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DEPARTMENT OF HEALTH
AND ENVIRONMENT

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Testimony on House Bill 2711

**Presented to
House Energy and Utilities Committee**

**By
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Chairman Holmes and members of the Committee, I am Ron Hammerschmidt, Director of KDHE's Division of Environment. I am pleased to appear before you today to present testimony on HB 2711.

The bill focuses primarily on matters of electricity generation and transmission and efficiency and conservation measures. I will confine my testimony to the sections of the bill that would expand the department's authority to address carbon dioxide emissions in Kansas and those sections that have a direct effect on the Kansas Air Quality Act, which the Kansas Department of Health and Environment implements.

I would like to first direct your attention to Sections 10-12, pages 6 - 12, the Carbon Dioxide Emissions Offset Act. Across the United States, a number of legislative and executive branch efforts are underway to address carbon dioxide emissions, generally in the form of cap and trade programs. These state and regional efforts are in various stages of development. Kansas currently is a signatory to the Midwest Governors' Greenhouse Gas Accord and a member of The Climate Registry. The Western Climate Initiative and the Regional Greenhouse Gas Initiative (RGGI) are similar efforts to establish greenhouse gas programs that focus on cap and trade with market-driven pricing. These markets could include either an allocation of allowances or an auction or a combination of the two.

This act would establish an efficiency standard for new sources but would not implement a cap on carbon dioxide emissions in Kansas. This differs from other state and regional initiatives that are establishing a cap that then encourages facilities to implement efficient generation based on market forces. In addition, by fixing the maximum price of carbon offsets at \$3/ton, the act would artificially set the price of carbon rather than allowing market forces to determine the price which, in effect, discourages carbon reductions.

Section 10 of the bill contains new definitions. In keeping with the expressed intent to keep this act separate from the Kansas Air Quality Act and to distinguish between the language used in the existing federal and state air quality laws, the department recommends that the term "affected facility" at Section 10, subsection (b)(1), page 6, lines 12-18, be changed to "affected electrical generating facility." The inclusion of the definition for "reconstruct" or "reconstruction" at Section 10, subsection (b)(7), page 7, lines 24 - 27, as well as the applicability criteria established in Section 11, page 7, lines 34 - 37, bring reconstructed facilities within the scope of the Carbon Dioxide Emissions Offset Act (Offset Act), which could have significant impacts on existing facilities. It is not clear whether all or part of an existing facility would be subject to emissions reductions or offsets.

Sections 10 and 12 of the bill imply a permitting process in several places, but the bill does not clearly establish one. Section 10, subsection (b)(5), pages 6-7, includes the concept of limiting CO2 emissions from facilities through hours of operation or the type of material combusted. This type of restriction is normally placed in a KDHE permit to make it enforceable. In addition, the phrase "permitting authority" is referenced once in Section 12, subsection(e), page 10, lines 21-29, where credits for permanently retiring facilities are discussed. The proposed Offset Act would not be part of the Kansas Air Quality Act and therefore, the CO2 limits/reductions could not be conditions in an air quality permit. In order to implement the program as envisioned by this bill, the state would need permitting and enforcement authority.

Section 10, subsection (b)(1)(C), page 6, lines 17 and 18, exempts sources from being defined as an "affected facility" if they are exempt under section 111 of the federal clean air act. This language would exempt several fossil-fuel-fired steam electricity generating units currently operating in Kansas that were built prior to promulgation of the new source performance standards by EPA.

I would now like to address Sections 30 - 33, pages 21 - 25, which amend the Kansas Air Quality Act. In Section 30, a new subsection (t) is proposed for addition to the list of the secretary's powers and duties in K.S.A. 65-3005. The secretary would be authorized to implement the federal clean air act (CAA), apparently in its entirety. The department currently implements only portions of the CAA. The department is uncertain whether the intent of subsection (t) is to extend the scope of Kansas's implementation of the CAA to other regulatory programs, such as small engine standards, vehicle emission standards, volatile organic compound (VOC)-content standards for paints, etc.

The department notes that several existing sections (e, i, q, and r) of K.S.A. 65-3005 refer to "the prevention, abatement and control of air pollution" as the bases of the Kansas Air Quality Act. In the policy statement made in Section 30, page 21, lines 17 and 18, however, the bill inserts new terms, "prevent the deterioration of air quality." This terminology is similar to the CAA terms, "prevention of significant deterioration (PSD)," which apply to the federal

preconstruction permits the department issues to major stationary sources. The similarity of language may create further confusion as to the intended scope of subsection (t).

Section 30, page 21, lines 22 – 23, limits the scope of the secretary's authority by restricting Kansas's implementation of the CAA to being no more stringent, restrictive or expansive than is required by the CAA. Using PSD permits as an example, Kansas regulation K.A.R. 28-19-350 does not implement all of the federal requirements for PSD. For example, Kansas implements Kansas-specific requirements for stack heights, air quality analysis, and visibility monitoring, which depart from the federal PSD requirements. Unlike the federal PSD rules, Kansas regulations do not require permit applicants to file environmental impact statements. The department is also concerned that a number of regulatory and voluntary programs it has implemented to prevent air pollution would be prohibited from expanding beyond the scope of the CAA. Examples of ongoing programs include: Sustainable Skylines Program; Blue Skyways Program; and the Kansas City Clean Air Action Plan.

The current air quality regulations address permitting requirements for major and minor stationary sources across a range of industrial activities in Kansas. Permits are issued for construction of the emissions source as well as for the source's operation. The department issues prevention of significant deterioration (PSD) permits, new source review (NSR) permits, and Title V operating permits to major stationary sources and construction and operating approvals for minor stationary sources pursuant to current Kansas regulations that have met the requirements for adoption under Kansas law and have met the requirements of the United States Environmental Protection Agency for inclusion in the state implementation plan required by the CAA. The last sentence of (t)(1)(A), page 21, lines 25 – 28, would require the department to seek the enactment of legislation in order to adopt air quality regulations that would be more stringent, restrictive or expansive than the CAA. This provision of the bill would disable the department from performing one of the core elements of the Kansas Air Quality Act, that is, prevention. The department would no longer have available the ability to take flexible and innovative approaches to air quality control.

Subsection (t)(1)(B), page 21, lines 32 – 35, provides an exception for non-attainment areas to the restrictions on the secretary's authority imposed in subsection (t)(1)(A). While the department acknowledges the need for this exception, we must note that the primary purpose of the Kansas Air Quality Act is to avoid federal designation of any area of Kansas as non-attainment. Such a designation means that the area does not meet the National Ambient Air Quality Standards and comes at a significant cost not only to the industries subject to further emission restrictions but to the public, in terms of health and restrictions on their personal activities, i.e., gasoline purchases, lawn mowing. The bill language would allow the department to take action only after non-attainment occurs rather than taking a preventative approach to avoid designation as non-attainment. The department is currently developing administrative

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regulations to implement contingency measures in a Kansas City maintenance plan, which is part of the state implementation plan to avoid a non-attainment designation.

With respect to Section 31, which amends K.S.A. 2007 Supp. 65-3008a, it appears that there is an additional affirmation step required to affirm the issuance of any permit, and the terms and conditions thereof. The bill does not define the form or procedure to be used for this additional affirmation step.

I appreciate the opportunity to provide these comments and will stand for questions when the time is appropriate.