

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

July 9, 2004
Room 514-S—Statehouse

Members Present

Senator Dwayne Umbarger, Chairman
Representative Carl Holmes, Vice Chairman
Senator Don Betts
Senator Karin Brownlee
Senator Bill Bunten
Senator Chris Steineger
Representative Eric Carter
Representative Jerry Henry
Representative Andrew Howell
Representative Jan Pauls
Representative Sharon Schwartz

Member Absent

Representative Candy Ruff

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

Sandy McAdam, Kansas Department of Health and Environment
Tom Conley, Kansas Department of Health and Environment
John Mitchell, Kansas Department of Health and Environment
Bill Bider, Kansas Department of Health and Environment
Bobbie Graff-Hendrixson, Department of Social and Rehabilitation Services
Reid Stacey, Department of Social and Rehabilitation Services
Ron Sieber, Hein Law Firm
Faith Loretto, Department of Administration
Don Carlson, Department of Health and Environment
Harry Bossi, Department of Administration
Carl Edwards, Board of Tax Appeals

Chris Tymeson, Kansas Department of Wildlife and Parks
Kevin Jones, Kansas Department of Wildlife and Parks
Larry Buening, Board of Healing Arts
Leland E. Rolfs, Kansas Department of Agriculture
David L. Pope, Kansas Department of Agriculture

Morning Session

Chairman Umbarger called the meeting to order July 9, 2004, at 10:05 a.m.

The Chairman introduced Senator Bunten, who will fill the vacant position caused by the death of Senator Clark.

Chairman Umbarger introduced Bill Bider to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Health and Environment, Waste Management (Attachment 1). KAR 28-31-10, hazardous waste monitoring fees.

Mr. Bider went over the funding projections for the hazardous waste program for FY 2004 and FY 2005 for the Committee members, detailing the funding shortages. Mr. John Mitchell appeared before the Committee to address the hazardous waste monitoring fee increases (Attachment 2). Mr. Bider stated that the goal of the agency was to increase fees in order to maintain current services, and that no proposal is being made to increase services in the agency. He stated that 48 out of 50 states run their own hazardous waste programs. At the federal level there are no fees, but if a violation is found, the federal government has stiffer penalties than the state (from \$7,000 to \$50,000).

The Committee had general questions concerning the lack of uniformity in the increased fees under the generator class and questioned why the rates were not raised at the same percentage level, and also had questions concerning the large amount of the increases. Mr. Mitchell explained that an inspection could not be done for less than \$250, which made the smaller plants have a larger percentage increase. Mr. Bider stated that there had not been a fee increase for almost 20 years and that the agency did not want to come for another fee increase for at least five years. The fee increase would be necessary to continue the same level of inspection under the hazardous waste management program, so that the funding from the federal EPA program would not be lost. It was explained that 25 percent of the state funds and 15 percent of federal funds were withheld from the funds for general agency expenses.

A question was asked as to the exact number of plants that handled hazardous waste. Mr. Bider stated that he did not have the exact figures, the difference being the plants monitored under the state regulations but not under federal regulations.

Committee members questioned whether or not the plants would be better served by having the federal EPA take over the program. Mr. Mitchell stated that most plants in the past have expressed the opinion that they would prefer to have the state continue to run the program, rather than the federal government.

The members of the Committee suggested that the e-mail address be furnished in the economic impact statement, and that e-mail comments on the proposed regulations may be accepted. The agency stated that this could be done. Committee members had questions concerning whether or not the fee increases had come before either the House Appropriations

budget committee or the Senate Ways and Means subcommittee. Mr. Bider stated that the need for a fee increase was in the budget, but he did not know if it had been discussed with either committee. The members requested that this information be provided to the Committee.

Chairman Umbarger thanked Mr. Bider and Mr. Mitchell for their appearance before the Committee and stated there may be additional questions that the Committee will need to have answered.

Chairman Umbarger recognized Bobbie Graff-Hendrixson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Social and Rehabilitation Services. KAR 30-5-71, copayment requirements.

It was suggested by Committee members that on page 3, subsection (b)(2), it could be rewritten to state “. . . who are inpatients in a state psychiatric facility who have reached the age of 18 and not yet 22 or at least 65 years of age . . .” which would eliminate the need for the word “both” as it is written. Ms. Graff-Hendrixson answered questions concerning the economic impact statement. Committee members also asked that the e-mail address be added to the notice for hearing and that the agency accept e-mail comments on the notice. Ms. Graff-Hendrixson stated that this could be done.

