

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 5, 2010
Room 152-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice-chairperson
Senator Karin Brownlee
Senator Janis Lee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative John Faber
Representative Steve Huebert
Representative Shirley Palmer
Representative Joe Patton
Representative Jan Pauls
Representative Ed Trimmer

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Judy Glasgow, Committee Assistant

Others Present

George Barbee, Kansas State Board of Technical Professions
M. L. Dyck, Kansas State Board of Technical Professions
Mark Stafford, Home Inspectors Registration Board
Justin McFarland, Kansas Board of Examiners in Optometry and Board of Pharmacy
Chris Tymeson, Kansas Department of Wildlife and Parks
Sean Miller, Capitol Strategies
John Smith, Kansas Department of Credit Unions
Michael Baugh, Kansas Department of Credit Unions
John Wine, Kansas Insurance Department
Linda Sheppard, Kansas Insurance Department
Stephen Williamson, KU Cancer Center

Marci Nielsen, KU Medical Center
Lane Letourneau, Kansas Department of Agriculture
Dave Starkey, Kansas Department of Agriculture
Roy Jensen, KU Cancer Center
Mary Blubaugh, Kansas State Board of Nursing
David Barfield, Kansas Department of Agriculture
Debra Billingsly, Kansas Board of Pharmacy
Christina Morris, Kansas Board of Pharmacy
Phyllis Gilmore, Behavioral Sciences Regulatory Board
Mike Cochran, Kansas Department of Health and Environment, Bureau of Water
Cynthia Khan, Kansas Department of Health and Environment, Bureau of Water
Berend Koops, Hein Law Firm

**Monday, April 5
Morning Session**

Chairperson Vicki Schmidt called the meeting to order at 10:00 a.m. The Chairperson asked the Committee for action on the minutes of the February 26, 2010, meeting. *Senator Ostmeyer moved that the minutes be approved as presented; Representative Holmes seconded the motion. The motion carried.*

Mark Stafford was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Home Inspectors Registration Board. KAR 130-4-1, code of ethics, and KAR 130-4-2, standards of practice.

The Committee members had questions for Mr. Stafford about these rules and regulations. Mr. Stafford stated that he was not able to answer questions of a technical nature and that Jeff Barnes would be the person who could answer those types of questions. Chairperson Schmidt asked that Mr. Stafford relay to Mr. Barnes how important it is that a Board member come before the Committee to answer the questions that come up regarding proposed rules and regulations in the future. A Committee member noted that home inspection is optional at this time. It was also noted that the inspection performed under KAR 130-4-2 would not ensure a house would meet city code standards. The Committee members stated that there were many conflicts in what could be and what could not be included in a home inspection. The Committee members found conflicting language in several sections of the Standards of Practice where items were included in both things to inspect and things that were excluded from inspection. Items of concern included, on page 7, 3) a) i) heating systems and components (3) flue pipes, dampers, chimneys and combustion gas venting were to be inspected, but under items not required to be inspected was 3) a) ii) (1) (b) the interior of chimneys and flues, which seemed to be in contradiction. On Page 9, item (13) required inspection of items that were included; however, in ii) 6) (c) these items are not to be inspected. A Committee member had concerns about items on page 14, section iii) about inspection of only a representative number of some components including hand railings and guardrails. The Committee felt that all of these safety related items should be inspected. A question was raised by a Committee member whether a copy of the *State of Kansas Home Inspection Standards of Practice* and the *Code of Ethics* would be provided to each inspector as he or she became licensed. Mr. Stafford did not know if this was to be the practice. The Committee stated that when a person contracted for a home inspection, the client should receive a list of what the inspection would and would not cover. Several Committee members expressed disappointment in the development of these rules and regulations. A question was raised on page 13, h) i) 2)(b) regarding the word "seawalls", indicating

seawalls probably would not be relevant in Kansas. A question arose about the composition of the Board and how its members were appointed. Mr. Stafford stated he could not answer that question. It was suggested that there should be a wider range of experience on the Board. The Committee recommended that additional groups be notified about these rules and regulations, including real estate boards, title companies, lenders, and others who would be impacted by the inspections. A Committee member suggested that there be a mission statement showing what a home inspection would include.

Chairperson Schmidt recognized Chris Tymeson, Chief Counsel, to address the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-4-4, big game; legal equipment and taking methods; KAR 115-4-4a, wild turkey; legal equipment and taking methods; and KAR 115-18-7, use of crossbows and locking draws for big game and wild turkey hunting by persons with disabilities; application, permit, and general provisions.

Mr. Tymeson stated that these three proposed rules and regulations allow the use of non-broadhead-tipped arrows while hunting if the arrows are not used to take or attempt to take big game animals. There were no questions.

Mr. Tymeson reviewed the exempt proposed rules and regulations noticed for hearing by the Kansas Wildlife and Parks Commission. KAR 115-25-7, antelope, open season, bag limit, and permits; KAR 115-25-8, elk; open season, bag limit and permits; and KAR 115-25-9, deer; open season, bag limit, and permits. There were no questions.

Justin McFarland was recognized by Chairperson Schmidt to speak to the proposed rule and regulation noticed for hearing by the Kansas Board of Examiners in Optometry. KAR 65-4-3, fees.

Mr. McFarland stated that the fee changed on this rule and regulation would increase the fee to obtain license renewal upon the failure to renew license before expiration date from \$250.00 to \$500.00 and to change the fee for conversion of license status from inactive to active from \$450.00 to \$100.00.

A Committee member requested that the Economic Impact Statement include information as to what has occurred in the past regarding the number of persons who have not renewed on time to give a better idea of the amount of increase that might be expected. Mr. McFarland stated that this could be done.

Chairperson Schmidt welcomed George Barbee, Chairperson, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Technical Professions (Attachment 1). KAR 66-8-6, reexamination; KAR 66-10-1, architectural experience of a character satisfactory to the board; KAR 66-12-1, minimum standards for the practice of land surveying; and KAR 66-14-10, licensure in another jurisdiction.

Mr. Barbee referred to the *Kansas Technical Professions, Volume 15, No. 2, dated April, May, June 2010*. (A copy of this paper can be obtained from the office of the Kansas State Board of Technical Professions, Landon State Office Bldg., 900 SW Jackson Street, Suite 507, Topeka, KS 66612.) On page 5 of the paper, Mr. Barbee noted that Kansas has had a higher percentage of persons pass the tests on the first time in comparison to the national percentage.

A Committee member noted that in KAR 66-8-6 (a) the last sentence probably should include subsection (b) since (a) refers to retaking the examination two additional times and (b) addresses the subsequent attempts to retake the examination. Staff stated that in KAR 66-14-10, subsection

(b), there should be a cross reference to the specific regulation where the continuing education requirements could be found.

John P. Smith, Administrator, was recognized by Chairperson Schmidt to address the proposed rule and regulation noticed for hearing by the Department of Credit Unions. KAR 121-10-1, definitions.

In response to a question from a Committee member, Mr. Smith stated that Kansas is requiring that, in addition to holding a valid permit to practice issued by a state board of accountancy, an independent certified public accountant also must be registered with the Kansas Board of Accountancy.

Chairperson Schmidt welcomed John Wine, Staff Attorney, to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 2). KAR 40-4-43, hospital, medical and surgical expense insurance policies and certificates; prohibiting certain types of discrimination.

A Committee member asked if this regulation would be in conflict with the federal health reform law. Mr. Wine stated that he could not answer that question but referred the question to Dr. Marci Nielson, KU Medical Center. She stated that she believed that the proposed regulation would not conflict with the federal health reform law. Dr. Roy Jensen also addressed the Committee stating that this rule and regulation was not in conflict with the federal law and the federal law will not take effect until 2014.

