

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

October 5, 2004
Room 514-S—Statehouse

Members Present

Representative Carl Holmes, Vice-Chairman
Senator Donald Betts
Senator Bill Bunten
Senator Chris Steineger
Representative Eric Carter
Representative Jan Pauls
Representative Sharon Schwartz

Members Absent

Senator Dwayne Umbarger, Chairman
Senator Karin Brownlee
Representative Jerry Henry
Representative Andrew Howell
Representative Candy Ruff

Staff

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Office of the Kansas Revisor of Statutes
Diana Lee, Office of the Kansas Revisor of Statutes
Gary Deeter, Committee Secretary

Conferees

Chris Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks
Julie Ehler, Staff Attorney, Kansas Department of Agriculture
Jim Bagley, Division of Water Resources, Kansas Department of Agriculture
George Barbee, Public Member, Kansas State Board of Technical Professions
Nialson Lee, Administrator, Health Care Delivery Systems, Kansas Department of Social and Rehabilitation Services
M.L. Korphage, Director, Conservation Division, Kansas Corporation Commission
Doug Farmer, Assistant Secretary, Kansas Department of Health and Environment
Bill Bider, Director, Bureau of Waste Management, Kansas Department of Health and Environment
Ralph Kieffer, Bureau of Air and Radiation, Kansas Department of Health and Environment
Mike Tate, Bureau of Water, Kansas Department of Health and Environment

Others Attending

See attached list.

Morning Session

Vice-Chairman Holmes called the meeting to order at 10:13 a.m. and welcomed Chris Tymeson, Chief Legal Counsel for the Kansas Department of Wildlife and Parks, who outlined proposed rule and regulation noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-2-2, motor vehicle permit fees; KAR 115-2-3, camping, utility, and other fees; KAR 115-2-3a, cabin camping permit fees; KAR 115-4-14, landowner deer management program; KAR 115-7-1, fishing; KAR 115-18-14, nontoxic shot; and KAR 115-25-6, turkey.

Answering questions from the Committee, Mr. Tymeson stated that the Department was preparing amendments to roll back the proposed entrance and camping fee increases included in KAR 115-2-2, 115-2-3, and 115-2-3a to the current fee structure, noting that the shift from the State General Fund (previously 75 percent and now 16 percent) to agency fee funds had strained the Department's budget, reduced the park and camping census, and would require a supplemental budget request of nearly \$300,000. Responding to a question from a Committee member, he commented that one alternative source of funding, patterned after a Montana law, would be to assess a \$5 fee for every Kansas motor vehicle license, allowing any Kansas citizen to have access to state parks without charge. He also noted that a new service, cabin camping, had become popular. Mr. Tymeson commented that the three-year deer management pilot program, patterned after a Colorado law, was based on deer density and required posted boundaries. Answering a question from a Committee member, he indicated that KSA 32-937 makes clear that deer permits can be granted only to Kansas landowners.

Julie Ehler, staff attorney for the Kansas Department of Agriculture, presented proposed rule and regulation noticed for hearing by the Kansas Department of Agriculture. KAR 5-3-4e, groundwater source formation codes; and KAR 5-3-29, Ozark and Springfield plateau aquifers. Members expressed concern regarding KAR 5-3-29 that, since Missouri has not established regulations regarding these aquifers and are able to use water resources without restriction, Kansas regulations would unfairly dampen economic development in Kansas. A Committee member noted that by making the regulations temporary, the agency circumvented public input and also noted that by unilaterally establishing water regulations, Kansas was surrendering negotiating leverage with Missouri. Jim Bagley, Division of Water Resources, commented that a three to five-year study had been initiated to determine the status of aquifer resources with the study possibly being funded by a federal grant and the Kansas Water Office. Ms. Ehler stated that discussions were presently being conducted among Missouri, Kansas, and Arkansas officials regarding water resources. Another member commented that including the criterion "exceeding safe yield" of KAR 5-3-29 added an extra statutory assessment.

George Barbee, Public Member, Kansas State Board of Technical Professions, reviewed proposed rule and regulation noticed for hearing by the Kansas State Board of Technical Professions. KAR 66-6-4, professional conduct; KAR 66-8-8, examination standards acceptable to the board for reciprocity applicants; KAR 66-9-6, geology curriculum approved by the board; KAR 66-9-7, educational standard acceptable to the board for reciprocity applicants; KAR 66-10-14, professional engineering, land surveying, and geology experience standards acceptable to the board

for reciprocity applicants; KAR 66-14-3, activities; and KAR 66-14-5, computation of credit (Attachment 1). He noted in the discussion of KAR 66-6-4 that mentoring had been added as qualifying for Professional Development Hours. Staff observed in the discussion of KAR 66-6-4 that statutory authority seems to include KSA 74-7026 as well as KSA 74-7023. Regarding KAR 66-9-7, staff commented that changing the verb tense would eliminate ambiguity, suggesting that, after the word "shall", insert the words "be deemed to have met. . . ."

