

March 1, 2011

Karl Brooks
Regional Administrator, Region VII
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, KS 66101

Dear Administrator Brooks:

The Kansas Department of Health and Environment (KDHE) is in receipt of your letter dated February 3, 2011, providing comments on the Sunflower Electric Power Corporation (Sunflower) permit. Specifically, EPA is concerned the permit does not adequately address compliance with the new 1-hour National Ambient Air Quality Standards (NAAQS) for NO₂ and SO₂.

As you know, the Sunflower permit decision is on appeal in the Kansas Supreme Court, pending briefing on issues raised in the Sierra Club's petition for review, including the issue of the permit's compliance with these new standards. The Responsiveness Summary fully explains KDHE's methodology for determining compliance with all NAAQS in the absence of final EPA guidance for compliance with the new 1-hour standards. The summary speaks for itself. I stand by the decision to issue the Sunflower permit, firmly believing it complies with all applicable state and federal air quality requirements.

The KDHE air quality permitting staff and I note with interest EPA's recent expression of concern about the uncertainties in trying to ensure compliance with the new 1-hour standards and its change in position on when the new 1-hour standards are in effect for certain sources. In a Desk Statement from Gina McCarthy, dated January 31, 2011, which was emailed to KDHE from EPA on February 3, 2011, regarding the Avenal Case filed on January 31, 2011, Ms. McCarthy stated:

"Today, EPA signaled its intent to apply a policy that will be more equitable to certain PSD permit applicants by no longer requiring them to demonstrate compliance with the new one-hour standard for nitrogen dioxide (NO₂) if a project's permit application was complete and under review by EPA prior to the June 2009 proposal of the new NO₂ standard.

EPA also believes that the factors that support this policy also provide the basis to grandfather the same permit applications from requirements to meet the new sulfur dioxide (SO₂) air quality standard and best available control technology (BACT) for greenhouse gases (GHGs). This represents a change in the position EPA has taken in previous interpretive statements, but is appropriate given the unforeseen challenges presented by the need for additional time, data collection and technical analysis required for the one-hour NO₂ standard."

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Ms. McCarthy further stated in the declaration filed on January 31, 2011, for the Avenal case,

“applicants seeking PSD permits to construct stationary sources of air pollution have experienced unforeseen challenges with the preparation and review of information to predict the impact of proposed sources on hourly NO2 concentrations.”

KDHE welcomes EPA’s policy shift on this issue and we look forward to continued dialogue with Region 7 on Sunflower Electric and all sources, in the interest of protection of air quality in Kansas.

As a SIP-approved State, KDHE takes the obligation to protect the air quality for all citizens of Kansas very seriously. We will utilize all available means at our disposal to ensure that Kansas meets the 1-hour standards. We look forward to receipt of the final guidance from EPA regarding this issue to assure uniform implementation of the new standard.

Sincerely,



Dr. Robert Moser
Secretary

RB/lv

c: John Mitchell, Director, Div. of Environment
Rick Brunetti, Director, Bureau of Air
Caleb Stegall, General Counsel
Rebecca Weber, Director, Air & Waste Management Div., US EPA, Region 7
Mark Smith, US EPA, Region 7