Guest OP/ED

EPA Will Make Sure Law is Followed on Sunflower Power Plant

By Karl Brooks
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The Sunflower coal-burning power plant controversy has been divisive, complicated – and long-running. Five years on, you can pick a fight by backing or opposing one of the biggest coal-fired plant proposed for this nation.

Each branch of state government -- the legislature, two governors, every level of the state courts – has weighed in. Tens of thousands of Kansans have gone on record for and against permitting Sunflower's construction.

Me, too! When I was teaching history and law at KU, four years before I took the oath of office to lead EPA in this region, I testified that Kansas had to use a fair, transparent state permitting process to base any decision on law and science.

EPA has not yet been party to the Sunflower controversy. That's as it should be. Our U.S. Constitution shares federal and state responsibility to protect our nation's air resource. Our keystone Clean Air Act assigns Kansas Department of Health and Environment (KDHE) initial responsibility to decide if Sunflower's pollutants will damage Kansans' health too much.

But EPA will soon have to make some important legal decisions. And recent developments in Topeka and Washington, D.C., warrant a brief explanation of this agency's duties if the Sunflower controversy hits my desk.

You probably know that on Election Day, Kansas Gov. Mark Parkinson abruptly removed Rod Bremby, the state's top environmental-protection official. It's fair to say these two did not see eye to eye on Sunflower: Bremby denied its permit in 2007 and Parkinson reversed that decision in 2009.

You also should know that this nation's air-quality laws are changing at the same time a new governor takes the reins in Topeka. In January 2011, the biggest new coal-burning pollution sources will have to limit climate-changing emissions for the first time.

How do these changes – political and legal, state and federal -- affect EPA's work on Sunflower? Rest assured, EPA's Sunflower decisions in the coming months will reflect enduring legal principles, not shifting political winds.

Both Kansas and EPA agree: Sunflower would burn so much coal that a state permit issued after January 2 must impose greenhouse-gas controls. Even Kansas leaders who back Sunflower concede that national law governs state permits.

While Kansas is amending its air-quality laws to control greenhouse gases, EPA and KDHE are cooperating to make sure applicants proposing new energy projects can still seek needed permits. A good example of federal-state partnership, this "backstop" shows why the Clean Air Act, now 40 years old, works so well.

Personnel changes at KDHE don't change EPA's responsibilities, but they do highlight Kansas' duty, under our system of government, to show its Sunflower decisions are fair, transparent, and consistent with the law.

If KDHE recommends Sunflower be permitted before January 2, EPA will review this initial decision by asking three important questions:

First, does the Kansas permit include public-health protection standards required by sound science and federal law?

Second, did Kansas operate all parts of its permitting process as required by the Clean Air Act?

And finally, does a Sunflower permit satisfy public confidence in the impartiality and transparency of Kansas' system of safeguarding air quality?

Kansas air permitting law gives all three branches of state government important work, and also invites the people of the state to participate. That's why EPA must scrutinize not just the language of any Sunflower permit, but the whole state decision-making process that produced a permit.

EPA has advised Kansas leaders of their duties many times. And Kansans should rest assured that this agency will make sure the rule of law has been faithfully enforced.

Brooks leads the U.S. Environmental Protection Agency for Region 7 which includes Kansas, Missouri, Iowa, Nebraska and nine Tribal nations.