

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

March 16, 2007
Room 519-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Karin Brownlee
Senator Ralph Ostmeyer
Representative John Faber
Representative Lance Kinzer
Representative Jan Pauls
Representative Arlen Siegfried
Representative Mark Treaster

Members Absent

Senator Vicki Schmidt, Vice-Chairperson
Senator Donald Betts
Senator Chris Steineger
Representative Josh Svaty

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes' Office
Judy Glasgow, Committee Assistant

Others Present

Aurora Shields, Kansas Department of Health and Environment
Bill Eastman, Westar
Tom Gross, Kansas Department of Health and Environment
Miles Stotts, Kansas Department of Health and Environment
John Mitchell, Kansas Department of Health and Environment
Craig Thompson, Kansas Department of Health and Environment
Deletria Nash, Kansas Insurance Department
Sandy Braden, Gaches, Braden, Barbee and Associates

Chairperson Holmes called the meeting to order at 1:40 p.m. on March 16, 2007.

The Chairperson welcomed Deletria L. Nash, Assistant General Counsel, to address the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-1-32, insurance companies; consent of insured; definitions; and KAR 40-7-19, agents; individual records; fees.

In KAR 40-1-32, staff questioned Ms. Nash about the definition of “application” since it is used in a narrower sense than is used in the statute. Ms. Nash stated that the Department was reconsidering its definition of “application.” In KAR 40-7-19, Ms. Nash stated that the fees were being adjusted to reflect inflation and that there is a positive economic impact since the information pertaining to individual records is available online at no charge. There were no other questions and the Chairperson thanked Ms. Nash for appearing before the Committee.

John Mitchell, Chief of Environmental Services, was welcomed by Chairperson Holmes to address proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. Mr. Mitchell introduced Aurora Shields, Environmental Laboratories Improvement Program, to speak to the rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-15-35, conditions of accreditation; KAR 28-15-36, requirements for accreditation of environmental laboratories other than field laboratories; KAR 28-15-36a, requirements for accreditation of field laboratories; and KAR 28-15-37, fees.

Ms. Shields stated that these amendments are designed to bring Kansas into compliance with the National Environmental Laboratory Accreditation Standards and federal regulations for laboratories conducting environmental testing; and state requirements for laboratory certification when monitoring under the state’s drinking water program, the wastewater program, and the federal Resource Conservation and Recovery Act programs. She explained that the fees had not been changed since 1994 and KAR 28-15-37 is raising fees to reflect the cost of running the accreditation program.

Staff noted that in KAR 28-15-35, page 4, (20), that the definition for “safe drinking water act” should be adopted by a date certain. It was noted that the economic statement for KAR 28-15-37 did not show the amount that would be generated by the increased fees. Ms. Shields responded that current fees generate \$200,000 and that the increase would generate an additional \$100,000, bringing the total to \$300,000. It was recommended that the economic statement be amended to show these figures before the public hearing. In response to a question from the Committee about the maximum fees that could be charged, staff explained that fees could be raised at anytime to defray the costs of the program that the laboratory program incurs. There were no other questions for Ms. Shields and she was thanked for her presentation before the Committee.

Craig Thompson, Section Chief, was introduced by John Mitchell to speak to the proposed rules and regulations noticed for hearing by Division of Environment, Bureau of Environmental Field Services. KAR 28-16-28g, surface water register.

Mr. Thompson stated that *Kansas Surface Water Register* dated December 20, 2006, is available (Attachment 2). This Register identifies major classified streams, lakes and wetlands and the uses that are existing or attainable as required by KSA 82a-2004. In the period of April 1 through October 31, 2005, 560 stream segments and 140 lakes/wetlands were evaluated by a use attainability analysis (UAA) to determine the appropriate use designation. Eighty stream segments are proposed for deletion from the *Kansas Surface Water Register* (removed from classification), 352 stream segments are proposed as secondary contact recreation, and 111 stream segments are proposed as primary contact recreation. One stream segment is proposed for restricted aquatic life and 17 stream segments have been rerouted and combined to form one segment. Forty-four lakes and wetlands are proposed for primary contact recreation and food procurement, and 96 lakes and wetlands are proposed for irrigation, livestock watering, domestic water supply, industrial water supply and groundwater recharge. Mr.