Chairperson Schmidt recognized David Barfield, Chief Engineer, to speak to the proposed rule and regulation noticed for hearing by the Department of Agriculture, Division of Water Resources. KAR 5-17-2, application to deposit a water right into a water bank or withdraw a deposit.

Staff noted that the word "any" should be inserted in the seventh line, so it would read "if any water use occurred." Mr. Barfield stated this would be done.

Mary Blubaugh, Executive Administrator, was recognized by Chairperson Schmidt to speak to the proposed rule and regulation noticed for hearing by the Kansas State Board of Nursing. KAR 60-16-105, revoked.

The Committee had no questions.

The Chairperson recessed the meeting until 1:30 p.m.

Afternoon Session

The meeting was reconvened at 1:30 p.m. by Chairperson Vicki Schmidt.

Senator Brownlee provided Committee members with an e-mail she received from Linda Sheppard, Director of the Accident and Health Division, Kansas Insurance Department answering the question regarding the proposed health insurance regulation discussed earlier in detail (Attachment 3).

Chairperson Schmidt welcomed Doug Farmer, Director of State Employees Health Benefit Plan, to speak to the proposed rules and regulations noticed for hearing by the State Employees Health Care Commission. KAR 108-1-1, eligibility; KAR 108-1-3, school district employee health care benefits plan; and KAR 108-1-4, local unit of government employee health care benefits plan.

Mr. Farmer stated that the three proposed rules and regulations change the waiting period for new employees from 60 days to 30 days. KAR 108-1-4 would allow the addition of non-state groups eligible under the statute, if approved by the Kansas State Employees Health Care Commission.

It was pointed out by a Committee member that in all three proposed rules and regulations, definitions are scattered throughout and it would be better if all definitions were located at the beginning of each regulation. Mr. Farmer stated that he would take this recommendation back to the Commission. One Committee member had questions on the Economic Impact Statement which stated that the additional cost to the state agencies could be more than two million dollars per year. The Committee members noted that in such tight budget times, this addition would be an important budget consideration. It was the Committee's recommendation that a copy of the letter to the State Employees Health Care Commission be sent to the Chairpersons and Ranking Minority members of the House Appropriations Committee and the Senate Ways and Means Committee, and House and Senate Leadership of both parties.

Staff noted that in KAR 108-1-1, page 10, (iv) the words "which is" should be inserted in the last sentence so that it would read "and which is hereby adopted." Mr. Farmer stated that this would be done. Mr. Farmer responded to all questions from the Committee.

The Chairperson recognized Mike Cochran, Chief of the Geology Section, to speak to the rules and regulations noticed for hearing by the Kansas Department of Health and Environment, Division of Environment, Bureau of Water (Attachment 4). KAR 28-46-1, general requirements; KAR 28-46-2a, definitions; KAR 28-46-3, classification of injection wells; KAR 28-46-4, injection of hazardous or radioactive wastes into or above an underground source of drinking water; KAR 28-46-5, application for injection well permits; KAR 28-46-6, conditions applicable to all permits; KAR 28-46-7, draft permits; KAR 28-46-8, fact sheets; KAR 28-46-9, establishing permit conditions; KAR 28-46-10, term of permits; KAR 28-46-11, schedules of compliance; KAR 28-46-12, requirements for recording and reporting of monitoring results; KAR 28-46-13, effect of a permit; KAR 28-46-14, transfer of permits; KAR 28-46-15, modification and reissuance of permits; KAR 28-46-16, termination of permits; KAR 28-46-17, minor modifications of permits; KAR 28-46-18, area permits; KAR 28-46-19, emergency permits; KAR 28-46-20, corrective action; KAR 28-46-21, public notice, public comments, and public hearings; KAR 28-46-22, signatories; KAR 28-46-27, prohibition of fluid movement into underground sources of drinking water; KAR 28-46-28, establishing maximum injection pressure; KAR 28-46-29, design and construction requirements; KAR 28-46-29a, operation of class III salt solution mining wells; KAR 28-46-30, monitoring and reporting requirements for class I wells; KAR 28-46-30a, monitoring and reporting requirements for class III salt solution mining wells; KAR 28-46-30b, groundwater monitoring for class III salt solution mining wells; KAR 28-46-31, information to be considered by the secretary; KAR 28-46-33, mechanical integrity testing; KAR 28-46-34, plugging and abandonment; KAR 28-46-35, state inspection and right of entry; KAR 28-46-40, exempted aquifers; KAR 28-46-41, sharing of information; KAR 28-46-44, sampling and analysis techniques; and KAR 28-46-45, salt solution mining well operation; fees.

The following regulations are being revoked: KAR 28-43-1; KAR 28-43-2; KAR 28-43-3; KAR 28-43-4; KAR 28-43-5; KAR 28-43-6; KAR 28-43-7; KAR 28-43-8; KAR 28-43-9; KAR 28-43-10; and KAR 28-43-11.

Staff noted that in KAR 28-46-1 the adoption by reference should be done by a date certain such as "July 1, 2008." Staff also pointed out that the notice of hearing did not list all the KAR rules and regulations that were to be heard. This could require a corrected notice of hearing to be published. A Committee member had a question regarding KAR 28-46-2a about the definition of "secretary" since it included the "secretary's authorized representative." It was suggested that agency staff review the rules and regulations and determine if the secretary only (not the secretary's representative) is to do certain tasks. Committee staff stated in KAR 28-46-7 that all material adopted by reference in other rules and regulations should be cross referenced here to make it easier to locate them. In KAR 28-46-10, Mr. Cochran responded to staff questions on how the agency determined the length of a permit to be less than 10 years. Committee staff suggested that there should be some criteria to show how the agency staff arrive at the time periods. A Committee member had questions concerning KAR 28-46-29, page 2, (h) and the curing time for cement mixtures used in casings and requested some clarification of the amount of time before pressure can be applied to a production casing. A Committee member noted that the total amount of what the fees will generate needs to be included in the economic impact statement rather than just the proposed increase per unit.

Phyllis Gilmore was recognized by the Chairperson to speak to the proposed rule and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-5-3, education requirements.

Ms. Gilmore stated that the rule and regulations clarified practicum supervision requirements and added the option of a 300-hour practicum when combined with an additional 400 hours of postgraduate supervised client contact. This amendment enables implementation of HB 2162 which was passed by the 2009 Legislature. There were no questions from the Committee.

Chairperson Schmidt welcomed Christine Morris to address proposed rules and regulations noticed for hearing by the Kansas Pharmacy Board. KAR 68-21-1, definitions; KAR 68-21-2, electronic reports; KAR 68-21-3, waivers for electronic reports; KAR 68-21-4, notice of requests for information; KAR 68-21-5, access to information; KAR 68-21-6, reciprocal agreements with other states to share information; and KAR 68-21-7, drugs of concern.

Committee staff asked whether the Kansas Pharmacy Board had checked with the Secretary of State concerning the approval of authentication of electronic identification devices or certificates to be sure these are within the requirements of the Uniform Electronic Transactions Act, see 16-1601. Ms. Morris stated that she would check to be sure that they did meet the requirements. In KAR 68-21-6, a Committee member noted that in subsection (c) the fifth word should be "be" not "by." In KAR 68-21-7, Committee staff stated that the term "stakeholders" should be defined somewhere in the regulations.

Justin McFarland was introduced by the Chairperson to speak to a proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-7-11, medical care facility pharmacy.

