



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 27 2010

OFFICE OF  
THE REGIONAL ADMINISTRATOR

Mr. W. C. Blanton  
Husch Blackwell LLP  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112

Dear Mr. Blanton:

Your recent letters have raised several issues regarding the Kansas Department of Health and Environment (KDHE) permitting process for the proposed expansion of the Sunflower Electric Power Corporation's Holcomb Station. I wanted to reiterate the Agency's views set out in William Rice's letter to KDHE dated July 1, 2009.

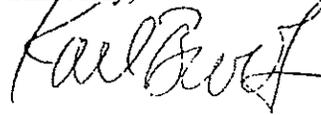
The Environmental Protection Agency's (EPA) role in the process is to provide oversight to ensure that the requirements of the Clean Air Act (CAA) and the federally approved Kansas State Implementation Plan are met. EPA particularly emphasized the importance of public input, preparation of a comprehensive administrative record, and careful response to public comments. As explained below, I reaffirm those principles.

At the heart of the CAA, and all basic environmental protection laws, are several fundamental principles. These principles apply to state agencies, such as KDHE, which implement the federal program with EPA approval. These principles are: 1) science and technical evidence drive permitting decisions; 2) permitting decisions reflect thorough and even-handed consideration of the public interest; and 3) state decisions comply with governing law. Not coincidentally, these same three principles are at the heart of EPA's core mission: regulate on the basis of science; be transparent to the public; and observe the rule of law.

In the Sunflower permitting process, as in most CAA matters, KDHE has the primary responsibility to implement and enforce the CAA. EPA's responsibility is to ensure KDHE complies with the CAA. Rest assured, EPA's review of KDHE's final permitting action will carefully consider whether KDHE: (1) thoroughly assessed engineering and scientific evidence to ensure the new source complies with KDHE's approved PSD program; (2) afforded adequate opportunities for public input, impartially and thoroughly considered, and appropriately responded to all public comments on all relevant aspects of the permit action; and (3) documented all relevant aspects of its final permitting decision so that the basis and record of the decision is clear and transparent.

I appreciate your interest in this important issue. If you have any questions, please do not hesitate to call me or EPA Region 7 Air and Waste Management Director, Rebecca Weber at (913) 551-7487.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl Brooks', written in a cursive style.

Karl Brooks  
Regional Administrator

Enclosure

cc: Roderick Bremby, Secretary  
Kansas Department of Health and Environment

Mr. Todd True  
Earthjustice

Ms. Amanda Goodin  
Earthjustice



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SEP 27 2010

OFFICE OF  
THE REGIONAL ADMINISTRATOR

Mr. Todd True  
Ms. Amanda Goodin  
Earthjustice  
705 Second Avenue, Suite 203  
Seattle, Washington 98104

Dear Mr. True and Ms. Goodwin:

Your recent letters have raised several issues regarding the Kansas Department of Health and Environment (KDHE) permitting process for the proposed expansion of the Sunflower Electric Power Corporation's Holcomb Station. I wanted to reiterate the Agency's views set out in William Rice's letter to KDHE dated July 1, 2009.

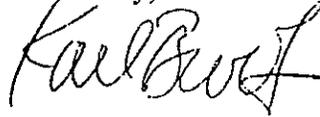
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Sincerely,

A handwritten signature in black ink, appearing to read "Karl Brooks". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Karl Brooks  
Regional Administrator

Enclosure

cc: Roderick Bremby, Secretary  
Kansas Department of Health and Environment

Mr. W.C. Blanton  
Husch Blackwell LLP



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OFFICE OF  
REGIONAL ADMINISTRATOR

JUL -1 2009

Roderick L. Bremby, Secretary  
Kansas Department of Health and Environment  
Curtis State Office Building  
1000 SW Jackson  
Topeka, Kansas 66612

Dear Secretary Bremby:

We appreciate the opportunity to meet recently with your staff, counsel for Governor Parkinson, and representatives of Sunflower Electric Power Corporation and Tri-State Generation and Transmission Association. During the meeting, we discussed important issues with respect to the new Sunflower project currently under review by your office. This letter summarizes state and federal air permitting and approval requirements which were discussed during the meeting.

As you know, in October 2007, KDHE announced its decision to deny a construction permit for two new 700 MW coal-fired units at the Sunflower Electric Power Corporation Holcomb Power Plant. On May 4, Governor Parkinson and Sunflower signed an agreement (the "Agreement") requiring issuance of a permit for one new 895 MW unit. This agreement was incorporated into HB2369 and signed into law by the Governor on May 22. However, as we stated at the meeting, the new Sunflower project contemplated by the Agreement must still meet the requirements of the federal Clean Air Act (CAA or the "Act") and the Kansas State Implementation Plan approved by EPA under the Act. These requirements are summarized below.

### **CAA Prevention of Significant Deterioration (PSD) Permit**

The CAA establishes a preconstruction permit program, the prevention of significant deterioration (PSD) program, to ensure, prior to approval for construction of a project, that major new sources of certain air pollutants other than hazardous air pollutants (HAP) are well controlled and will not significantly degrade air quality. The KDHE also has a program in place, approved by EPA, to implement the PSD program in accordance with federal law. A State with an EPA-approved PSD program is authorized to issue a single construction permit that fulfills the requirements of both State and federal law. Notwithstanding KDHE's responsibilities under State law, as amended by HB2369, KDHE retains a responsibility under its approved PSD program to ensure that construction permits issued by KDHE meet the requirements of the PSD program under the federal Clean Air Act. If a permit issued by KDHE under State law is not

issued in accordance with the requirements of the State's approved PSD program, the Sunflower facility will not have the necessary authorization under the Clean Air Act to commence construction.