Thompson stated that the review of all major classified streams, lakes and wetlands will be completed and the agency will meet the statutory deadline of December 2007.

Several Committee members had questions concerning the *Kansas Surface Water Register* pertaining to domestic water supply and industrial supply. The Chairperson suggested that each Committee member review the Register for his or her district for appropriateness. One Committee member requested that the streams, lakes and wetlands be identified by county for easier identification by interested persons. Mr. Thompson stated that this could be done. In response to a question concerning how many additional reports would be coming, Mr. Thompson stated there would be two more, one for 2006 and one for 2007. The Chairperson thanked Mr. Thompson for his presentation before the Committee.

Tom Gross was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment, Bureau of Air and Radiation. KAR 28-19-720, new source performance standards; KAR 28-19-728, definitions; measurements, abbreviations, and acronyms; KAR 28-19-728a, applicability; KAR 28-19-728b, emissions budget requirements; appeal procedure; KAR 28-19-728c, mercury designated representative; permits; KAR 28-19-728d, mercury allowance allocations; KAR 28-19-728e, allowance tracking system; retired unit exemption; KAR 28-19-728f, monitoring and reporting; KAR 28-19-735, national emission standards for hazardous air pollutants; and KAR 28-19-750, hazardous air pollutants; maximum achievable control technology.

Mr. Gross stated that these proposed rules and regulations were needed to bring Kansas in line with the requirements of federal regulations for standards of performance for new sources of air pollution emissions and federal regulations for hazardous air pollutants.

A question was raised in Committee concerning why Kansas was proposing these regulations since they are the same as the federal regulations that industry is required to meet. A question was raised by Committee members concerning why Kansas would not let the federal government be the primary enforcer since they were the same as the federal requirements. Mr. Gross stated that the industry preferred working with the state agency when meeting these requirements. A Committee member noted that in the past legislation had been offered to let EPA handle these requirements and industry had been strongly against it. The Committee noted that the economic statement should be changed to reflect the estimated amount each power plant would incur to meet these proposed regulations. After answering questions concerning cost to bring existing plants in compliance and how much it would cost for new plants to comply with these regulations, the Chairperson thanked Mr. Gross for his appearance before the Committee.

The next meeting will be on March 23, 2007. The Chairperson adjourned the meeting at 2:50 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning conditions of accreditation; requirements for accreditation of environmental laboratories other than field laboratories; requirements for accreditation of field laboratories; and fees; surface water register; new source performance standards; definitions, measurements, abbreviations, and acronyms; applicability; emissions budget requirements, appeal procedure; mercury designated representative, permits; mercury allowance allocations; allowance tracking system, retired unit exemption; monitoring and reporting; national emission standards for hazardous air pollutants; and hazardous air pollutants, maximum achievable control technology and had the following comments.

KAR 28-15-35. In subsection (a)(20), reference is made to the federal Safe Drinking Water Act. The Committee suggests a date be included in order to note the version being adopted by reference.

Comment. The Committee suggests that the agency check all adoptions by reference of federal law so that the date being referenced is consistent throughout agency rules and regulations.

Economic Impact. The Committee requests that the Economic Impact Statement on the set of regulations dealing with laboratories be revamped in order to reflect the total economic impact on the state.

KAR 28-16-28g. The Committee desires an explanation of the drinking water, industrial water use, and irrigation use designations for Meade State Lake and the associated wildlife area.

Economic Impact. With respect to the regulations dealing with air emissions, the Committee requests that the Economic Impact Statement reflect the economic impact costs on electric generation facilities in the state. The Committee suggests that the Statement be modified to reflect the impact on each electric generation facility by name and that this information be compiled before the agency's public hearing.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning insurance companies, consent of insured, definitions; and agents, individual records, fees and had the following comment.

KAR 40-1-32. The Committee requests that the agency reconsider the definitions of the terms "application" and "altered."

Prepared by Judy Glasgow
Edited by Raney Gilliland and Melissa Calderwood

Approved by Committee on:

April 24, 2007
Date