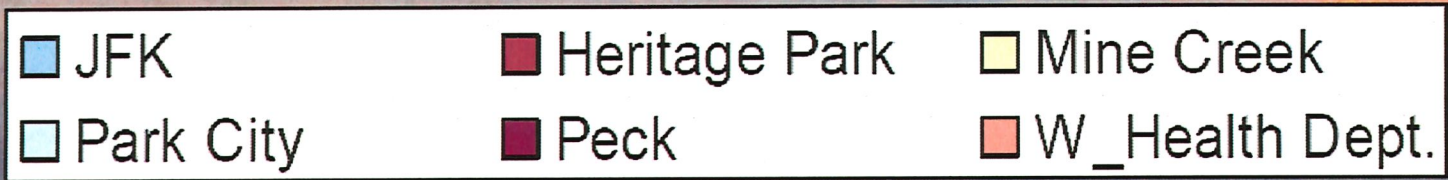
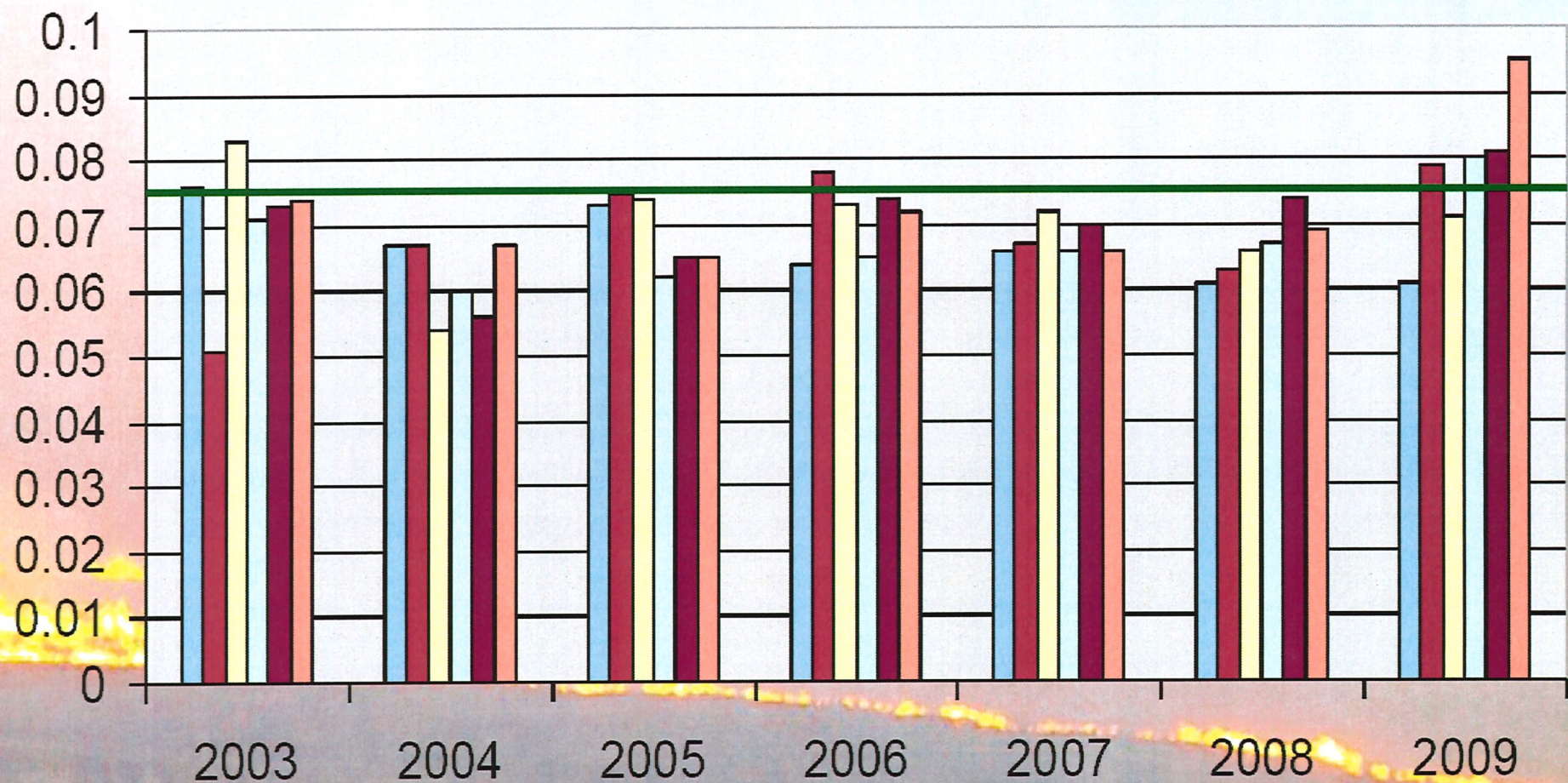
3-9