A question was raised concerning the pharmacy technician certification and where it was referred to in the regulations. Ms. Billingsley stated that the regulations covering ratios for supervision give the option of having pharmacy technician certifications, in order to go from a supervisory level of two to one to a level of three to one. She stated that it is an option and not a requirement.

Chairperson Schmidt recognized Kevin Ireland, attorney, to address the proposed rules and regulations noticed for hearing by the Kansas State Department of Education. KAR 91-41-1,

definitions; and KAR 91-40-27, parental consent. A Committee member noted that the definitions beginning on page 5 with subsection (q) need to be alphabetized.

The Chairperson stated that the next meeting would be held in May when the Legislature returns to session. Staff will notify Committee members of the specific date.

The Chairperson adjourned the meeting at 3:45 p.m.

Prepared by July Glasgow
Edited by Jill Shelley

Approved by Committee on:

May 4, 2010

(Date)

Committee Comments on Proposed Rules and Regulations

Kansas Home Inspectors Registration Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning code of ethics, and standards of practice for registrants. After discussion, the Committee had the following comments.

Standards of Practice. The Committee is concerned that with respect to the inspection of electrical systems it appears that an inspector is to inspect the operation of ground fault circuit interrupter receptacles and circuit breakers using the built-in test button (page 9, (c)(i)(13)), yet under the items that the inspector is not required to inspect are ground fault circuit interrupters breakers using the installed test buttons if doing so will or could cause damage to any item or create a safety risk (page 9, (c)(ii)(6)(c)). This appears to be in conflict since one must test to determine if there is any damage potential. Please review for any similar conflicts and make appropriate adjustments.

Standards of Practice. Under the Structural Systems and Components section, (e)(ii) on page 11, there is a requirement that the inspector "shall probe a representative number of components." The Committee believes that it is unclear what this number would be in order to meet the requirement of a "representative number." The Committee has a similar question about the interior systems and components on page 14, particularly stairways, balconies, and hand railings and guardrails. Please review and modify appropriately.

Standards of Practice. In the section dealing with Exterior and Interior Systems and Components, a requirement is included to inspect "seawalls." The Committee questions whether seawalls should be included in Kansas standards.

Request. The Committee believes that it is important that various groups of individuals in Kansas have access to the requirements outlined in these regulations. Among those the Committee believes should be aware of these requirements are lenders, realtors, and individuals associated with title companies. Please inform the Committee of the Board's outreach to these groups and how the Board intends to notify home inspectors.

Request. The Committee believes that it would be helpful to have a checklist of those items which are to be included in a home inspection and those items which are excluded from a home inspection. This checklist would be helpful and informative to sellers, purchasers, lenders, realtors, and individuals associated with title companies. Please consider the development of such a checklist and make it available to the appropriate individuals.

Question. The Committee is aware that the agency has a website which contains useful information. However, how may an individual review the documents referred to in this set of regulations if that individual has no access via the Internet?

Concern. The Committee is concerned that no representative of the Board was present at the review of the proposed rules and regulations. The Committee believes that the comments and concerns of the members of the Committee provide guidance to members of the Board in understanding the concerns of legislators. Please make an effort to have at least one member of the Board present at future meetings where proposed rules and regulations of the agency are reviewed by the members of the Joint Committee on Administrative Rules and Regulations.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning big game, legal equipment and taking methods; wild turkey, legal equipment and taking methods; use of crossbows and locking draws for big game and wild turkey hunting by persons with disabilities, application, permit, and general provisions. After discussion, the Committee had no comment.

Kansas Board of Examiners in Optometry. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees. After discussion, the Committee had the following comment.

Economic Impact Statement. The Committee believes that the Economic Impact Statement should be expanded to include estimated income from the fee adjustments for each category which is being proposed for change.

Kansas State Board of Technical Professions. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning reexamination; architectural experience of a character satisfactory to the board; minimum standards for the practice of land surveying; and licensure in another jurisdiction. After discussion, the Committee had the following comments.

KAR 66-8-6. In subsection (a), the Committee believes that the reference should be to both subsections (b) and (c).

KAR 66-14-10. In subsection (b), the Committee believes it would be helpful to reference the actual regulation number to assist the reader in locating the continuing education requirements.

Kansas Department of Credit Unions. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions. After discussion, the Committee had no comment.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning hospital, medical, surgical expense insurance policies and certificates, prohibiting certain types of discrimination. After discussion, the Committee had no comment.

Division of Water Resources, Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application to deposit water right into a water bank or withdraw a deposit. After discussion, the Committee had the following comment.

KAR 5-17-2. In subsection (a), the Committee suggests the addition of the word "any" between "if" and "water" in the proposed new language for clarity.

Kansas State Board of Nursing. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning advisory committee (revocation). After discussion, the Committee had no comment.

Kansas State Employees Health Care Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility; school district employee health care benefits plan; and local unit of government employee health care benefits plan. After discussion, the Committee had the following comments.

KAR 108-1-1. The Committee suggests that a definition for "substantial gainful activity" be established since it is a determinant factor in "permanent and total disability." Does the term mean "employment"?

Comment. Please consider placing the definitions in one section alphabetically and the policy in subsequent rules and regulations.

Concern. The members of the Committee are concerned about the costs associated with these rules and regulations and their impact on the State's budget. For example, the Economic Impact Statement states that the proposed KAR 108-1-1 will cost an additional \$2.429 million to all state agencies. For KAR 108-1-4, the Economic Impact Statement indicates that there may be a need for additional employees to add new public employee groups to the state plan. This letter to Secretary Goossen will

be forwarded to the Legislative Leadership as well as the chairpersons and ranking minority members of the Senate Ways and Means Committee and the House Appropriations Committee.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning general requirements; definitions; classification of injection wells; injection of hazardous or radioactive wastes into or above an underground source of drinking water; application for injection well permits; conditions applicable to all permits; draft permits; fact sheets; establishing permit conditions; term of permits; schedules of compliance; requirements for recording and reporting of monitoring results; effect of a permit; transfer of permits; modification and reissuance of permits; termination of permits; minor modifications of permits; area permits; emergency permits; corrective action; public notice, public comments, and public hearings; signatories; prohibition of fluid movement into underground sources of drinking water; establishing maximum injection pressure; design and construction requirements; operation of class III salt solution mining wells; monitoring and reporting requirements for class I wells; monitoring and reporting requirements for class III salt solution mining wells; groundwater monitoring for class III salt solution mining wells; information to be considered by the secretary; mechanical integrity testing; plugging and abandonment; state inspection and right of entry; exempted aquifers; sharing of information; sampling and analysis techniques; salt solution mining well operations, fees; and revocations. After discussion, the Committee had the following comments.

KAR 28-46-1. The Committee believes that there needs to be a date certain for the adoptions by reference from the Code of Federal Regulations.

KAR 28-46-2a.. With respect to the definition of the term "secretary," please review the entire set of proposed regulations to determine whether, in all places where the term "secretary" is used, if the agency also wants to give that authority to the "secretary's authorized representative."

KAR 28-46-7. In subsection (b), please consider including cross references to the KAR where the Code of Federal Regulations is adopted.

KAR 28-46-10. The Committee is concerned that there are no criteria for the length of time of the permit. Please consider the inclusion of criteria to determine the length of time of the permit.

KAR 28-46-29. The Committee is concerned whether the 72-hour time frame is sufficiently long for the cement mixture to cure. It also appears that the regulation is silent on the time frame before pressurization may occur, and the Committee believes that a standard should be established. In addition, the Committee believes that the logs need to be reviewed by a third party to determine their adequacy.

