

Kansas Administrative Regulations

Department of Health and Environment

Article 31.—Hazardous Waste Management Standards and Regulations

28-31-264a. Hazardous waste treatment, storage, and disposal facilities; additional state requirements.

Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Financial assurance.

(1) For the purposes of this subsection, the following definitions shall apply:

(A) "Captive insurance company" shall mean an insurance company that is established with the specific objective of financing risks emanating from its parent group or groups and that could or could not also insure risks of the parent groups' customers.

(B) "Financial institution" shall mean a bank, an insurance company, a surety company, or a trust company.

(C) "Purchased financial instrument" shall mean a trust fund, a letter of credit, a surety bond, or an insurance policy.

(D) "Unrelated" shall mean that neither party has any ownership of the other party, or any controlling interest in the other party.

(2) Each financial institution that provides financial assurance for a hazardous waste facility in Kansas shall meet the following requirements, in addition to meeting the requirements of 40 CFR part 264, subpart H:

(A) Each bank and each trust company shall have the authority to issue letters of credit in Kansas or to act as trustee for the facility in Kansas, or both.

(B) Each insurance company shall meet the following criteria:

(i) Have a current minimum rating in the secure or investment grade category by the A.M. Best insurance rating agency; and

(ii) not be a captive insurance company.

(C) Each surety company shall meet the following criteria:

(i) Have a current minimum rating in the secure or investment grade category by the A.M. Best insurance rating agency; and

(ii) be licensed in Kansas.

(3) If the financial assurance required by 40 CFR part 264, 265, or 267 is a purchased financial instrument, the financial institution that provides the purchased financial instrument shall be unrelated to both the owner and the operator of the facility.

(4) Each person that is required to submit the information listed in one or more of the following regulations shall also submit a copy of the most recent corporate annual report:

(A) 40 CFR 264.143(f)(3);

(B) 40 CFR 264.145(f)(3);

(C) 40 CFR 265.143(e)(3);

(D) 40 CFR 265.145(e)(3); or

(E) 40 CFR 267.143(f)(2).

(5) The corporate annual report required by paragraph (a)(4) shall be submitted for both publicly and privately owned facilities and shall contain the following items:

(A) Financial statements;

(B) notes to financial statements; and

(C) a copy of the independent certified public accountant's report, including an unqualified opinion.

(b) Notice in deed to property. Each owner of property on which a hazardous waste treatment, storage, or disposal facility is located shall record, in accordance with Kansas law, a notice with the register of deeds in the county where the property is located. The notice shall include the following information:

(1) The land has been used to manage hazardous waste.

(2) All records regarding permits, closure, or both are available for review at the department.

(c) Restrictive covenant and easement. Any owner of property on which a hazardous waste treatment, storage, or disposal facility is or has been located may be required by the secretary to execute a restrictive covenant or easement, or both, according to the following requirements:

(1) The restrictive covenant shall be filed with the county register of deeds, shall specify the uses that may be made of the property after closure, and shall include the following requirements:

(A) All future uses of the property after closure shall be conducted in a manner that preserves the integrity of waste containment systems designed, installed, and used during operation of the disposal areas, or installed or used during the postclosure maintenance period.

(B) The owner or tenant and all subsequent owners or tenants shall preserve and protect all permanent survey markers and benchmarks installed at the facility.

(C) The owner or tenant and all subsequent owners or tenants shall preserve and protect all environmental monitoring stations installed at the facility.

(D) The owner or tenant, all subsequent property owners or tenants, and any person granted easement to the property shall provide written notice to the secretary during the planning of any improvement to the site and shall commence any of the following activities only after receiving approval from the secretary:

- (i) Excavating or constructing any permanent structures or drainage ditches;
- (ii) altering the contours;
- (iii) removing any waste materials stored on the site;
- (iv) changing the vegetation grown on areas used for waste disposal;
- (v) growing food chain crops on land used for waste disposal; or
- (vi) removing any security fencing, signs, or other devices installed to restrict public access to waste storage or disposal areas.

(2) The easement shall state that the department, its duly authorized agents, or contractors employed by or on behalf of the department may enter the premises to accomplish any of the following tasks:

- (A) Complete items of work specified in the site closure plan;
- (B) perform any item of work necessary to maintain or monitor the area during the postclosure period; or
- (C) sample, repair, or reconstruct environmental monitoring stations constructed as part of the site operating or postclosure requirements.

(3) Each offer or contract for the conveyance of easement, title, or other interest to real estate used for treatment, storage, or disposal of hazardous waste shall disclose all terms, conditions, and provisions for care and subsequent land uses that are imposed by these regulations or the site permit authorized and issued under K.S.A. 65-3431, and amendments thereto. Conveyance of title, easement, or other interest in the property shall contain provisions for the continued maintenance of waste containment and monitoring systems.

(4) All covenants, easements, and other documents related to this regulation shall be permanent, unless extinguished by agreement between the property owner and the secretary.

(5) The owner of the property shall pay all recording fees.

(d) Marking requirements. Each operator of a hazardous waste container storage facility or a tank storage facility shall mark all containers and tanks in accordance with 40 CFR 262.34(a)(2) and (3).

(e) Environmental monitoring. All samples analyzed in accordance with 40 CFR part 264, subpart F or G or 40 CFR part 265, subpart F or G shall be conducted by a laboratory certified for these analyses by the secretary, except that analyses of time-sensitive parameters, including pH, temperature, and specific conductivity, shall be conducted at the time of sampling if possible.

(f) Laboratory certification. For hazardous waste received at a treatment, storage, or disposal facility with the intent of burning for destruction or energy recovery, all quantification analyses performed for the purpose of complying with permit conditions shall be performed by a laboratory certified for these analyses by the secretary, if this certification is available.

(g) Hazardous waste injection wells. The owner or operator of each hazardous waste injection well shall comply with the requirements of article 46 of these regulations. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)