<b>KC Area Sites</b>		<b>Wichita Sites</b>	
<b>JFK:</b>	<b>0.051</b>	<b>Health Dept.:</b>	<b>0.095</b>
<b>Heritage Park:</b>	<b>0.054</b>	<b>Park City:</b>	<b>0.080</b>
<b>Leavenworth</b>	<b>0.054</b>	<b>Sedgwick:</b>	<b>0.081</b>
<b>Mine Creek</b>	<b>0.061</b>	<b>Peck:</b>	<b>0.081</b>

**8 Hour Standard: 0.075 PPM**



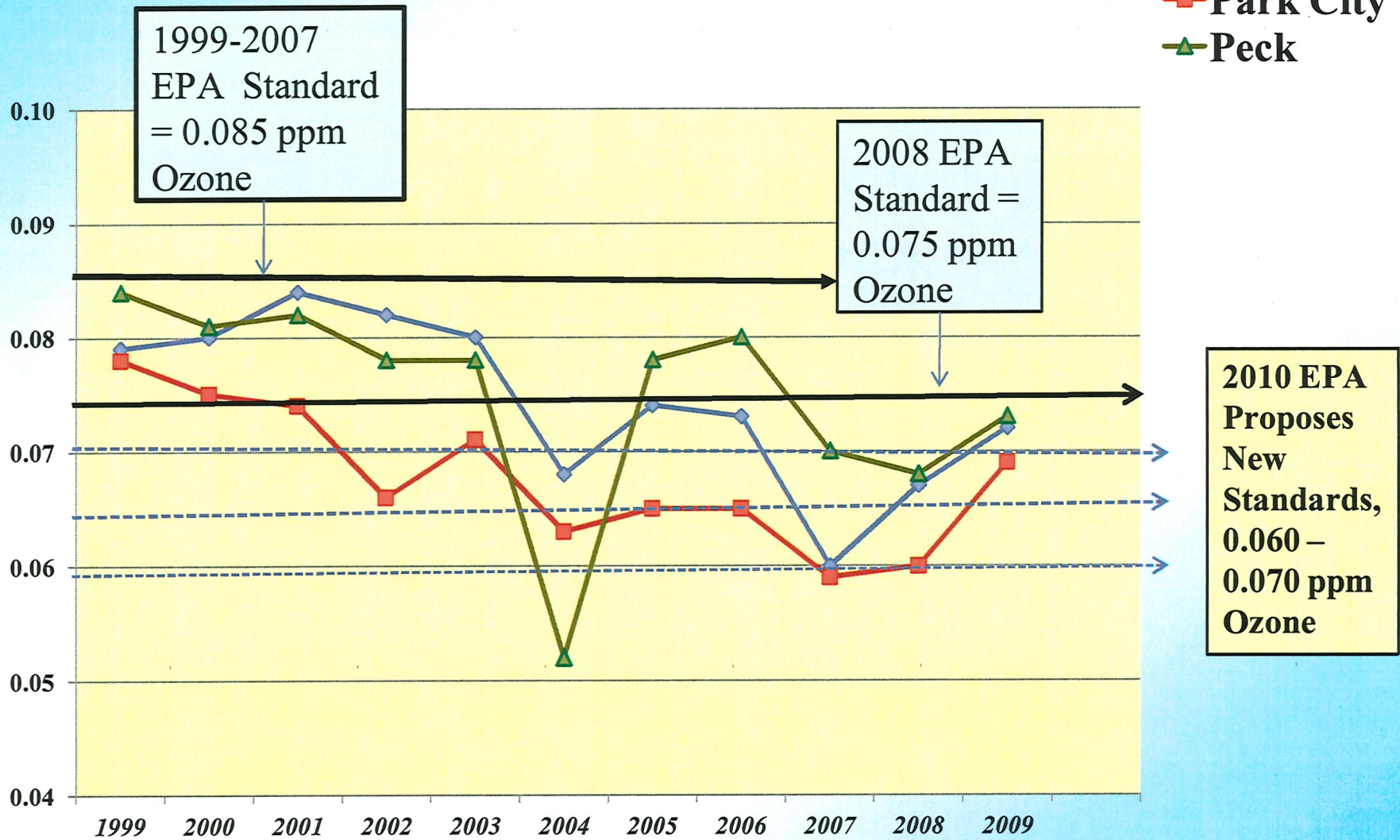
# 8 Hour Ozone Maximum Values - April



# Wichita MSA Ozone 4th High 8 Hour Average

1999-2009

- ◆ Env. Serv
- Park City
- ▲ Peck





SIERRA CLUB, KANSAS CHAPTER  
9844 GEORGIA, KANSAS CITY, KS 66109

STATEMENT OF CHRIS CARDINAL, LEGISLATIVE COORDINATOR  
FEBRUARY 4TH, 2010  
BEFORE THE SENATE NATURAL RESOURCES COMMITTEE  
PRESCRIBED BURNING IN THE FLINT HILLS

Chairperson McGinn and honorable members of the committee:

Thank you for the opportunity to speak to this pressing issue today, and for the fine work this committee and its members do for the state of Kansas. My name is Chris Cardinal, and I am here on behalf of the Kansas Chapter of the Sierra Club, the nations largest and oldest grassroots environmental organization.

Kansans' want and should have a coordinated system of outdoor recreation, tourism, cultural and natural resources involving the private sector, user organizations and associations, friends groups, and all levels of government.

Everyone involved in the presentations on Prescribed Burning, as well as in all types of agriculture, have a sustainable proposition to offer. The Kansas Chapter of the Sierra Club, in turn, is not in support of taking away the ranchers' matches. Rather we believe that the manner and frequency of range burning in the Flint Hills needs to be changed to accommodate native wildlife habitat, to reduce air pollution, and to protect the day to day operations livestock production. As outlined below, we believe this is a worthy and achievable goal.

Thirty plus years of unequivocal prairie ecosystem research in the Konza Prairie and others, has shown the following:

- 1) Burning of prairie is required to maintain the ecosystem
- 2) The best regime for maintaining the ecosystem is to burn on approximately a 3-year cycle
- 3) Burning in patches or on a rotational basis within a landowners property is preferred to burning all the property in a single year.