Representative Pauls made a motion for the Committee minutes for August 24, 2004, to be approved as presented; seconded by Representative Schwartz. Motion carried.

Afternoon Session

Nialson Lee, Administrator, Health Care Delivery Systems, Kansas Department of Social and Rehabilitation Services (SRS), presented proposed rule and regulation noticed for hearing by the Kansas Department of Social and Rehabilitation Services. KAR 30-5-59, provider participation requirements. Mr. Lee indicated that the proposed change to the regulation was necessary to address services provided for cochlear implants. A Committee member questioned the costs associated with broadening the regulation. Mr. Lee indicated that SRS is aware of two cases with an estimated cost of \$10,000.

M.L. Korphage, Director, Conservation Division, Kansas Corporation Commission, outlined proposed rule and regulation noticed for hearing by the Kansas Corporation Commission. KAR 82-3-108, well location; exception; KAR 82-3-123, well bore; commingling of production; KAR 82-3-123a, well bore; commingling of fluids; KAR 82-3-138, new pool application; KAR 82-3-208, venting or flaring of casinghead gas; KAR 82-3-301, revoked; KAR 82-3-304, tests of gas wells; penalty; KAR 82-3-312, gas allowables and drilling unit; KAR 82-3-314, venting or flaring of gas other than casinghead gas; and KAR 82-3-1005, testing and inspection requirements for underground porosity gas storage facilities and underground porosity gas storage wells, penalty (Attachments 2 and 3). The first four regulations, he said, allow the Conservation Division to grant applications without an order from the Commission. Answering a member's question, Mr. Korphage said that if there are no protests to an application, the process can be streamlined by eliminating the final step. Replying to another question, Mr. Korphage noted that the Conservation Division is given statutory authority for such decisions in KSA 55-706(b). Staff recommended giving the authority addressed in these regulations to the "Director," not the "Division." Mr. Korphage noted that KAR 82-3-301 is being revoked after being declared unconstitutional, and that KAR 82-3-314 is a new regulation implementing statutory changes to KSA 55-102 as directed by the 2002 Legislature. Regarding commingling of fluids, a member expressed concern that the presence of water may effectively plug a well. Staff suggested adding language regarding the effect of water on production to KAR 82-3-123a. Mr. Korphage stated that KAR 82-3-1005 adds two additional alternate tests for gas storage facilities and wells.

Doug Farmer, Assistant Secretary, Kansas Department of Health and Environment (KDHE), responding to Committee comments from the meeting on July 9, 2004, addressed issues noted in response to the Committee Chairman on September 14th radiation fee regulations (KAR 28-35-145 and 146; KAR 65-16-166, 167, and 169), and hazardous waste monitoring fees (KAR 28-31-10) (Attachment 4). Noting that the fee increases had gone through the legislative committee process, he said that the Department had postponed waste-monitoring fee increases, and other fee increases had been included in the budgeting process.

Bill Bider, Director, Bureau of Waste Management, KDHE, reviewed the fee process for inspecting hazardous waste, noting that even a simple inspection requires about 30 hours of staff time, and further noting that inspection fees range from \$100 for a small company to \$1,200 for the largest ones. He commented that the lowest fees reflect less than actual cost of the inspections, but minimize the impact on small companies. He said the ending balance in the hazardous waste disposal fee fund was \$199,000 as of September 2004, that inspection costs average \$60,000 per month, and that the proposed fee increase will result in a \$100,000 surplus at the end of the first year, but will carry the fund for at least five years before another increase is needed. Answering questions about allowing the EPA (Environmental Protection Agency) to do inspections rather than using KDHE resources, Mr. Bider said that presently KDHE does 350 inspections per year and the EPA does an estimate of ten per year in Kansas and that, though the EPA does not charge for inspections, Kansas companies prefer to pay for KDHE inspections rather than face EPA fines and deal with EPA's inflexibility. He said that the fees have never been increased since their inception in 1980 and are not close to the statutory maximum. Mr. Bider also noted that the EPA provides \$1 million in federal money to KDHE for inspections and that no SGF monies are used for this program. A member commented on the report addressed in the letter that *Discover* card does not charge a transaction fee for payments to the agency.