There being no other questions, Ms. Graff-Hendrixson was thanked for her presentation before the Committee by the Chairman.

Tom Conley, Department of Health and Environment, was recognized by Chairman Umbarger to speak to the proposed rules and regulations noticed for hearing, radiation regulations. KAR 28-35-145, initial license and registration fees; KAR 28-35-146, annual license and registration fees; KAR 28-35-146a, determination of hourly rate and full cost; KAR 28-35-147, revoked; and KAR 28-35-147a, schedule of fees.

Mr. Conley stated that these regulations will implement the fee structure established by SB 396 during the 2004 Legislative Session, and will generate sufficient revenue to support the radiation control program on a user-pay approach. He stated that, at this time, Kansas inspects 40 percent of the radioactive material licensees and 2 percent of the x-ray registrants each year. Mr. Conley stated that in the 2006 agency budget request, the agency will request staff additions to move the program to a higher level.

Committee members had questions concerning the acceptance of credit cards and the fee schedule that has been proposed. Mr. Conley stated that this is a new program and the agency does not accept credit cards at this time and they will check into the fee schedules and what costs would be incurred by accepting credit card payments. Mr. Conley responded to questions concerning the licensing of x-ray machines and the reason for their inspection. The Committee suggested that a specific application fee be charged, prior to requesting the license.

In response to Committee members' questions concerning KAR 28-35-146a, and how the agency came up with the \$55.00 hourly rate charge and the term full cost, Mr. Conley stated that the total agency budget was divided by the total number of hours worked and arrived at \$55.00. Staff stated that Legislature may be needed to clarify items (1) and (2) since they are not covered in the bill and these may exceed the statutory allowance. Committee members suggested that (b) (1) should be changed to read actual costs plus twenty-five percent to collect the agency costs. Staff stated that additional legislation may be necessary.

The meeting was recessed until 1:30 p.m.

Afternoon Session

Mr. Conley continued with the review of proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment, radiation regulations.

Committee members noted that Jim O'Connell, the Kansas representative on the Central Interstate Low-Level Radioactive Waste Compact, should be contacted regarding these proposed rules and regulations, that the e-mail address should be provided, and that the department should accept e-mail comments. A Committee member suggested that an application fee should be charged for a permit that could be a set amount and then assess a fee for the actual costs of the agency. After responding to general questions from members, Mr. Conley was thanked for his appearance before the Committee by the Chairman.

Chairman Umbarger introduced Don Carlson, Department of Health and Environment, to speak to the proposed rules and regulations noticed for hearing by the Department of Health and Environment, industrial wastewater lagoons. KAR 28-16-160, definitions; KAR 28-16-161, municipal and commercial lagoons: general provisions; KAR 28-16-162, industrial lagoons: general provisions; KAR 28-16-163, required hydrogeologic information for new or modified municipal, commercial, or industrial wastewater lagoons; KAR 28-16-164, municipal, commercial, and industrial wastewater treatment system lagoons: soil liner design; KAR 28-16-165, municipal, commercial, and industrial soil liners; postconstruction testing; KAR 28-16-166, requirements for impermeable synthetic membrane liners in municipal or commercial wastewater treatment system lagoons; KAR 28-16-167, requirements for impermeable synthetic membrane liners in industrial wastewater treatment system lagoons; KAR 28-16-168, postconstruction testing of municipal, commercial, and industrial impermeable synthetic membrane liners; KAR 28-16-169, minimum standards of design, construction, and maintenance; KAR 28-16-170, water, oil, or gas wells; KAR 28-16-171, monitoring wells; KAR 28-16-172, plan and specification approval; permit issuance; KAR 28-16-173, municipal, commercial, and industrial wastewater lagoons: closure requirements; and KAR 28-16-174, variance of specific requirements.

Mr. Carlson responded to general questions concerning the proposed rules and regulations. Staff noted that in KAR 28-16-166, page 3, fourth line, there appears to be some text omitted. This is also true in KAR 28-16-167 subsection (j) and KAR 28-16-169 in subsection (b). Also in KAR 28-16-166 (i) (1) second line, the word "threat" needs to be inserted between "imminent" and "or." Committee members requested that the economic statement set forth the total costs of implementation of the regulations. Staff requested that in KAR 28-16-166(f) the language be clarified as to which regulations would apply in specific instances. The Committee also was concerned that no correspondence had been received from the League of Kansas Municipalities about this proposed regulation.

