

Kansas Administrative Regulations

Kansas Department of Agriculture—Division of Water Resources

Article 14.—Enforcement and Appeals

5-14-1. Enforcement.

(a) Except as set forth in subsection (i), the procedure set forth below shall be followed whenever enforcement action is taken by the chief engineer after becoming aware that a person may be performing any of the following:

- (1) Violating any provision of K.S.A. 82a-701 et seq., and amendments thereto;
- (2) violating any provision of a regulation adopted pursuant to that act; or
- (3) violating a term, condition, or limitation of an approval of application or water right.

(b) The alleged violation shall be investigated by the chief engineer.

(c) A written report of the investigation shall be prepared by the chief engineer. This report shall include any documents regarding the matter that were relied upon or prepared by the chief engineer. This report shall be made a part of the official record of the chief engineer. If an approval of application or a water right is involved, the report shall be made an official part of that file.

(d)(1) If the investigation shows that no violation has occurred or that enforcement action is not warranted, no further enforcement action shall be taken at that time.

(2) If the investigation determines that a violation has occurred, an order shall be issued by the chief engineer. The owner or owners of the approval of application or water right, as shown in the records of the chief engineer, shall be served by delivering a copy in person or sending a copy of the order by restricted mail. The order shall specify the following:

- (A) What the violation is;
- (B) what actions are necessary to correct the violation;

(C) what a reasonable time is in order to correct the violation. Extensions of time to correct a violation may be granted by the chief engineer if good cause is shown by the violator or owner;

(D) that the order will become effective immediately; and

(E) that a hearing may be requested within 15 days of the issuance of the order. The request for a hearing may include a request for a stay of the order. If the person shows good cause why a stay should be granted, a stay may be granted by the chief engineer.

(e) If the violation is corrected within the time specified by the chief engineer, the violator shall notify the chief engineer. An inspection shall be conducted by the chief engineer to determine if the violation has been corrected. If the violation has been corrected, the diversion of water may continue within the terms, conditions, and limitations of the approval of application or water right.

(f) If the violation is not corrected within the time specified by the chief engineer, an order requiring that unauthorized or illegal diversion of water cease until the violation is corrected shall be issued by the chief engineer.

(g) If the violator ceases diversion of water and then corrects the violation, the violator shall notify the chief engineer when the violation is corrected. The diversion works and the authorized place of use, as appropriate, shall be inspected by the chief engineer to determine if the violation has been corrected. If the chief engineer determines that the violation has been corrected, the order prohibiting diversion of water shall be rescinded by the chief engineer as soon as possible. When the owner or violator receives notice from the chief engineer that the order prohibiting the diversion of water has been rescinded, the diversion of water may recommence.

(h) (1) Any of the actions listed in paragraph (h) (2) may be taken by the chief engineer if the violator performs any of the following acts and fails to cease the diversion of water as ordered by the chief engineer:

(A) Violates any provision of K.S.A. 82a-701 et seq., and amendments thereto;

(B) violates any provision of a regulation adopted pursuant to that act; or

(C) violates a term, condition, or limitation of an approval of application or a water right.

(2) If the violator performs any act listed in paragraph (h)(1), any of the following actions may be taken by the chief engineer:

(A) Bring an action to enforce the orders of the chief engineer pursuant to the act for judicial review and civil enforcement of agency actions, K.S.A. 77-624 et seq., and amendments thereto;

(B) request the attorney general to bring an action in the name of the state of Kansas;

(C) request that criminal proceedings be brought pursuant to K.S.A. 82a-728, and amendments thereto;

(D) enter into a consent order with the violator specifying the remedial actions that shall be taken by the violator;

(E) take any other legally permissible enforcement action; or

(F) any combination of the above actions.

(i) The provisions of this regulation shall not apply to any actions taken by the chief engineer pursuant to K.S.A. 82a-706b, and amendments thereto, to enforce water right priorities and to prevent direct impairment by either of the following:

(1) Junior water rights; or

(2) illegal diversions of water.

(j) After the violator has been issued an order as specified in subsection (f), the violator may request an administrative hearing before the chief engineer in accordance with the provisions of K.A.R. 5-14-2.

(Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706, 82a-706b, 82a-706d, and 82a-728; effective Sept. 22, 2000.)

***** Authenticated Kansas Administrative Regulation *****