The annual, early-spring ,complete burning of entire ranches - in fact almost all of the Flint Hills - is not a requirement to preserving the prairie ecosystem. Rather, it is the regime which has been shown to produce the most weight gain in the shortest period of time for ranchers at the cost of the degradation of one of our states most valuable resources and habitats.

Ranching today in most of the Flint Hills is a broad-scale industrial activity that is damaging on many levels. Scientists agree that it is responsible for the decline of the greater

prairie chicken and other grassland birds. This excess burning and stocking system is so vast, as the members of this committee know, that it has caused exceedances at air quality monitors in Kansas City and Wichita in two of the past six years.

Current range burning practices in the Flint Hills have nothing to do with preserving the 'agricultural heritage' of the Flint Hills. Early-intensive stocking has only been practiced in the Flint Hills since about 1980 and is not the method that was used by the Native Americans (as noted in 2002 by Kansas University researchers). Many studies have shown that it is detrimental to the prairie ecosystem. It decreases plant diversity and eliminates all habitat for wildlife at a single moment in time.

Dr. Robert Robel of KSU notes that burning in April and May disrupts the female Prairie Chicken's nesting patterns. The hens are looking for nests in February and March, then burning takes place shortly after in April and May. The hen lays 14 eggs (1 per day) and then sits on the eggs for 28 days. The hens need the last year's dead cover to nest, so the burning is destroying cover.

The greater prairie-chicken symbolizes a vanishing heritage, and there are also many practical reasons private landowners should pay attention to what this bird is telling us. For in fact, what's good for the greater prairie-chicken is, in many cases, good for landowners and their business.

The greater prairie-chicken isn't endangered, but the science behind their rapidly declining populations tells us that if we don't change our ways, they will be. The scale used to identify urgency of threat to a Candidate Species runs from 12 to one, with one being almost certain that a species will be listed as threatened or endangered. The lesser prairie-chicken recently rose on this scale from an eight to a two.