Committee members requested that the Kansas Department of Health and Environment provide the information that was requested at the May hearing on domestic water supply and primary drinking water by the August meeting. There being no further questions, Chairman Umbarger thanked Mr. Carlson for his appearance before the Committee.

Chairman Umbarger recognized Harry Bossi, Kansas State Employees Health Care Commission, to speak to the proposed rule and regulation noticed for hearing. KAR 108-1-1, eligibility.

Committee members had questions concerning page 7 (v), "The child is a United States citizen, a United States national, or a resident of the United States, Canada, or Mexico at some time during the tax year" and questioned what the policy behind this specific inclusion was. Mr. Bossi

stated that he did not know, but would find out. Staff noted that on page 5 (f), the “subject to the provisions thereof” at the beginning of the paragraph should be stricken since it is a duplicate clause within the paragraph. Committee members requested that an e-mail address be included in the notice and that e-mail comments be accepted by the agency.

Chairman Umbarger thanked Mr. Bossi for his presentation before the Committee upon completion of the questions.

Chairman Umbarger introduced Carl Edwards, Acting Executive Director and Secretary, Kansas Board of Tax Appeals, to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Tax Appeals. KAR 94-2-21, filing fees.

Mr. Edwards responded to general questions from Committee members concerning the various fees imposed on all appeals and applications filed except for appeals involving single-family residential properties. After answering all questions, Mr. Edwards was thanked for his appearance before the Committee.

Chairman Umbarger recognized Chris Tymeson, Chief Legal Counsel for the Kansas Department of Wildlife and Parks, to speak to the rules and regulations noticed for hearing by the Department of Wildlife and Parks. KAR 115-18-1, wildlife rehabilitation permit; application, reporting, and general provisions.

Mr. Tymeson responded to questions from Committee members concerning state and federal licensing requirements and how they are different. Committee members suggested that the e-mail be provided in the notice and that the Department accept comments on proposed rules and regulations by e-mail.

Chairman Umbarger asked for action on the Committee minutes for May 27, 2004. *Representative Pauls moved to approve the minutes as presented; Representative Holmes seconded the motion. Motion carried.*

Chairman Umbarger introduced Larry Buening, Jr., Executive Director, to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Healing Arts. KAR 100-28a-1, fees; KAR 100-29-7, fees; and KAR 100-69-5, fees.

Staff noted that the history section needed to be updated. Mr. Buening responded to general questions from Committee members concerning the proposed rules and regulations. The Committee recommended that the e-mail address be included in the notice and that comments on the proposed rules and regulations be accepted by e-mail. After answering Committee questions, Mr. Buening was thanked for his presentation by the Chairman.

Chairman Umbarger introduced Melissa Wangemann, Legal Counsel, to speak to the proposed rules and regulations noticed for hearing by the Secretary of State. KAR 7-27-1, maintenance of party affiliation lists, KAR 7-29-2, official ballot colors; and KAR 7-32-2, Kansas administrative regulations; KAR 7-18-1, revoked; KAR 7-18-2, revoked; and KAR 7-18-3, revoked.

Ms. Wangemann stated that the proposed rules and regulations noticed for hearing, KAR 7-32-2, has been withdrawn from hearing at this time.

Committee members recommended that the e-mail address be provided on the notice of hearing and that the agency accept e-mail comments on the proposed rules and regulations. Committee members suggested that when choosing paper colors, that they should be light in color for easier reading by the public. Staff noted that on KAR 7-27-1, (b) line 4, that the word “voters” be inserted between “that” and “name”.

Chairman Umbarger recognized Leland Rolfs, Staff Attorney, and David Pope, Chief Engineer, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Agriculture, Division of Water Resources, for Equus Beds Groundwater Management District No. 2. KAR 5-22-1, definitions; KAR 5-22-4b, water flowmeter maintenance; KAR 5-22-4c, water flowmeter testing by a nondistrict person; KAR 5-22-4d, water flowmeter installation procedures; KAR 5-22-6, noncompliance; penalties; appeal procedures; KAR 5-22-7, safe yield; KAR 5-22-8, change applications; KAR 5-22-9, exceptions; KAR 5-22-10, aquifer storage and recovery system: data reporting requirements; KAR 5-22-13, potential net evaporation; KAR 5-22-14, maximum reasonable quantity for beneficial use; KAR 5-22-15, limitations on the use of fresh groundwater; and KAR 5-22-17, bank storage wells.