Concern. The Committee is concerned that at some point in the future structures may be built in close proximity to one of these wells and believes that the agency should address this by preventing any structure from being built near one of these wells when the facility is closed.

Concern. The Notice of Hearing does not include references to all rules and regulations in Article 46 nor does it include a summary of each of the proposed regulations. Please review to determine whether this jeopardizes the adequacy of the notice of hearing.

Economic Impact Statement. The Committee believes that the Economic Impact Statement should be rewritten to include additional detail on estimated costs and the additional amount of money being raised by the adjustments in the fees.

Kansas State Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning education requirements. After discussion, the Committee had no comment.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; electronic reports; waivers for electronic reports; notice of requests for information; access to information; reciprocal agreements with other states to share information; and drugs of concern. After discussion, the Committee had the following comments.

KAR 68-21-1 and KAR 68-21-2. The Committee questions whether the agency has discussed these proposed rules and regulations with officials with the Secretary of State's Office to determine whether they meet the requirements of the Uniform Electronic Transaction Act.

KAR 68-21-6. In subsection (c), the word "by" should be "be."

KAR 68-21-7. The Committee believes the term "stakeholders" should be defined to clarify who would be notified.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning medical care facility pharmacy. After discussion, the Committee had the following comment.

KAR 68-7-11. The Committee questions whether there is specific statutory authority for the agency to require a pharmacy technician to become certified.

Kansas State Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions, and parental consent. After discussion, the Committee had the following comment.

KAR 91-40-1. Please alphabetize the terms in this proposed rule and regulation.

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS
COMMITTEE GUEST LIST

DATE: April 5, 2010

NAME	REPRESENTING
Berend Koops	Hein Law Firm
George Barbee	Ks St Bd of Tech Prof.
ML Dyck	"
Mark Starford	HIRB
Justin McFarland	KOB
Chris Tynes	KDWD
Sean Mize	CAPITOL STRATEGIES
Bell Snowden	Merck
John P. Smith	KDCU
Michael Baugh	KDCU
Paul Jones	United Health Group
Colin Vire	KID
Steph Williamson	KU Cancer Center
Marti Nielsen	KUMC
Gene Letourneau	KDA
Dave Starkey	KDA
Roy Jensen	KU Cancer Center
Mary Belukay	KSBW
Dave Barford	KDA



KANSAS STATE BOARD OF TECHNICAL PROFESSIONS

(785) 296-3053

<http://www.kansas.gov/ksbtp/>

Landon State Office Building 900 SW Jackson Street Suite 507 Topeka, Kansas 66612-1257

TESTIMONY BEFORE THE JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS ROOM 152-S APRIL 5, 2010

Mr. Chairman and members of the Committee, I am George Barbee, Chairperson of the Kansas Board of Technical Professions. This Board licenses architects, engineers, geologists, landscape architects and land surveyors.

You have before you today four regulations with proposed revisions.

K.A.R. 66-8-6. Reexamination.

This regulation was previously named Repeat Examinations. The proposed changes expand the rules on requirements to retake an exam. After the third failed attempt at an exam, an applicant would be required to show that they had tried to further their knowledge in order to increase their chances of passing the exam. Paragraph (c) clearly states that the Board may not accept results or may not allow an applicant to retake an examination if there is a report of an irregularity.

K.A.R. 66-10-1. Architectural experience of a character satisfactory to the board.

This regulation is being revised to update the revision date of the document adopted by reference.

K.A.R. 66-12-1. Minimum standards for the practice of land surveying.

This regulation is being revised to reflect the current version of the "Kansas minimum standards for boundary surveys and mortgage title inspections standards of practice."

K.A.R. 66-14-10. Licensure in another jurisdiction.

Changes to paragraphs (a) and (b) of this regulation clarify the continuing education requirements of a licensee who resides in another state. Paragraph (c) clarifies that all surveyors, regardless of their state of residence, must complete the two hour of continuing education on Kansas Minimum Standards as required in K.A.R. 66-14-1(b).

Thank you for the opportunity to speak with you today. I am open to questions at this time.

MEMORANDUM

To: Joint Committee on Administrative Rules and Regulations

From: John Wine
Kansas Insurance Department

Re: K.A.R. 40-4-43

Date: April 5, 2010

My name is John Wine and I am a Staff Attorney for the Kansas Insurance Department. With me today is Linda Sheppard, Director of our Accident and Health Division. I would like to thank the committee for allowing the Department to appear and comment on the proposed regulation K.A.R. 40-4-43.

K.A.R. 40-4-43 is being proposed to prohibit an unfair discriminatory practice in the administration of health insurance policies. Without this regulation cancer patients have experienced negative economic impact when they choose to participate in a clinical trial. Currently, a cancer patient whose physician recommends participation in an approved clinical trial may be forced to choose between participation in the trial or insurance coverage for all other costs of treatment for the condition. The unfair discrimination we are seeking to prohibit has occurred when an insured elects to participate in a trial and his or her insurance company not only denies coverage for the specific costs of the trial, but refuses to provide coverage for routine services, such as physician visits, clinical laboratory tests, x-rays, and hospital stays, that would have been reimbursed if the insured had not participated in the trial. K.S.A. 40-2404a

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expressly authorizes the Kansas Insurance Department to adopt regulations identifying specific methods of unfair discrimination. Although this regulation would not require any insurance company to pay for the costs of participation in the clinical trial itself, it would prohibit the company from discriminating against patients in clinical trials by denying reimbursement for costs that would otherwise have been covered.

There will be a positive economic impact on cancer patients, health care providers, and institutions that conduct clinical trials to the extent that participation in an approved trial is made economically feasible by this regulation. Insurance companies will experience a negative economic impact only if they had previously been engaging in this discriminatory practice. There will be no other economic impact on government agencies, small businesses or the general public.

We would be happy to answer any questions the members of the committee might have. Again, thank you for allowing us to appear today and comment on the proposed regulation.

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Raney Gilliland

From: Linda Sheppard [LJShep@ksinsurance.org]
Sent: Monday, April 05, 2010 12:36 PM
To: Karin@karinbrownlee.com; Karin Brownlee
Cc: Raney Gilliland
Subject: Rules and Regs Committee Information
Attachments: Linda Sheppard1.vcf

Importance: High

**** High Priority ****

Sen. Brownlee, I apologize for not being present when the Committee's hearing on the Department's clinical trials regulation began. I understand you asked a question during the hearing with regard to applicability of the clinical trial provisions in the federal health reform law that may have been answered by Dr. Nielsen prior to my arrival. I would like to clarify that those provisions DO apply to fully insured plans. However, the Department does not view those provisions as a conflict with the regulation we are proposing at this time because (1) the provisions in the federal law are consistent with and do not conflict with the provisions of KID's proposed regulation and (2) the provisions of the federal law related to clinical trials do not become effective until January 1, 2014. Approval of this proposed regulation would permit the Commissioner to put these standards in place prior to that date. I have included portions of the language from the federal law below for your review. Again, I apologize for the confusion caused by my late arrival.

Linda

SEC. 2709. COVERAGE FOR INDIVIDUALS PARTICIPATING IN APPROVED CLINICAL TRIALS

(a) COVERAGE

(1) **IN GENERAL.** If a group health plan or a health insurance issuer offering group or individual health insurance coverage provides coverage to a qualified individual, then such plan or issuer

(A) may not deny the individual participation in the clinical trial referred to in subsection (b)(2);

(B) subject to subsection (C), may not deny (or limit or impose additional conditions on) the coverage of routine patient costs for items and services furnished in connection with participation in the trial; and

(C) may not discriminate against the individual on the basis of the individual's participation in such trial.