Aside from its entertainment value, the prairie chicken is seen as a symbol of our prairie heritage. From a scientific viewpoint, this bird is regarded as the canary in the mine. Only a well maintained prairie will support a prairie chicken population. A healthy prairie will provide the habitat for other creatures, like the upland sandpiper, the eastern meadowlark, and the regal fritillary butterfly.

If the greater prairie-chicken is listed as threatened or endangered, that will have a direct impact on agricultural business. Limitations imposed by the federal Endangered Species Act (ESA) could affect day to day operations involving livestock production, including limiting some

common activities. Further, oil, gas and wind energy production could be directly impacted if the bird is listed, as ESA rules could affect the locations and scope of these activities.

Rangeland and water issues also go hand in hand in greater prairie-chicken country. Surface water availability and water quality problems can degrade habitat for greater prairie-chickens and other wildlife. Conversely, healthy native grasslands are good for prairie-chickens and water resources.

For all these reasons it is in the best interest of the private landowner to be in support of a three year burn cycle.

Flint Hills burning should and must continue, but under different regimes than currently used. Such burning could be done using the regime supported by science, to reduce it's impact on urban air quality and to meet the proposed EPA requirements for ozone.

Exempting the Flint Hills from EPA regulation will only contribute to the worsening of the urban air quality and be detrimental to the prairie ecosystem and the agricultural industry as a whole.

Mr. Chairman and Members of the Committee; it is our position, in line with the unequivocal research, that burning approximately one-third of the prairie each year would go a long way to meeting the EPA air quality standards, would be beneficial to the long term health of not only the prairie ecosystem, but also to the day to day livestock, oil, gas and wind energy operations. Thank you again for the opportunity to speak to this pressing issue.

**TESTIMONY BEFORE SENATE NATURAL RESOURCES COMMITTEE  
FLINT HILLS PRESCRIBED BURNING**

January 22, 2010

Good morning, Madam Chair and members of the Committee. My name is Cindy Kemper, and I am here today in my capacity as Johnson County's chief environmental staff person. One of my duties as director of the Johnson County Environmental Department is to oversee the county's air pollution control program. We exercise this duty in close coordination with the KS Department of Health & Environment, the U.S. EPA and other air quality agencies in the Kansas City region.

We understand the importance of prescribed burning to preservation of natural resources and to livestock vitality. Those of us who live in larger cities in Kansas surely benefit in many ways from the strong agricultural traditions in the rural part of our state, and we owe much to the farmers and ranchers who are part of those traditions.

However, our local businesses and the health of our citizens suffer when prescribed burns take place in a very concentrated, compressed time period under weather conditions that carry the smoke and harmful emissions into our area. This has happened twice, once in 2003 and again in 2009. As the U.S. EPA ratchets down on air pollution standards, these situations are likely to occur more frequently. In fact, smoke from the concentrated field burning in 2003 and 2009 caused violations of the ground-level ozone ("smog") standard in the Kansas City area. The health of our residents was directly impacted by the smoke from these burns.

As you undoubtedly know, Johnson County is part of a five county area in the greater Kansas City region that has struggled for decades to comply with the ozone standard. Over the years, hundreds of businesses in Johnson County have been subject to increasingly more stringent air pollution regulations in order to reduce the emissions that cause ozone. The cost of these controls is passed onto the public in the form of higher prices for products and services.

Our local efforts to control local emissions that cause ozone are not finished. In 2008, the U.S. EPA strengthened the federal ozone standard and is expected to

strengthen it again in response to scientific evidence that adverse health impacts occur at lower ozone levels. We must now return to our local businesses and our residents, and ask them to invest, once again, in more pollution controls. There is no more "low hanging fruit." The next round of pollution controls will be much more expensive and will "touch" many more local businesses and residents than previously.

You can imagine how difficult it is to justify additional air pollution controls locally when smoke from the agricultural burning in out-state areas not only remains uncontrolled, but makes the local problem worse. The ozone violations caused by the burning increases the magnitude of the emission reductions we must achieve locally to meet the ozone standard in Johnson County and the larger Kansas City area. The economic cost to downwind communities like Johnson County is potentially enormous. We could be looking at a mandatory vehicle inspection & maintenance program for the Kansas City area; or reformulated gasoline requirements.

