

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Robert Tyson at 8:34 a.m. on January 23, 2004 in Room 423-S of the Capitol.

Members Present:

Senator Christine Downey
Senator Dwayne Umbarger
Senator Janis Lee
Senator Mark Taddiken
Senator Phil Journey
Senator Robert Tyson
Senator Tim Huelskamp

Committee staff present:

Raney Gilliland, Legislative Research Department
Lisa Montgomery, Office of Revisor of Statutes
Linda Bradley, Committee Secretary

Conferees appearing before the committee:

Mike Pepoon, Director of Government Relations, Sedgwick Co.
Karl Mueldener, Director Bureau of Water Regulation
Theresa Hodges, Director Bureau of Environmental Field Services

Others attending:

See Attached List.

The meeting was called to order by Chairman Robert Tyson.

Bill Introductions

Mike Pepoon, Director of Government Relations in Sedgwick, Co. requested introduction of a bill to amend K.S.A. 65-3410 due to a definition change for "solid waste." Senator Journey made a motion to introduce the bill, Senator Lee seconded the motion and the motion carried.

Theresa Hodges, Director Bureau of Environmental Field Services of KDHE, requested introduction of a bill to amend Kansas statute of fixing fees on Radiation Protection Services. Senator Lee made a motion to introduce the bill. Senator Humbarger seconded the motion and the motion carried.

Senator Tyson made a motion to introduce a bill for the purpose of discussion in the Committee. The purpose of the bill would be to split Wildlife and Parks into a Department of Fish and Game, then move the Parks into Commerce and call it Commerce and Tourism. Senator Tyson said this would help get Tourism going in the State. Senator Tyson made the motion for purpose of discussion and Senator Taddiken seconded the motion and the motion carried.

Overview - KDHE

Senator Tyson introduced Karl Mueldener, Director Bureau of Water Regulations of the KDHE, to give an update. Mr. Mueldener presented a summary of activities conducted by the Department to implement K.S.A. 82a-2001 et.seq. (2001 **SB 204**) concerning water quality standards and how the standards apply to streams. Mr. Mueldener then introduced Theresa Hodges, Director Bureau of Environmental Field Services of KDHE, who spoke on field activities related to stream use designations. A copy of their testimony and Annual Report regarding the implementation of this statute is attached. (Attachment 1)

The Chairman then asked the Committee if there were questions. Senators Lee and Huelskamp asked a range of questions including how do you determine public access and how does it effect classification how long a stream segment is, and whether or not there was an impact to the rails-to-trails program.

CONTINUATION SHEET

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE at 8:30 a.m. on January 23, 2004 in Room 423-S of the Capitol.

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The Chairman thanked the conferees for their presentations.

Adjournment

As there was no further business, the meeting was adjourned. The time was 9:19 a.m.

The next meeting is scheduled for Thursday, January 29, 2004.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: Friday, January 23, 2004

NAME	REPRESENTING
Karl Mueldeuer	K D HE
Theresa Hodges	"
Steve Adams	KDWP
Steve Swaffar	Ks Farm Bureau
Rob Menly	Horn Law Firm
Derenda Mitchell	KLA
Jesse McCumy	Commerce
Ken Entwistle	Kansas Water Office
Dale Lambly	K D A
Todd Johnson	KLA
Mike Reporn	Salzwick County
Danielle Noel	Johnson County Gas
Mark Tomb	Lkm
Chris Agjimen	Sierra Club



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

Briefing
to
Senate Committee on Natural Resources
January 23, 2004

Good morning Chairman Tyson and members of the committee. My name is Karl Muedener. Theresa Hodges and I are here to present a summary of activities conducted by the Department to implement K.S.A. 82a-2001 et.seq. (SB 204). SB 204 concerns water quality standards and how the standards apply to streams.

The statute required KDHE to perform two major tasks and to report annually to the Legislature on the progress being made:

1. Evaluate the classification of stream segments against the criteria for classification provided in the statute; and
2. Evaluate the designated uses of classified stream segments .

The report provides a chronology of activities conducted by KDHE.

The evaluation of stream segments for classification is primarily dependent on the US Geological Survey (USGS) completing work on a method for extrapolating stream flow for Kansas stream segments. In order to facilitate that work, KDHE staff contracted with USGS staff to develop a scope of work and funding mechanism. That work was initially completed December 31, 2002. Copies of the USGS report were provided to the Legislative Committee Chairs January 16, 2003. USGS presented an overview of the report to the Senate Environment Committee on February 6, 2003. Subsequent to the original report submission, errors were discovered in some of the calculated flow values. USGS is in the process of correcting those errors and submitting a modified report. The modified report is expected before April 2004.