(h) **PREEMPTION.** Notwithstanding any other provision of this Act, nothing in this section shall preempt State laws that require a clinical trials policy for State regulated health insurance plans that is in addition to the policy required under this section.

SEC. 1255. EFFECTIVE DATES.

This subtitle (referring to subtitle C, which includes the clinical trial provisions) (and the amendments made by this subtitle) shall become effective for plan years beginning on or after January 1, 2014, except that--

(1) section 1251 shall take effect on the date of enactment of this Act; and

(2) the provisions of section 2704 of the Public Health Service Act . . . as they apply to enrollees who are under 19 years of age, shall become effective for plan years beginning on or after the date that is 6 months after the date of enactment of this Act.

Linda J. Sheppard, Director
Accident & Health Division
Kansas Insurance Department
420 S.W. 9th Street
Topeka, KS 66612
785.296.7895 (direct)
785.291.3034 (fax)
linda.sheppard@ksinsurance.org

**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
PRESENTATION TO THE LEGISLATURE'S JOINT COMMITTEE
ON ADMINISTRATIVE RULES AND REGULATIONS**

Proposed Regulations for Class III Salt Solution Mining Wells

Presented by Michael Cochran, Bureau of Water, Geology Section
April 5, 2010

INTRODUCTION

Good afternoon. My name is Mike Cochran. I am Chief of the Geology Section which is located within the Kansas Department of Health and Environment's Bureau of Water. With me this afternoon is Cynthia Khan who works as an environmental geologist in the Underground Injection Control Unit.

REGULATION DEVELOPMENT

Reasons for regulation amendments, new regulations:

- The salt solution mining well regulations have not been updated since their adoption in 1979.
- New information obtained from sinkhole that developed in January 2003 at a pre-regulation well near the BNSF mainline railroad tracks in the east part of Hutchinson, Kansas.

KDHE began in November 2003 to work with the salt solution mining industry to revise the salt solution mining wells found in Article 43.

- Salt Institute served as a liaison.
- Numerous conference calls and face to face meetings were conducted.
- Propose revocation of Article 43 and incorporation of these salt solution mining regulations into the existing UIC regulations for Class I, III (salt solution mining), IV, and V wells under Article 46.
- Add amended and new regulations to Article 46.
- Also update Article 46 the Federal Regulation references and other minor wording changes to reflect current acceptable regulatory language/format.

ECONOMIC IMPACT

- There are no additional costs to KDHE.
- Sinkholes cause groundwater contamination, threat to public safety and property.

Joint Committee on Rules
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Attachment 4

- Remediation of sinkhole is very costly, several million dollar range, remediation of contamination is costly.
- Proposed regulations significantly reduce the potential threats.

Costs associated with the proposed regulation to the salt solution mining industry are summarized below:

- Potential loss of salt reserves: \$48,000 to \$110,000 per year, per facility.
- Potential costs for geomechanical studies: \$40,000 to \$150,000 per study. Required only in cases where a waiver to a requirement is sought. It is anticipated such a study would only be needed once at a facility.
- Monitoring and Reporting: \$6,500 to \$12,500 per year.
- Groundwater Monitoring: Groundwater monitoring well clusters range from \$2,000 to \$5,000 for installation and annual sampling costs of \$1,500 to \$7,500 per facility.
- Annual Fees: \$12,000 per facility and \$175 per unplugged salt solution mining well.

OUTREACH

- Cover letters with copies of the draft regulations provided to: the City of Lyons and Hutchinson, the Groundwater Management Districts #2 and #5, the four operating Underground Hydrocarbon Storage Companies, and all four operating Salt Solution Mining Companies for comment.
- Proposed regulations published on February 25, 2010, in the Kansas Register establishing a 60+ day public comment period and providing notice of the public hearing for the regulations.
- Public hearing will be conducted at the City of Hutchinson Water Treatment Center, at 1:00 p.m. on Thursday, May 13, 2010.
- Proposed regulations and the economic impact statement are posted on the KDHE Geology Section website. This website was included in the public notice.
- KDHE is still in the information gathering public comment period.

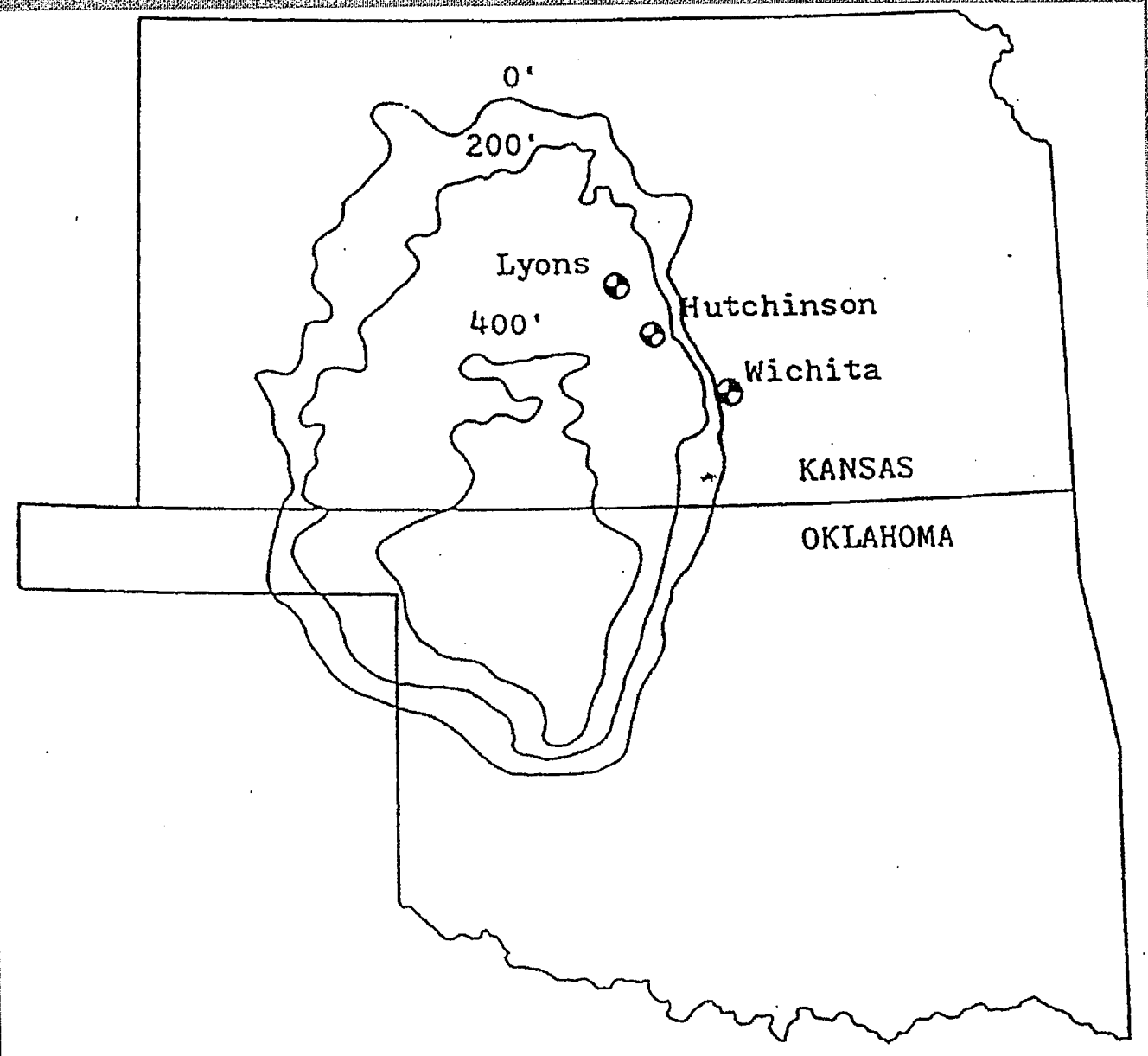
REGULATION DESCRIPTION

We are prepared to discuss the proposed regulations in more detail. Please refer to the regulation description document found in your packet.

