

**GOVERNOR’S REGULATORY REVIEW COUNCIL (GRRC)
MINUTES OF THE
APRIL 28, 2015 STUDY SESSION**

The Governor’s Regulatory Review Council study session was held on **Tuesday, April 28, 2015**, at **9:00 a.m.**, at the Arizona Department of Administration, 100 N. 15th Avenue, Third Floor Conference Room, Phoenix, Arizona.

PRESENT:

Council Chair:	Bret Parke
Council Member:	Lori Daniels
Council Member:	Jason Isaak
Council Member:	Michael Lofton
Council Member:	Marcus Osborn (arrived at 9:08)
Council Member:	Connie Wilhelm
GRRC Staff Attorney:	Scott Cooley
GRRC Staff Attorney:	Christopher Klemminich

ABSENT:

Council Member:	Warde Nichols
Attorney General Representative:	Christopher Munns

CALL TO ORDER:

Council Chair Bret Parke called the Study Session to order at approximately 9:04 a.m.

DISCUSSION OF MINUTES:

Council Meeting Minutes 4/7/2015:	No Discussion
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DISCLOSURE OF CONFLICTS OF INTEREST:

None

DISCUSSION AGENDA:

D. Five-Year-Review Reports for Discussion:

- 1. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-15-0305)**
Title 18, Chapter 8, Articles 1, Remedial Action Requirements; and 2, Hazardous Wastes

Scott Cooley gave a report on the legal and economic impact analysis for this agenda item.

Council Chair Bret Parke commented regarding R18-8-201 and whether there is an opportunity to allow the rule to expire, and the status of the fees referenced in the comments in section three of the memo to Council?

Scott Cooley responded to Council Chair Bret Parke's comments: Those fees are no longer applicable and the department adopted more recent fees in Rule 260, so the department is planning to repeal that rule or let it expire.

Mark Lewandowski of ADEQ confirmed the department planned to repeal the rule.

Council Member Marcus Osborn stated that in your report, you said that the feds have annual or bi-annual reporting dates, but we require much more frequent reporting. Why do we need to be more stringent? Why not keep the rules as consistent with the feds as possible?

Scott Cooley addressed Council Member Osborn's comments: ADEQ believes that more frequent reporting is necessary for them to adequately enforce the rules.

Mark Lewandowski of ADEQ further explained that the slightly more stringent requirements, an annual report instead of a bi-annual report, and manifests to be submitted to ADEQ instead of to the EPA, date from about 1984 to 1985 timeframe when Arizona, under the Department of Health Services, was first applying for authority to run the hazardous waste program. At that time the thought was, we may not have as much inspection as you want, but we are going to require more reporting, and we are going to look at the manifests ourselves instead of having them sent to San Francisco.

Council Chair Bret Parke asked if the department could consider expiration versus repeal? It causes confusion having two different fee rules.

Mark Lewandowski of ADEQ acknowledged Council Chair Bret Parke's comment.

Council Member Jason Isaak asked a follow up question regarding the federal reporting requirements versus ours and if the department is at a point where that could be looked at again?

Mark Lewandowski of ADEQ responded to Council Member Isaak's comment: To get there we would have to get our seven years backlog of rules submitted to the EPA and then we could start a conversation with them. It is possible we are at that point. The idea is to be consistent with the federal program and equivalent to, and without the inspectors back in 1985, the equivalency was gained through the extra reporting. There would probably be some transition costs in changing things around but we could look into that.

Council Member Jason Isaak inquired about the backlog that has to be dealt with before that question can be addressed?

Mark Lewandowski of ADEQ: I think it would be premature to ask EPA about changing things like that when we do not have the last seven years of their rules brought into our regulations.

Council Member Jason Isaak acknowledged Mr. Lewandowski's comment.

Council Chair Bret Parke: To clarify, this is an authorized program from the federal government to the state, and because we are trying to reduce the seven year gap to a normal one or two year gap, it would not be favorable to the state to open the negotiations before we can get the program back to that normal one or two year program gap in terms of incorporating federal references and changes.

Council Member Marcus Osborn commented: To make sure this is systemically done, the Department should explore that when the time is right. I am not making a recommendation that you need to do that, but when you are done, if there are administrative synergies we can link up, I think at least it would be something we would want you to explore as part of the five year review process, but at the right time.

2. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-15-0306)

Title 18, Chapter 13, Articles 2, Solid Waste Definitions, Exemptions; 3, Refuse and Other Objectionable Wastes; 5, Requirements for Solid Waste Facilities Subject to Self-Certification; 7, Solid Waste Facility Plan Review Fees; 8, General Permits; 9, Solid Waste Management Planning; 11, Collection, Transportation, and Disposal of Human Excreta; 12, Waste Tires; 13, Special Waste; 14, Biohazardous Medical Waste and Discarded Drugs; 16, Best Management Practices for Petroleum Contaminated Soil; 21, Solid Waste Landfill Registration Fees; 25, Recycling; and 27, Solid Waste Fees for Fiscal Year 2011

Christopher Klemminich gave a report on the legal and economic impact analysis for this agenda item.

Council Chair Bret Parke instructed staff with suggestions for streamlining the presentation of materials to Council and the items with which Council are most concerned.

Council Member Marcus Osborn: It seems like there are a lot of opportunities in these rules to clean them up and make them more understandable, and not in way that is inconsistent with the overriding goal of the administration of not increasing regulatory burdens. I get nervous for relying on substantive policy statements to bootstrap provisions, as longer term, that is problematic policy. At some point I would like to have a dialog with some of the folks in the executive to look at that Executive Order

and have some input to say, "Do you really want to include these type of things, because we think these will make the rules better without increasing burden"?