On December 10, 2002, KDHE submitted regulations to EPA adopting all provisions of SB204 (2001 Legislature). EPA acted on portions of that submission June 24 and August 28, 2003. KDHE also submitted adopted regulations to EPA incorporating amendments to SB204 as required by HB2219 (2003 Legislature) on October 1, 2003. EPA responded to both submissions in a letter dated November 3, 2003.

Senate Natural Resources Committee
Date: 1-23-04
Attachment # 1

DIVISION OF ENVIRONMENT
Bureau of Environmental Field Services
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE 430, TOPEKA, KS 66612-1367
Voice 785-296-6603 Fax 785-291-3266 <http://www.kdhe.state.ks.us>

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The letter approved all but one of the regulatory provisions. Approved regulatory provisions essentially implement state statutes which updated the states recreational uses designations based on EPA's risk based approach relying on e-coli bacteria. The previous system utilized fecal coliform and recognized only two recreational use categories. The five new recreational use categories take into consideration the accessibility of the stream in setting the use category. The more accessible streams are given stricter bacteria criteria than less accessible streams.

One part of regulations was disapproved by EPA. The disapproved reg provision was based on KSA 82a-2001(a)(1)(D)(ii) :

“(ii) a cost/benefit analysis conducted by the department and taking into account the economic and social impact of classifying the stream segment indicates that the benefits of classifying the stream segment outweigh the costs of classifying the stream segment, as consistent with the federal clean water act and federal regulations...”

The provision requires that for any small stream to be classified the benefit of classifying the stream must outweigh the cost of classifying the stream. This provision is based on state statute applies to streams with a median flow less than one cubic foot per second, not inhabited by a threatened or endangered species, and not receiving effluent from a wastewater facility. EPA stated costs and benefits can be considerations in classification, however *“in no case does either the CWA [Clean Water Act] or EPA's implementing regulations allow a cost/benefit analysis to override the requirement to protect existing and attainable uses.”* Due to EPA's action, this one portion of the state water quality standards conflicts with current state law.

Theresa Hodges will brief you on activities related to stream use designations.

A use attainability analysis (UAA) is defined as a study conducted or accepted by the department that is designed to determine whether or not a surface water or surface water segment supports, or is capable of supporting in the absence of artificial sources of pollution, one or more of the designated uses. KDHE published a guidance document December, 2001 which describes the protocol for such a study. The surface water quality standards define 7 designated uses: agricultural water supply use (irrigation and livestock watering), aquatic life support use (special, expected, restricted), domestic water supply use, food procurement use, groundwater recharge use, industrial water supply use, and recreational uses (primary and secondary contact recreation).

The statute requires KDHE to complete recreational UAAs on all stream segments listed in the 1999 Surface Water Register where such UAAs have not been conducted (25% each year through October, 2005). In October, 2003, draft regulations proposed recreational uses for 383 stream segments and 107 lakes. This included 71 stream recreational UAAs conducted in 2001. Fourteen stream segments were proposed for deletion from the Kansas Surface Water Register (removed from classification), 245 stream segments were proposed as secondary contact recreation, and 124 stream segments were proposed as primary contact recreation. Six lakes were proposed for deletion from the Kansas Surface Water Register, 4 lakes were proposed as secondary contact recreation, and 97 lakes were proposed as primary contact recreation and food

procurement. Recreational use designations for stream segments were assigned either 2 sub-classes of primary contact recreation or 2 sub-classes of secondary contact recreation in response to requirements of K.S.A. 2002 Supp 82a-2001, implementing provision of HB 2219.

Hearings on the draft regulations were held in Wichita and Topeka on December 1-2, 2003. Based on comments received, modified regulations were sent to the Department of Administration and the Office of the Attorney General for review and approval. On December 29, 2003, the regulations were adopted by the Secretary of Health and Environment and submitted to EPA for approval on January 5, 2004. The regulations are effective today, January 23, 2004 under State law.

The designated use changes resulting from the UAAs conducted during the 2003 field work season will be reviewed internally, public comment will be sought and then they too must be adopted into regulations through the regulatory process.

KDHE has met all of the deadlines for activities stipulated in the statute.

We will be glad to answer any questions.

Respectfully Submitted,

Karl Mueldener
Director
Bureau of Water

Theresa Hodges
Director
Bureau of Environmental Field Services

Annual Report to the Governor and Legislature
Regarding Implementation of K.S.A. 82a-2001 *et.seq.*

January 9, 2004

Kansas Department of Health and Environment
Division of Environment
Curtis State Office Building
1000 SW Jackson, Suite 400
Topeka, Kansas 66612

Activities Related to Substitute of Senate Bill 204 (KSA 82a-2001 et. seq.)

Kansas Department of Health and Environment

January 9, 2004

On April 13, 2001, Governor Graves signed into law Substitute for Senate Bill 204 (SB204). K.S.A. 82a-2001 *et. seq.* requires the Kansas Department of Health and Environment (KDHE) perform two major tasks:

1. Evaluate the classification status of stream segments against the criteria for classification of stream segments provided in K.S.A. 82a-2003.
2. Evaluate the designated uses of classified streams against the criteria for use designation of classified stream segments provided in K.S.A. 82a-2004.