Ralph Kieffer, Bureau of Air and Radiation, Kansas Department of Health and Environment, presented proposed rule and regulation noticed for hearing by KDHE. KAR 28-19-720, new source performance standards; KAR 28-19-735, national emission standards for hazardous air pollutants; KAR 28-19-750, hazardous air pollutants; and KAR 28-19-750a, consolidated federal air regulations. He stated that the proposed regulations will bring Kansas into compliance with new federal regulations, but that they will not subject the regulated facilities to any new requirements. Answering Committee questions, Mr. Kieffer said that EPA statistics do not identify specific states and therefore the economic impact of these regulations on Kansas cannot be easily discerned. Members requested more Kansas-specific information regarding the economic impact of the regulations.

Mike Tate, Bureau of Water, Kansas Department of Health and Environment, outlined proposed rule and regulation noticed for hearing by KDHE. KAR 28-16-58, definitions; KAR 28-16-28b, definitions; KAR 28-16-28c, general provisions; KAR 28-16-28d, surface water classification and use designation; KAR 28-16-28e, surface water quality criteria; KAR 28-16-28f, administration of surface water quality standards; and KAR 28-16-28g, surface water register (Attachment 5). He noted several changes in wording to comply with federal regulations, saying that no new regulations were needed. He said one major change was to "adopt by reference" certain information to obviate duplication. Members commended the Bureau for initial public input before promulgating the regulations.

The meeting was adjourned at 3:39 p.m. Members discussed the next meeting, agreeing to cancel the meeting scheduled for November 15, tentatively planning to meet on November 16, 2004. A future meeting is planned for December 6-7, 2004.

Committee Comments on Proposed Rules and Regulations

Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning motor vehicle permit fees; camping, utility, and other fees; cabin camping permit fees; landowner deer management program; fishing, legal equipment, methods of taking, and other provisions. After discussion, the Committee expressed the following comments.

KAR 115-2-2. In subsection (a), correct the stated date of January 1, 2003 to January 1, 2005.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning groundwater source formation codes; Ozark and Springfield plateau aquifers. After discussion, the Committee expressed the following comments.

KAR 5-3-29. The Committee is concerned that the safe yield test has been substituted for the test standards provided for in KSA 82a-711.

General Comment. The Committee is concerned that the restrictions imposed by this regulation hampers economic development in Kansas while no similar restrictions on economic development through the use of this water are being imposed in Missouri.

Kansas State Board of Technical Professions. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning professional conduct; examination requirements for reciprocity applicants; geology curriculum approved by the board; education requirement for reciprocity applicants; professional engineering, land surveying, and geology experience standards acceptable to the board for reciprocity applicants; activities; computation of credit. After discussion, the Committee expressed the following comments.

KAR 66-9-6. Consider clarification of the issue of 30 hours of credit as required by KSA 74-7041 for both bachelor's and master's degree applicants. Consider moving the phrase "or master's degree in geology" and inserting it after "baccalaureate degree."

KAR 66-9-7. Consider clarification of the Board's intent regarding the educational standard. Specifically, consider using the phrase "shall deemed to have met" in lieu of "meet."

KAR 66-14-5. Consider insertion of the reference "(pdh)" in section (a).

Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning provider participation requirements. After discussion, the Committee had no comment.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning well location, exception; well bore, commingling of production; well bore, commingling of fluids; new pool application; venting or flaring of casinghead gas; tests of gas wells, penalty; gas allowables and drilling unit; venting or flaring of gas other than casinghead gas; testing and inspection requirements for underground porosity gas storage facilities and underground porosity gas storage wells, penalty. After discussion, the Committee expressed the following comments.

General Comment. Consider making references to the Director of the Conservation Division rather than to the Division itself.

KAR 82-3-108. Consider rephrasing the sentence in subsection (b) so that it is clear that the list will be a list of counties.

KAR 82-3-123a. In subsection (b)(4), consider the addition of a phrase relating to water chemistry data.

KAR 82-3-314. In (a)(1)(B), end the phrase with a semi-colon rather than a colon.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning air quality; surface water quality. After discussion, the Committee had the following comments.

General Comment–Air Quality. The Committee is concerned that the Economic Impact Statement does not adequately reflect the economic impact on Kansans.

KAR 28-16-58. In subsection (a)(8), consider placing the word "written" after the "2004" for clarification of intent.

General Comment–Surface Water Quality. The Committee wishes to express its approval and commendation in bringing in all of the concerned entities and individuals into the process.

Prepared by Gary Deeter
Edited by Raney Gilliland and Melissa Calderwood

Approved by Committee on:

December 6, 2004

(date)