

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

March 23, 2007
Room 519-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-Chairperson
Senator Ralph Ostmeyer
Representative John Faber
Representative Jan Pauls
Representative Mark Treaster

Members Absent

Senator Donald Betts
Senator Karin Brownlee
Senator Chris Steineger
Representative Lance Kinzer
Representative Arlen Siegfried
Representative Josh Svaty

Staff Present

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

Others Present

Lee Rolfs, Kansas Department of Agriculture
Kimberly Feldkamp, Department of Agriculture
David L. Pope, Kansas Department of Agriculture
Dave Starkey, Kansas Department of Agriculture
Matt Scherer, Kansas Department of Agriculture
Lindsey Douglas, Hein Law Firm
John Donley, Kansas Livestock Association
Ron Gaches, Kansas Society of Professional Engineers

Chairperson Holmes called the meeting to order at 1:30 p.m. on March 23, 2007.

Chairperson Holmes stated that House members would be going back into session at 2:00 p.m., so he would allow any House members with questions to go first.

The Chairman welcomed David Pope, Chief Engineer, to address the proposed rules and regulations noticed for hearing by the Department of Agriculture Division of Water Resources. KAR 5-40-1, definitions; KAR 5-40-2, dams; plans and specifications; KAR 5-40-2a, benchmarks; KAR 5-40-2b, design reports; KAR 5-40-3, specifications; KAR 5-40-4, preparer of maps, plans, profiles, reports, and specifications; KAR 5-40-5, determining the capacity of a reservoir; KAR 5-40-5a, determining the height of a dam or barrier; KAR 5-40-8, acceptable application; KAR 5-40-9, revoked; KAR 5-40-10, revoked; KAR 5-40-11, revoked; KAR 5-40-12, as-built drawings; KAR 5-40-13, revoked; KAR 5-40-20, hazard classes of dams; KAR 5-40-21, class sizes of dams; KAR 5-40-22, design requirements for construction of a dam; KAR 5-40-23, detention storage; KAR 5-40-24, dam breach analysis; KAR 5-40-26, request to issue or reconsider hazard class determination; KAR 5-40-30, time of concentration; KAR 5-40-31, design duration rainfall depth; KAR 5-40-32, determination of rainfall excess; KAR 5-40-33, hydrographs; KAR 5-40-40, geotechnical investigation of all dams; KAR 5-40-41, geotechnical investigation of a low-impact dam; KAR 5-40-42, geotechnical investigation of a high-impact dam; KAR 5-40-43, cutoff trench; KAR 5-40-44, embankment; KAR 5-40-45, allowance for settlement of an earthen dam; KAR 5-40-46, side slopes of an earthen dam; KAR 5-40-50, pipes; KAR 5-40-51, acceptable trash racks for primary spillways; KAR 5-40-52, stilling basins; KAR 5-40-53, drawdown pipes; KAR 5-40-54, control of seepage along a conduit; KAR 5-40-55, earthen auxiliary spillways; KAR 5-40-56, maximum design velocity for an auxiliary spillway; KAR 5-40-57, service spillway design; KAR 5-40-70, construction notification to the chief engineer; KAR 5-40-71, inspection during dam construction, repair, and modification; KAR 5-40-72, construction inspection reports; KAR 5-40-73, emergency action; KAR 5-40-73a, discovery of an existing illegal, unpermitted dam; KAR 5-40-74, design criteria for an existing illegal, unpermitted dam; KAR 5-40-75, maintenance of dams; KAR 5-40-76, repair or modification of a permitted or prejurisdictional dam; KAR 5-40-77, easements for dams; KAR 5-40-90, requirements for a dam safety inspection report; KAR 5-40-91, schedule for inspection of hazard class C dams; KAR 5-40-92, schedule for inspection of hazard class B dams; KAR 5-40-93, schedule for inspection of dams; KAR 5-40-94, revision of schedule of inspections; KAR 5-40-100, request to be included on the list of independent engineers qualified to review applications; KAR 5-40-101, information to be submitted with a request to be a reviewer; KAR 5-40-102, minimum requirements to be an individual reviewer; KAR 5-40-103, conflict of interest; KAR 5-40-104, notification of approval or disapproval to be a reviewer; KAR 5-40-105, procedure for independent review of an application to construct a dam or other water obstruction; KAR 5-40-106, report of findings of independent reviewer; KAR 5-42-1, stream obstructions; plans and specifications; KAR 5-42-5, determining the peak discharge of a one percent-change storm; and KAR 5-44-7, certification of elevations.

A general question was raised concerning SB 15 and how this bill would impact these proposed rules and regulations. Mr. Pope stated that SB 15 dealt with the State Conservation Commission and the rehabilitation of substandard dams needing repair and provides a mechanism for funding for private dam owners. Mr. Pope stated that the agency currently is working under guidelines and these proposed rules and guidelines are being proposed to improve clarity and to update the engineering practices that have changed since the guidelines were written. He explained that the key issue of the proposed rules and regulations was public safety. Mr. Pope then introduced Lee Rolfs, Department of Agriculture, to address the proposed rules and regulations noticed for hearing by the Division of Water Resources.