K.S.A. 82a-2006 requires the Secretary of Health and Environment to report annually to the Governor and Legislature the status of implementing K.S.A. 82a-2002 *et. seq.*. The status report follows:

1. Classification of Stream Segments. Evaluation of stream segments for classification is primarily dependent on the US Geological Survey (USGS) completing work on a method for extrapolating stream flow for Kansas stream segments. In order to facilitate that work, KDHE staff met with USGS staff to develop a scope of work and funding mechanism. That work was initially completed December 31, 2002. Copies of the USGS report were provided to the Legislative Committee Chairs January 16, 2003. USGS presented an overview of the report to the Senate Environment Committee on February 6, 2003.

Subsequent to the original report submission, errors were discovered in some of the calculated flow values. USGS is in the process of correcting those errors and submitting a modified report. The modified report is expected before April 2004.

2. SB204/HB2219 Regulations. On December 10, 2002, KDHE submitted regulations to EPA adopting all provisions of SB204 (2001 Legislature). EPA acted on portions of that submission June 24 and August 28, 2003. KDHE also submitted adopted regulations to EPA incorporating amendments to SB204 as required by HB2219 (2003 Legislature) on October 1, 2003. EPA responded to both submissions in a letter dated November 3, 2003.

The letter approved all of the regulatory provisions with the exception of KSA 82a-2001(a)(1)(D)(ii):

“(ii) a cost/benefit analysis conducted by the department and taking into account the economic and social impact of classifying the stream segment indicates that the benefits of classifying the stream segment outweigh the costs of classifying the

stream segment, as consistent with the federal clean water act and federal regulations...

The provision requires that for any stream to be classified which does not have a median flow of greater than one cubic foot per second; or is not inhabited by a threatened or endangered species; or is not receiving effluent from a wastewater facility, the benefit of classifying the stream must outweigh the cost of classifying the stream. EPA stated costs and benefits can be considerations in classification, however *"in no case does either the CWA [Clean Water Act] or EPA's implementing regulations allow a cost/benefit analysis to override the requirement to protect existing and attainable uses."* Due to EPA's action, approved portions of the state water quality standards conflict with current state law.

3. Evaluation of Designated Uses. The following is a list of use attainability tasks completed in this reporting period:

- A. In the period of April 1 through October 31, 2002, 312 stream segments and 107 lakes were evaluated by a use attainability analysis (UAA) to determine the appropriate recreational use designation.
- B. March 13, 2003 - Notice of Intent to Revise Regulations published in the Kansas Register and notification mailed to 204 persons/entities on mailing list. No comments were received.
- C. October 2, 2003 - *Kansas Register* notice published regarding the draft regulations and scheduled hearing dates; notification also mailed to 204 persons/entities on mailing list. Regulations proposed recreational uses for 383 stream segments and 107 lakes. This included 71 stream recreational UAAs conducted in 2001. Fourteen stream segments were proposed for deletion from the Kansas Surface Water Register (removed from classification), 245 stream segments were proposed as secondary contact recreation, and 124 stream segments were proposed as primary contact recreation. Six lakes were proposed for deletion from the Kansas Surface Water Register, 4 lakes were proposed as secondary contact recreation, and 97 lakes were proposed as primary contact recreation and food procurement. Recreational use designations for stream segments were assigned either 2 sub-classes of primary contact recreation or 2 sub-classes of secondary contact recreation in response to requirements of K.S.A. 2002 Supp 82a-2001, implementing provision of HB 2219.
- D. November 20, 2003 - Regulation package presented to the Joint Committee on Administrative Rules and Regulations.
- E. December 1-2, 2003 - Hearings on the draft regulations were held in Wichita and Topeka.

- F. December 5, 2003 - Comment period on the draft regulations closed.
- G. December 23, 2003 - Based on comments received, modified regulations sent to Department of Administration for review and approval. Received approval.
- H. December 29, 2003 - Approval received on final regulations from the Office of Attorney General.
- I. December 29, 2003 - Final regulations adopted by the Secretary of Health and Environment.
- J. January 5, 2004 - Final regulations submitted to EPA for approval.
- K. January 8, 2004 - Final regulations published in the *Kansas Register*.
- L. January 23, 2004 - Regulations effective under State law.

4. Cost/Benefit Protocols. In a letter dated November 3, 2003, U.S. EPA responded to the surface water quality regulations submitted by KDHE implementing HB 2219. The U.S. EPA disapproved the cost/benefit provisions of K.S.A. Supp2002 82a-2001(a)(1)(D)(ii). In light of the disapproval of this provision, the KDHE has not further pursued the development of cost/benefit protocols.