We have been holding off on these rules, and they do not match up statutorily and they create issues. I think this is a classic example and I have always been very impressed by ADEQ and how they have managed their rule process and it's a little frustrating to me that we are not cleaning up some of this with the expedited rulemaking authority that we have and not increase burdens.

Council Chair Bret Parke responded to Council Member's Osborn's comment regarding discussion at the director and the executive level to address some of these concerns.

3. ARIZONA DEPARTMENT OF ADMINISTRATION (F-15-0501)

Title 2, Chapter 1, Article 8, Reimbursement for Public or Private Transportation

Christopher Klemnich gave a report on the legal and economic impact analysis for this agenda item.

4. ARIZONA STATE LAND DEPARTMENT (F-15-0502)

Title 12, Chapter 5, Article 12, Fees

Christopher Klemnich gave a report on the legal and economic impact analysis for this agenda item.

Council Member Jason Isaak commented that in the proposed course of action, assuming they receive an exemption from the Governor, the agency indicates it will start the rule writing process the end of 2015 and will not have a submission until 2017. That seems long.

Christopher Klemnich responded to Jason Isaak's comment: As of late last week, the department did not have a permanent land commissioner, so the rule writers did not feel comfortable adhering to a timeline. However now that a new commissioner has just been appointed and will soon have priorities in place the rule may be able to be done sooner.

5. ARIZONA DEPARTMENT OF REAL ESTATE (F-15-0503)

Title 4, Chapter 28, Articles 4, Education; 7, Compensation; 8, Documents; and 12, Developments

Christopher Klemnich gave a report on the legal and economic impact analysis for this agenda item.

Council Member Marcus Osborn commented regarding the economic analysis and the cost and administrative burden on the regulated community.

Christopher Klemminich addressed Council Member Osborn's comments and offered to follow up with the department.

Council Member Marcus Osborn: Even good rules have a cost.

Council Chair Bret Parke made a follow up comment: When they identify that there is no available economic impact statement, there is a certain date beyond which older rules do not have an economic impact statement. The registers just contain the notices. There is some challenge for agencies in terms of retaining institutional knowledge at the state level if they do not have a repository for those.

Council Member Marcus Osborn responded to Council Chair Bret Parke's comment regarding the economic analysis.

6. ARIZONA DEPARTMENT OF ADMINISTRATION (F-15-0504)

Title 2, Chapter 1, Article 4, Emergency Telecommunication Services Revolving Fund

Christopher Klemminich gave a report on the legal and economic impact analysis for this agenda item.

7. ARIZONA DEPARTMENT OF PUBLIC SAFETY (F-15-0505)

Title 13, Chapter 9, Articles 1, General Provisions; 2, Concealed Weapons Permit: Application, Renewal, Responsibilities; 4, Certificate of Firearms Proficiency; 5, LEOSA-Recognized Instructors; and 6, Hearings and Disciplinary Proceedings

Scott Cooley gave a report on the legal analysis for this agenda item.

Council Chair Bret Parke commented about the agency exceeding overall licensing time frames.

Scott Cooley acknowledged Chair Bret Parke's comment.

Council Chair Bret Parke: The report says "it shall be refunded" and mentions excused payment for fees that have not yet been paid, but it does not state in the materials whether the department is doing so. I would like to know both that they are observing the law and compliant with the law but also if there is any economic impact that they can share with us from the refunds and excuse of payments for those concealed weapon permits.

Scott Cooley acknowledged Chair Bret Parke's comment and asked the Department for its response.

Paul Swietek of Department of Public Safety acknowledged Chair Bret Parke's question and agreed to provide the answers to the questions the Council has raised and respond back to the Council.

Council Chair Bret Parke acknowledged Mr. Swietek's comment.

Council Member Marcus Osborn asked if there have been comments from stakeholders? I agree with Mr. Cooley's recommendation. I think they should pursue the moratorium exception and we can build that into a motion and I would support that. I think it is within our authority. I am equally concerned that they are not meeting their licensing timeframes. Most agencies have already built them out so there is an adequate cushion. It seems like it is ripe for reform and the agency should re-do these rules so they can process these permits timely, especially given the high profile nature of their constituents.

Scott Cooley responded to Council Member Osborn's comments and noted that the agency reported there have been no written criticisms of the rules in the last 5 years and has also indicated it plans to do a rulemaking.

Council Member Marcus Osborn acknowledged Mr. Cooley's comment.

Scott Cooley gave a report on the economic impact analysis for this agenda item.

Council Member Marcus Osborn questioned whether this item should be removed from consent agenda?

Council Chair Bret Parke directed that this agenda item be removed from May 5, 2015 consent agenda and be placed as a separate item.

8. ARIZONA GAME & FISH DEPARTMENT (F-15-0506)
Title 12, Chapter 4, Article 8, Wildlife Areas and Department Property

Scott Cooley gave a report on the legal and economic impact analysis for this agenda item.

E. CONSIDERATION AND DISCUSSION OF RULES:

1. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (R-15-0501)
Title 18, Chapter 9, Article 10, Arizona Pollutant Discharge Elimination System - Disposal, Use, and Transportation of Biosolids

Amend: R18-9-1002; R18-9-1015

Christopher Klemminich gave a report on the legal and economic impact analysis for this agenda item.

Council Chair Bret Parke provided an update on last month's discussion regarding the economist position at GRRC. GRRC has incorporated an existing resource within the ADOA to provide economic analysis.

Christopher Klemmich furthered Chair Parke's comments regarding the economic analysis for next month's files.

Council Member Marcus Osborn asked if the Council would have the ability to ask the economists specific questions for follow-up?

Council Chair Bret Parke responded to Council Member Osborn's question and comments.

F. ADJOURNMENT

Council Chair Bret Parke adjourned the study session at approximately 10:43 a.m.

Respectfully submitted,
/S/epc
GRRC Program Specialist