



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

OFFICE OF
REGIONAL ADMINISTRATOR

OCT 31 2011

Dr. Robert Moser
Secretary
Kansas Department of Health and Environment
Curtis State Office Building
1000 Southwest Jackson
Topeka, KS 66612

Dear Dr. Moser:

I am writing to express this Agency's concern about the State of Kansas' characterization of this agency's position about CAA permit limits in the State's recent brief to the Kansas Supreme Court. This letter reiterates EPA's prior comments to KDHE on the Sunflower permit that the Clean Air Act (CAA) requires permits to contain emission limits that are protective of the new National Ambient Air Quality Standards (NAAQS) for nitrogen oxide and sulfur dioxide.

Recently, KDHE argued to the Kansas Supreme Court that under the Kansas State Implementation Plan (SIP), the Sunflower permit was not required to include one-hour emission limits for nitrogen oxides and sulfur dioxide because Kansas has three years to implement the new NAAQS standards for those pollutants into its SIP. When discussing this issue on page 36 of its brief Kansas incorrectly informed the Court, "Obviously EPA has no substantial objection to the issuance of the construction permit."

Kansas' brief did not inform the Court that EPA has in three separate letters advised KDHE that any Sunflower permit needs to ensure that the NAAQS are protected (*see* EPA letters to KDHE dated April 2, 2010, August 2, 2010, and February 3, 2011). The February 3, 2011, letter to KDHE states,

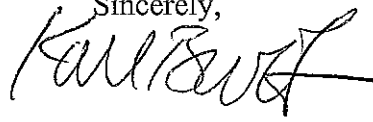
"KDHE has not adequately addressed EPA's comment from August 12, 2010, which states that KDHE needs to ensure that National Ambient Air Quality Standards (NAAQS) are protected. KDHE's response to comments stated that the CAA does not require protection of the new 1-hour NAAQS until adopted and approved into the Kansas SIP. Our understanding is this position comes from your interpretation of section 110(a) of the CAA, which allows states up to 3 years for adoption and submission of SIPs for new NAAQS. Since EPA disagrees with KDHE's interpretation of federal law, EPA would appreciate a clarification of whether KDHE believes Kansas law precludes the state from applying these standards to this permit."

EPA continues to believe that KDHE could amend the permit to include enforceable 1-hour emission limits prior to the construction and/or operation of the new unit. KDHE recently issued a permit to another facility that did include one-hour emission limits in accordance with the new NO₂ and SO₂ NAAQS. EPA believes this was a correct interpretation of the CAA and the Kansas SIP and encourages KDHE to include one-hour emission limits in the Sunflower permit.



EPA looks forward to a constructive dialogue about how to implement KDHE's duty to apply new NO₂ and SO₂ NAAQS in the Sunflower permit and future permit actions.

Sincerely,

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

Karl Brooks
Regional Administrator

cc: Steve Fabert, Kansas Attorney General's Office.
John Mitchell, Kansas Department of Health and Environment