The original application for the Sunflower modifications, submitted to KDHE in February 2006, requested approval of three new 700 MW units. This was the project on which EPA and the public were invited to comment during the permit review process. However, the 2007 draft final construction permit, prepared after EPA's review and after the close of the public comment period, addressed requirements for two new 700 MW units. Despite the preparation of a draft final permit for these two units, KDHE denied the permit. The Agreement contemplates that Sunflower will now construct a single, new 895 MW unit and states, in part, that "the Secretary shall issue the final permit substantially in the form of the draft final permit prepared by the KDHE technical staff." However, as discussed below, the redesign of this new unit, as well as public input on the new project, will need to be considered in determining the form and content of any final permit.

Several design changes are anticipated for the larger 895 MW unit. Such redesign can lead to changes in emissions impacts on air quality, which could affect the public's concerns about the project. The public should have an opportunity to provide meaningful comment on any such impacts. For example, the following potential changes have been discussed: 1) a relocated stack, which could change the location of significant emissions impacts, 2) one or more additional scrubber modules, and 3) redesign of the coal and other materials handling facilities, which could change the projected impacts of fugitive emissions on air quality in the area.

We believe that the requirements of the Clean Air Act PSD program, as implemented through KDHE's approved State Implementation Plan, necessitate submission of an application addressing all applicable requirements of the PSD program for the new project. KDHE should conduct a comprehensive analysis of the new project addressing the PSD program requirements. Best available control technology (BACT) will need to be established and air quality and increment impacts will need to be analyzed contemporaneously with any approval of the project. We recommend that part of the analysis include an evaluation of PM<sub>2.5</sub> emissions instead of relying on PM<sub>10</sub> emissions as a surrogate. In addition, Sunflower should consider the option of employing Integrated Gasification Combined Cycle (IGCC) technology, and other higher efficiency designs for the permit record.

As required by the applicable federally approved state regulations implementing the CAA PSD program, we expect that KDHE will prepare a comprehensive record supporting any decision it makes regarding the new project. Consistent with the approved regulations, KDHE must provide opportunity for a full 30-day public notice and comment period, making the results of KDHE's analysis of the new project available for public review. KDHE should also respond to any comments prior to making a final permit decision.

## CAA Section 112(g) Hazardous Air Pollutant (HAP) Permit

The CAA establishes comprehensive programs to address sources of hazardous air pollutants (HAP), which can cause serious health effects. One such program, the 112(g) permit program, is designed to ensure that certain major new sources of HAPs are determined, prior to their construction or reconstruction, to be well controlled regarding these pollutants. As you know, the EPA and KDHE have requirements in place to implement these programs.

In 2006, KDHE proposed a mercury limit for the new units consistent with EPA's New Source Performance Standards (NSPS) found at 40 CFR Part 60, Subpart Da. The limit satisfied the regulatory requirements for hazardous air pollutants (HAP) at that time because EPA had promulgated a rule, called the Section 112(n) Revision Rule, which removed coal- and oil-fired electric generating units from the list of categories regulated under section 112. On February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit vacated this rule. On March 14, 2008, the Court issued its mandate, which made the vacatur effective. The effect of the vacatur is that coal- and oil-fired electric generating units remain a section 112(c) listed source category. Because EPA has not yet promulgated national emission standards for coal- and oil-fired electric generating units under section 112(d), any such units that are major sources<sup>1</sup> must undergo a case-by-case MACT determination pursuant to section 112(g)(2) prior to construction or reconstruction. See January 7, 2009 memorandum from Robert J. Myers to Regional Administrators (attachment).

The construction permit proposed and denied by KDHE contained no limits on HAPs, other than mercury, and would not effectively satisfy Sunflower's obligation to comply with 112(g). Likewise, the Agreement signed May 4 does not establish adequate limits for HAP emitted for the new unit, including, for example, HAP acid gases, metals, organics or mercury for the new unit. To reconcile the gap, Sunflower is required to apply for a case-by-case 112(g) permit. Alternatively, Sunflower can obtain a "synthetic area source" permit, which would include enforceable emissions limits that prevent Sunflower from emitting pollutants above the 112 major source levels. See section 112(a)(1)-(2). In either case, KDHE would have to conduct an appropriate review, set rigorous, enforceable emissions limits in a proposed permit, provide a minimum of 30 days for public comment, respond to comments, and issue a final permit decision. We discussed these issues with your staff and Sunflower in detail at the recent meeting. The 112(g) case-by-case permitting requirements are described in 40 CFR §63.40-63.44 and the Kansas implementing rules at K.A.R. 28-19-752a.

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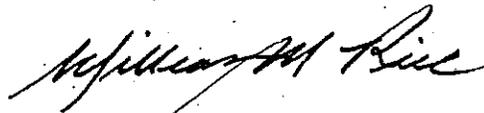
<sup>1</sup> A major source is any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP.

## Next Steps

We look forward to working with KDHE and Sunflower to ensure that all preconstruction permits or approvals issued by the Department meet applicable requirements for this new project under the Kansas program. EPA also retains its authority under Sections 113 and 167 of the Clean Air Act, as appropriate, to ensure that the applicable legal requirements are met.

We appreciate your consideration of these issues. We will be available during the review process to assist with issues that arise, and to make the review proceed as expeditiously as possible. If you have any questions, please don't hesitate to contact me at 913-551-7006, or have your staff contact Rebecca Weber, [weber.rebecca@epa.gov](mailto:weber.rebecca@epa.gov), 913-551-7487.

Sincerely,



William W. Rice  
Acting Regional Administrator

cc: Sally Howard, Governor Parkinson's Office  
Aaron Dunkel, Kansas Department of Health and Environment  
John Mitchell, Kansas Department of Health and Environment  
Sunflower Electric Cooperative  
Tri-State Generation and Transmission