Staff noted the language in KAR 5-22-1, page 8, (1) needs to be clarified as to its intent. Staff noted that in KAR 5-22-6 page 2, (g) needs to be clarified to the roles within the districts. Committee members suggested that in KAR 5-22-10, page 2 (b), the term "backup data" should be clarified and changed to "supporting data," if this is their intent. It was suggested by the Committee that the term "surface water" be clarified as to the agency's intent in KAR 5-22-13. The members of the Committee had a concern about KAR 5-22-14, page 2, (F) (1) and (2) to make sure that this does not limit industrial use for economic development. The Committee also requested that the table for water use by livestock is the same as the statewide rates for consistency. In KAR 5-22-15 (b) (1), the Committee requested that the 250 milligrams per liter be raised. Mr. Pope stated that they would examine this and raise it if necessary. Mr. Rolfs and Mr. Pope answered general questions concerning these rules and regulations raised by Committee members.

Vice-Chairman Holmes thanked Mr. Rolfs and Mr. Pope for their appearance before the Committee.

Vice-Chairman Holmes stated that the next meeting would be August 24, 2004. The meeting was adjourned.

Committee Comments on Proposed Rules and Regulations

Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees for physician assistants; physical therapists; physical therapist assistants; and athletic trainers. After discussion, the Committee had no comment.

Department of Agriculture, Division of Water Resources. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Groundwater Management District No. 2. After discussion, the Committee expressed the following comment.

KAR 5-22-1. In subsection (v)(1), clarify how the arithmetic mean is calculated.

KAR 5-22-10. In subsection (b), clarify the meaning of "backup data." Consider the use of the term "supporting documentation."

KAR 5-22-13. In subsection (b)(2), clarify what is meant by "surface water." Consider clarifying this by indicating that it is water supplied by a water appropriation permit.

KAR 5-22-14. In subsection (b), please determine whether the livestock rates for this regulation are the same as the statewide rates. In subsection (f), reconsider the process for the determination of municipal water usage.

KAR 5-22-15. In subsection (b)(1), review the chloride levels under the definition of "other waters" to determine if a higher level ought to be established.

Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning radiation; hazardous waste; and industrial wastewater lagoon requirements. After discussion, the Committee expressed the following comment.

KAR 28-35-145 and 146. Consider the appropriateness of allowing the use of a credit card for the payment of the fee.

KAR 28-35-146a. The Committee is concerned that the use of "full-cost" in this regulation may not realize the "actual cost" to the agency. See also KAR 28-35-147a. Consider a standard application fee and then a fee for the actual license.

Consider informing the state's representative to the Interstate Low-level Radioactive Waste Compact Commission concerning these fees.

KAR 28-16-166. In subsection (f), clarify when these standards are to be used. (See also KAR 28-16-167(j) and 28-16-169(b)). In subsection (i) (1), it appears that the word "threat" was left out after the first use of the word "imminent."

General comment. The Committee is concerned that the League of Kansas Municipalities has not appeared to comment on the regulations concerning industrial wastewater lagoon requirements. The Committee believes that input from the municipalities is vital on these proposed regulations.

KAR 28-31-10. The Committee requests that the agency delay implementation of this regulation pending review by the House Appropriations Committee and the Senate Ways and Means Committee. The Committee is concerned about the increases in these fees and the manner in which they were calculated.

Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning co-payment requirements. After discussion, the Committee expressed the following comment.

KAR 30-5-71. In subsection (b) (2), consider combining (A) and (B) into (2) to clarify who are the eligible recipients.

General comment. The Committee commends the agency on the policy change and thinks the end result is beneficial to those being served.

Kansas State Employees Health Care Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility requirements. After discussion, the Committee expressed the following comment.

KAR 108-1-1. In subsection (f), the same language appears to be repeated twice in the regulation. (See "subject to the provisions...".) In subsection (v), the Committee questions the limitations on the eligible child criteria.

Kansas Board of Tax Appeals. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning proceedings before the Board. After discussion, the Committee had no comment.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning wildlife rehabilitation permits. After discussion, the Committee had no comment.

Kansas Secretary of State. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning maintenance of party affiliation lists, official ballot color, KAR prices, Kansas Athlete Agent Act registration, and Kansas Athlete Agent Act forms. After discussion, the Committee expressed the following comment.

KAR 7-27-1. In subsection (b), consider inserting "voter's" after "amendments thereto, that."

KAR 7-27-2. Consider language relating to lighter colored paper for official ballots.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Melissa Calderwood

Approved by Committee on:

August 24, 2004
(date)