Mr. Rolfs stated that the agency has been working on these proposed rules and regulations for several years with the association and dam owners and that the guidelines have not been substantially changed for the last 15 to 20 years. In response to a question from the Committee, Mr. Rolfs stated that 41 dams were reviewed in the two last year and that 1/4 of them were high impact

dams and 3/4 were low impact dams. The total costs incurred under these proposed regulations for the last two years would have been \$250,000.

The Committee had several questions concerning the use of the term “competent contractor” and how the agency would determine “competent.” The Committee noted that in KAR 5-40-1, page 3, (2) the words “the location of” should be added at the beginning. On page 7 (hh), a cross reference to KAR 5-40-20 and KAR 5-40-21 needs to be made. In KAR 5-40-2, page 6, a clarification of the term “competent contractor” is needed. A question was raised concerning how notice under KAR 5-40-8 would be handled and how the notification process would work and when the 60-day time frame to submit requested information would begin. Mr. Rolfs stated that the 60-day time frame would begin when the letter is sent, but would not argue if the postmark were to be used. In response to a question from staff, Mr. Rolfs stated that in KAR 5-40-22, the design requirements for construction are the same as federal requirements. In response to questions from the Committee concerning dam failures and loss of life, Mr. Rolfs stated that in Kansas, dams had been under state inspection since 1929, so that problems and failures have been discovered before major problems have occurred. Staff noted that in KAR 5-40-32, it would be helpful if the antecedent moisture condition referred to were adopted by reference. Staff suggested in KAR 5-40-71 that a clarification should be made on how and when the dam engineer or his representative is to notify the chief engineer when there is a problem. Staff also noted that the term “jurisdictional dam” should be defined in the rules and regulations. In KAR 5-40-100, staff noted that the “minimum requirements” should be cross referenced.

Lee Rolfs, David Pope, and Matt Scherer responded to questions of a general nature from the Committee and staff concerning the enforcement and economic consequences of implementing these proposed rules and regulations. Vice Chairperson Schmidt thanked them for their presentation before the Committee.

The meeting was adjourned at 3:50 p.m. The next meeting will be called by the Chairperson with notice given by the Kansas Legislative Research Department.

Committee Comments on Proposed Rules and Regulations

Division of Water Resources, Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; dams, plans and specifications; benchmarks; design reports; specifications; preparer of maps, plans, profiles, reports, and specifications; determining the capacity of a reservoir; determining the height of a dam or barrier; acceptable application; as-built drawings; hazard classes of dams; class sizes of dams; design requirements for construction of a dam; detention storage; dam breach analysis; request to issue or reconsider hazard class determination; time of concentration; design duration rainfall depth; determination of rainfall excess; hydrographs; geotechnical investigation of all dams; geotechnical investigation of a low-impact dam; geotechnical investigation of a high-impact dam; cutoff trench; embankment; allowance for settlement of an earthen dam; side slopes of an earthen dam; pipes; acceptable trash racks for primary spillways; stilling basins; drawdown pipes; control of seepage along a conduit; earthen auxiliary spillways; maximum design velocity for an auxiliary spillway; service spillway design; construction notification to the chief engineer; inspection during dam construction, repair, and modification; construction inspection reports; emergency action plan; discovery of an existing illegal, unpermitted dam; design criteria for an existing illegal, unpermitted dam; maintenance of dams; repair or modification of a permitted or prejurisdictional dam; easements for dams; requirements for a dam safety inspection report; schedule for inspection of hazard class C dams; schedule for inspection of hazard class B dams; schedule for

inspection of dams; revision of schedule of inspections; request to be included on the list of independent engineers qualified to review applications; information to be submitted with a request to be a reviewer; minimum requirements to be an individual reviewer; conflict of interest; notification of approval or disapproval to be a reviewer; procedure for independent review of an application to construct a dam or other water obstruction; report of findings of independent reviewer; stream obstructions, plans and specifications; determining the peak discharge of a one percent-chance storm; certification of elevations; revocations and had the following comments.

KAR 5-40-1. In subsection (c)(2), the Committee believes that a phrase similar to “the location and design of” should precede the language in the proposed regulation. In subsection (mm), the Committee believes that some determination of which type of “owner of dam” has priority if appropriate, see also KAR 5-40-75. In subsections (aa) and (hh), the Committee believes that consideration should be given to including a cross reference to KAR 5-40-20 and KAR 5-40-21.

KAR 5-40-2. The Committee believes consideration should be given to defining the term “competent contractor.”

KAR 5-40-8. In subsection (b), the Committee believes that consideration should be given to inclusion in the regulation language which indicates when the time frames in the regulation are to begin.

KAR 5-40-24. The Committee requests that the agency give consideration to providing a mechanism to assure that the dam has been constructed according to NRCS specifications.

KAR 5-40-26. The Committee believes that consideration should be given to whether decisions made pursuant to this regulation should be appealable through the Kansas Act for Judicial Review and Enforcement of Agency Actions. The Committee requests the agency give similar consideration in KAR 5-40-104.

KAR 5-40-71. The Committee suggests language be added to this regulation to guide an engineer who may discover issues with the dam during construction. The regulation only indicates that the engineer is to be present during certain times, but provides no guidance to the engineer of appropriate actions.

KAR 5-40-76. This regulation makes reference to a “prejurisdictional dam.” The Committee believes that the agency should consider defining a “jurisdictional dam.”

Prepared by Judy Glasgow
Edited by Raney Gilliland and Melissa Calderwood

Approved by Committee on:

April 24, 2007
(date)