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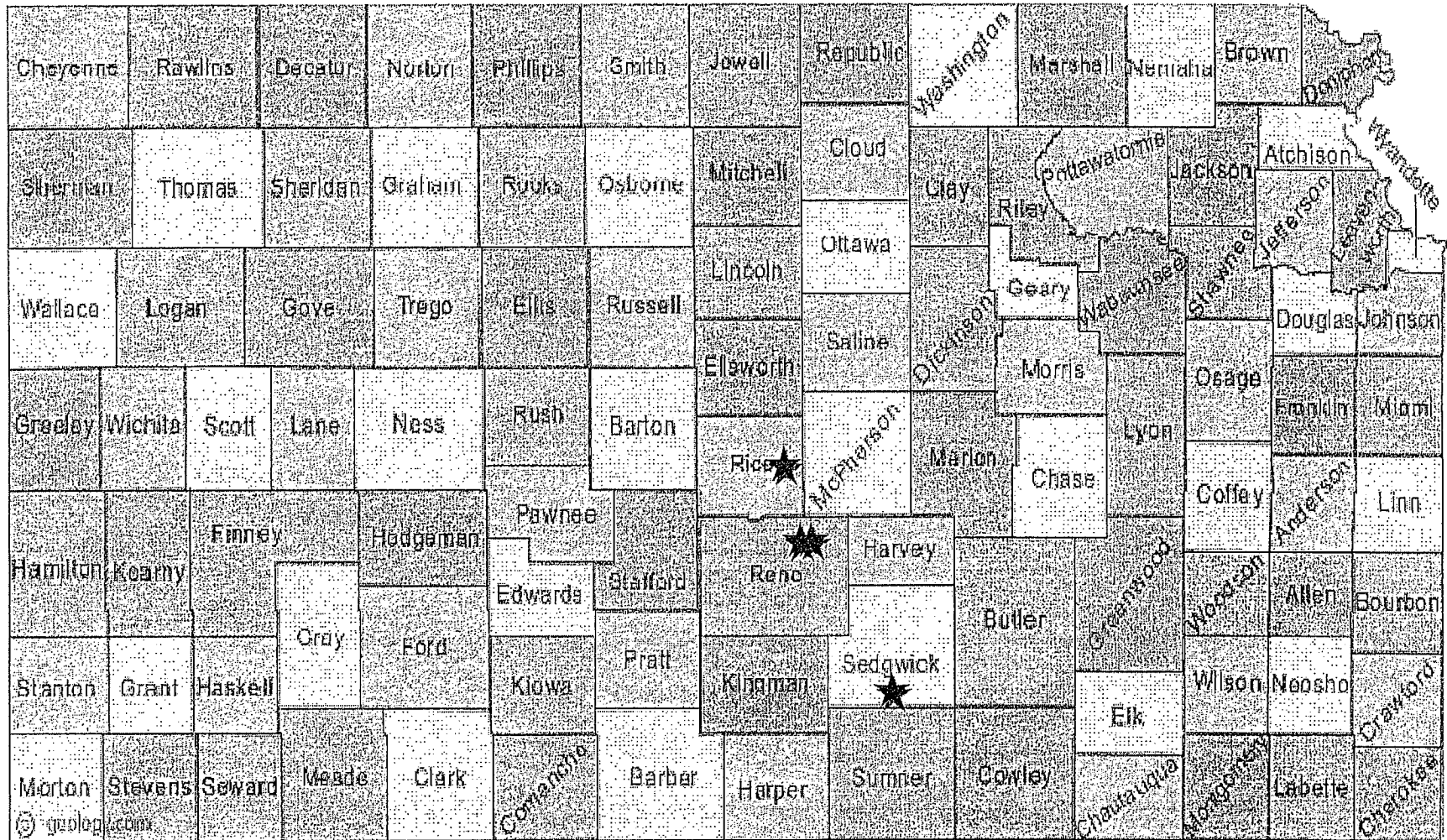
EXTENT AND THICKNESS OF HUTCHINSON SALT MEMBER

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CLASS III FACILITIES

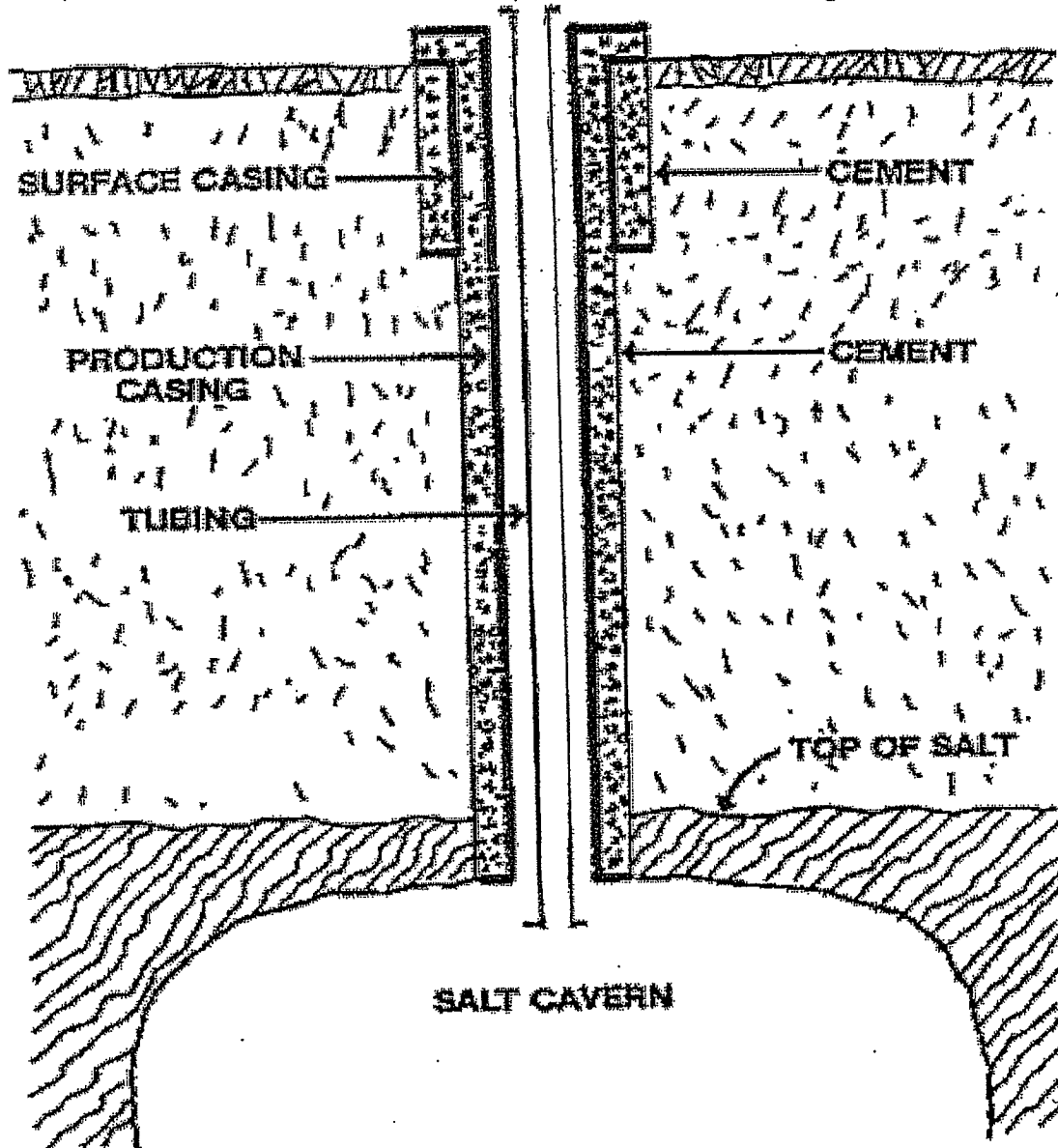
11-11



★ - Denotes Facility Location

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Modern Salt Solution Mining Well