A solution is not only possible, but hopefully, is on the horizon. Johnson County has been invited to participate in the development of a KS Smoke Management Plan to reduce the impact of this burning on downwind communities like Johnson County, while still preserving the benefits of burning. All affected parties – urban and rural interests alike – need to be involved in the development of this Plan. We are optimistic that an effective, credible Plan can result from this process. However, this cannot be an open-ended process without milestones and timeframes, or the U.S. EPA has made it very clear that it will be forced to intervene. Federal law does not allow air pollution sources to contribute to violations of health-based standards in downwind communities. And even if the federal law did not exist, surely we all share a mutual commitment to providing healthy air for everyone in KS to breathe. There is no reason why healthy air quality and healthy prairie eco-systems cannot co-exist in harmony. We look forward to working with the agricultural community to achieve this goal.

Thank you for the opportunity to testify on this critical issue.



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

FEB 3 2010

OFFICE OF  
REGIONAL ADMINISTRATOR

John Mitchell  
Director  
Division of Environment  
Kansas Department of Health & Environment  
Curtis State Office Building  
1000 S.W. Jackson Street, Suite 400  
Topeka, KS 66612-1367

Dear Mr. Mitchell:

My staff have advised me of the Region's participation in ongoing dialogue relating to the Flint Hills burns. These efforts included participation in the meeting on December 1<sup>st</sup> with the Flint Hills Fire Council, Kansas Livestock Association, Kansas Department of Agriculture the U.S. Fish and Wildlife Service, Kansas Prescribed Fire Council, Johnson County Environmental Department and others. My staff reports that the discussion at the meeting was very productive, and that they believe everyone walked away from the meeting with a better understanding of the range of perspectives and complex challenges related to the burning in the Flint Hills.

I am quite concerned about the air quality health impact associated with the burns. The emissions from the burns have contributed to higher measurement of particulate matter and ozone concentrations in the downwind areas such as Wichita and Kansas City. It is also likely that additional impacts are occurring in those local communities situated between the Flint Hills and these large metropolitan areas.

As you know, emissions from sources and activities that impact violating monitors will have to be considered in the planning process for attaining and maintaining the ambient air quality standards. The Environmental Protection Agency's (EPA's) ambient air quality standards are health-based standards. There is a substantial amount of research linking elevated levels of particulate matter and ozone to adverse health affects such as decreased lung function and an increase in the incidence of asthma attacks.

At the December 1<sup>st</sup> meeting, the Region highlighted the importance of a smoke management program, and we continue to strongly encourage the development and use of a smoke management program as an important tool for managing the environmental and health impacts of the burning. Such a program can benefit Kansas residents and agricultural communities through the use of strategies ranging from burn event education and advance downwind notification to burn planning, regional coordination and evaluation of alternative burn approaches. All of these strategies have been successfully employed at other locations throughout the country and have resulted in reduced exposure and impact on public health and the environment. I am simply asking ranchers burning within the Flint Hills area to be good neighbors to those residents who live not only immediately adjacent to their ranches but also to those who live downwind and could be impacted by the burns.

RECYCLE A small recycling symbol consisting of three chasing arrows forming a triangle.

Senate Natural Resources  
02-04-10  
Attachment 6 - 1



2

It is my understanding that there will be numerous stakeholder meetings to discuss the air quality concerns related to agricultural burning and approaches to manage the burns. I look forward to hearing from you in the near future regarding your progress at these meetings and your thoughts on any follow-up meetings needed to continue the development of such a program. I would be glad to offer our assistance at any time should you require it to meet our mutual goal of protecting human health and the environment.

Again thank you for setting up the meeting; I look forward to continuing our discussion. If you have any questions, please call me at 913-551-7006 or contact Becky Weber at 913-551-7487, email [weber.rebecca@epa.gov](mailto:weber.rebecca@epa.gov).

Sincerely,



Karl Brooks  
Regional Administrator

cc: Prescribed Fire Council  
Kansas Farm Bureau  
Kansas Livestock Association  
KSU Extension  
Kansas Department of Agriculture  
Kansas Forest Service  
USDA Natural Resources Conservation Service  
Johnson County Health Department  
City of Wichita  
KS Wildlife Parks

6-2