Typical Class III Well Gallery

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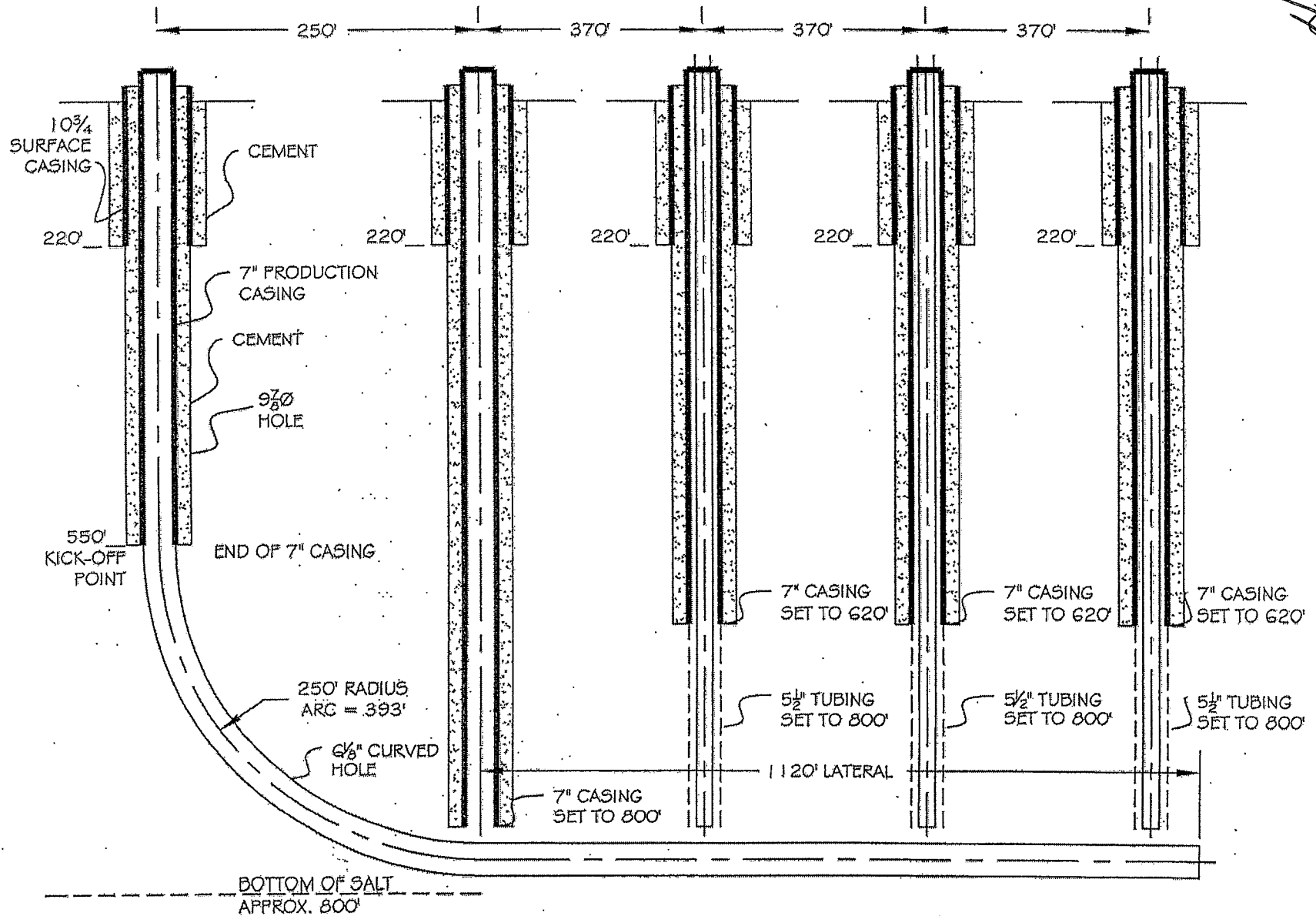
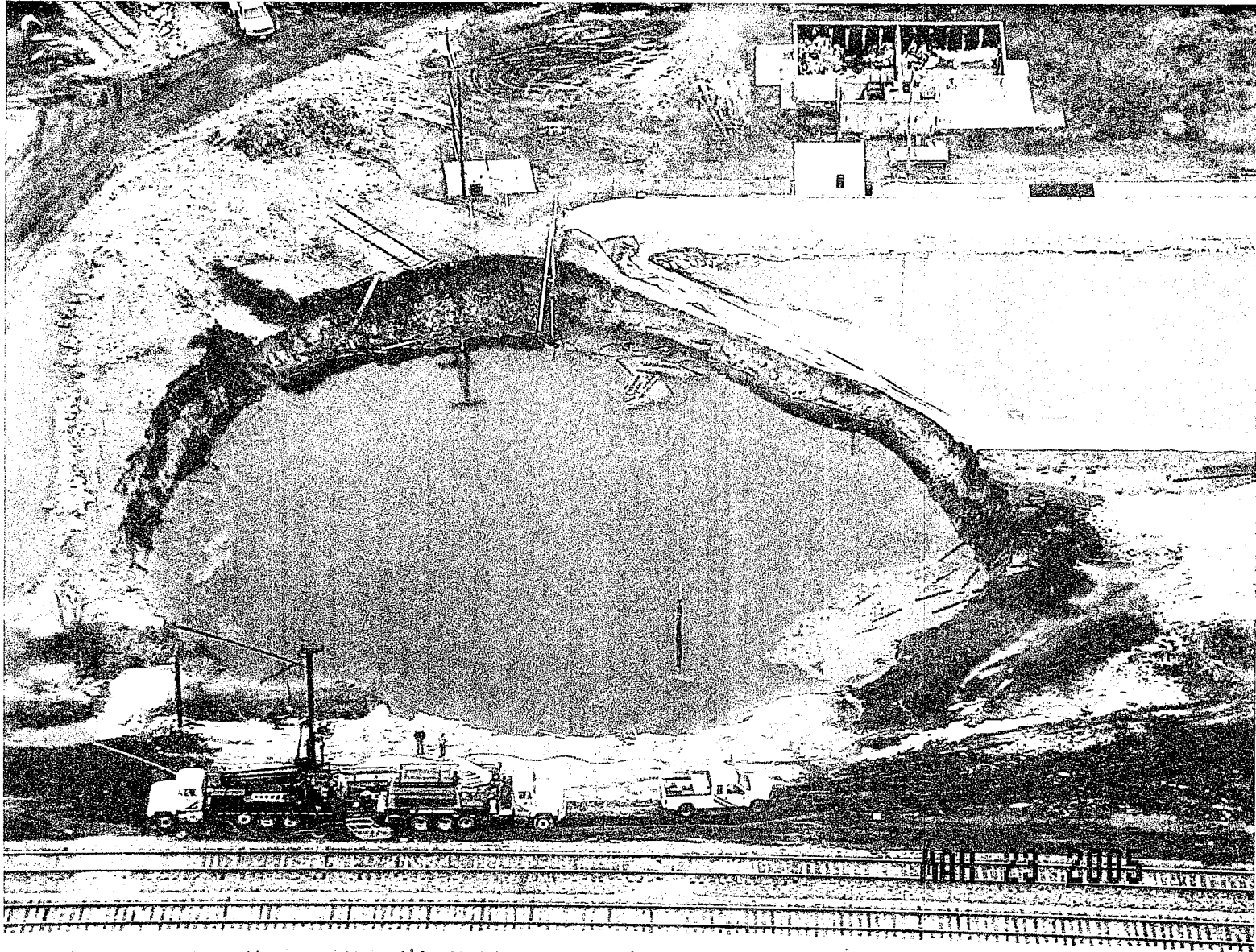


FIGURE 7-1 SUB-SURFACE WELL COMPLETION

Aerial view of Well #19 Sinkhole at the former Carey Salt Plant in Hutchinson, Kansas that occurred on January 3, 2005. Picture was taken March 23, 2005 and shows the sinkhole's northern boundary in relation to the BNSF railroad tracks. Drilling crews were onsite investigating extent of subsurface disturbance and potential remediation activities. The property is currently owned by the MOSAIC Company.



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**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
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REGULATION SUMMARY

April 5, 2010

In November of 2003, KDHE began working with the salt solution mining industry to revise the Class III Underground Injection Control (UIC) regulations under Article 43. These regulations have not been updated since their adoption in 1979.

A significant change to the Class III salt solution mining regulations is the proposed revocation of Article 43 and incorporation of these Class III regulations into the existing UIC regulations for Class I, IV, and V wells under Article 46. This change allows for one set of regulations for the salt solution mining wells, which will enhance efficiency and be more "user friendly." Most of the regulation changes in Article 46 are updates to the Federal Regulation references and other minor wording changes. Significant modifications or additions pertaining to the Class III salt solution mining regulations are summarized as follows:

28-46-2 Definitions

- Added definitions applicable to Class III salt solution mining wells including "existing salt solution mining well", "salt roof," and "transportation artery".

28-46-10 Term of permits

- Existing regulation allowed Class III permits to be issued for the operating life of the facility. This has been revised to clarify a fixed permit term of 10 years with the ability to apply for a new permit after the 10 year period, which is consistent with current practice.

28-46-28 Establishing maximum injection pressure

- Clarified the wording of this regulation allowing the exceedence of the maximum operating pressure for Class III wells for the purpose of establishing a connection of a Class III well to another Class III well for operation as a solution mining gallery.

28-46-29 Design and construction requirements

- Establishes the solution mining cavern wall, instead of the wellhead, as the compliance point for determining the setback distances. The existing regulations establish the compliance point at the wellhead.
- Cavern wall must be at least 50 feet from other active or abandoned brine-supply wells or other holes or excavations penetrating the salt section, unless they have been properly plugged, and 50 feet from any existing surface structure not owned by the permittee, including any transportation artery.

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- Cavern wall must also be located at least 50 feet from the property boundaries of any owners who have not consented to the mining of salt under their property.
- Production casing must extend at least 55 feet into the salt formation for new wells. Current regulations require 45 feet into the salt formation.
- A variance for each well not meeting the requirements of 28-46-29 may be granted by the secretary if all the following conditions are met:
 - a) The variance is protective of public health, safety, and the environment.
 - b) The permittee agrees to perform any additional monitoring or well improvements, or any combination of these, if required by the secretary.
 - c) The permittee agrees to conduct a geomechanical study in support of the variance request. The geomechanical study shall be conducted by a contractor experienced in conducting and interpreting geomechanical studies.
- Clarifies that a cement bond log must be conducted on the production casing after the cement has cured for 72 hours for new wells, which is the current practice.

28-46-29a Operation of class III salt solution mining wells

- Prohibits operation of class III salt solution mining wells under the following conditions:
 - When the salt roof is less than 50 feet in thickness above the washed cavern. Current regulation allows a 40-foot thick salt roof thickness. A variance cannot be obtained.
 - The top of the salt cavern is less than 250 feet from the ground surface. A variance cannot be obtained. Current regulations allow cavern roof to be 300 feet from the ground surface.
 - The distance between adjacent galleries is less than 100 feet from the wall of a cavern in an adjacent gallery.
 - There are leaks or losses of fluid in the casing or surface pipe of a well. A variance cannot be obtained.
 - There is a variance provision except for where noted.

28-46-30a Monitoring and reporting requirements for class III wells.

- Within two years of the effective date of this regulation, each permittee shall submit a plan for monitoring the injection and withdrawal volumes and injection pressures that meets the secretary's approval.
- Requires monthly submittal of monitoring reports for injection and withdrawal volumes/ratios and a summary of minimum and maximum injection pressures instead of current quarterly reporting.
- 24-hour oral notification requirement if an unanticipated loss of fluid occurs or the monitoring system indicates a leakage has occurred with written confirmation within seven days.
- Sonar caliper surveys for determining the dimensions of the salt solution mining well cavern will now be required after each 20% increment of the total amount of remaining salt that can potentially be mined in accordance with the regulations has been mined. This is a change from the current 50% requirement for the

initial sonar survey and then a sonar survey at each 10% increment of useful life thereafter.

- A variance to the sonar survey frequency may be granted by the secretary.
- 24-hour oral notification requirement of a verified exceedance of the maximum permitted injection pressure with written confirmation within seven days.
- Each new well shall have a meter to measure injection or withdrawal volume with records of these flow volumes kept on site. Current regulations allow gallery monitoring.
- Each permittee shall submit a ground subsidence monitoring plan to the secretary within two years after the effective date of these regulations. Annual elevations surveys are currently required, but this regulation adds a 24-hour notification of the Secretary for an elevation change in excess of 0.10 inches.

28-45b-30b Groundwater monitoring for class III salt solution mining wells.

- Within two years of the effective date of this regulation, each permittee shall submit a groundwater monitoring plan that meets the secretary's approval.
- Establishes the requirements for the monitoring system.
- Requires submittal of workplan to the Secretary for review and consideration of approval if chloride concentrations in the groundwater exceed 250 mg/l or established background concentrations.

28-46-34 Plugging and abandonment

- Modification to this regulation adds the plugging requirement for Class III wells present in Article 43 with the additional requirement to follow KDHE's procedure document #:UICIII-7. An alternative method for the plugging of a Class III well can be used if the secretary determines the alternative method is substantially equivalent to the procedure document and protective of public health, safety and the environment.

28-46-45 Salt solution mining well operations; fees

- This regulation would increase the current fee for operation of a salt solution mining well, which has not increased since 1979, from \$1,300 per facility to \$12,000 per facility and \$175 per unplugged salt solution mining well. There are four operating facilities and 151 active wells. This increase in fees will assist in covering KDHE's costs associated with oversight of these Class III wells. These funds by Statute K.S.A. 55-1, 117 are directed to the Subsurface Hydrocarbon Storage Fund. An index number will be used to keep these funds separate from the fees collected to regulate the underground hydrocarbon storage facilities.

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