Kansas Administrative Regulations

Department of Health and Environment

Article 29.—Solid Waste Management

28-29-2106. Financial assurance provided by an irrevocable letter of credit.

(a) Letter of credit. Any owner or operator of a permitted solid waste disposal area or processing facility may satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, by obtaining a letter of credit that conforms to the requirements of this regulation and by submitting the original letter of credit to the department.

(1) Each owner or operator of a new facility shall submit to the department the letter of credit before the permit is issued by the department.

(2) Each owner or operator required to provide financial assurance for a corrective action plan shall submit the letter of credit to the department within the times specified in K.A.R. 28-29-2102(d).

(3) The institution issuing the letter of credit shall meet the following criteria:

(A) Be unrelated to the owner or operator;

(B) be authorized to issue letters of credit in Kansas; and

(C) conduct letter of credit activities that are regulated by an agency of the state or federal government.

(b) Form of the letter of credit. The wording of the letter of credit shall be identical to the wording in the document provided by the department. If the amount of the letter of credit is changed or the expiration date is extended, an original amendment to the letter of credit shall be filed with the department.

(c) Standby trust fund. Any owner or operator who uses a letter of credit to satisfy the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, shall also establish a standby trust fund. A copy of the standby trust agreement with an original signature shall be submitted to the department along with the original letter of credit. Under the terms of the letter of credit, all payments from the penal sum shall be deposited by the issuing institution directly into the standby trust fund, in accordance with instructions from the department. The standby trust fund shall conform to the requirements specified in K.A.R. 28-29-2103, except that, until the trust account is funded pursuant to the requirements of this regulation, the following shall not be required:

(1) Payments into the fund as specified in K.A.R. 28-29-2103 (c) or (e);

(2) updates to schedule A of the trust agreement as specified in K.A.R. 28-29-2103(b)(3);

(3) annual valuations as required by the trust agreement; and

(4) notices of nonpayment as required by the trust agreement.

(d) Provisions of the letter of credit. The letter of credit shall be irrevocable and shall be issued for a period of at least one year. The letter of credit shall require that the expiration date be automatically extended for a period of at least one year on the expiration date and on each succeeding expiration date, unless 120 days before the current expiration date the issuing institution notifies both the owner or operator and the department by certified mail of a decision not to extend the expiration date. Under terms of the letter of credit, the 120-day period shall begin on the date by which both the owner or operator and the department have received the notice, as evidenced by the return receipts.

(e) Amount of the letter of credit. The letter of credit for closure, postclosure, or both, shall be issued for at least the amount of the current cost of closure or postclosure, or both, whichever is greater. The letter of credit for corrective action shall be issued for at least the amount of the current cost estimate for corrective action during the entire corrective action period.

(f) Increases in the amount of the letter of credit. Whenever the current cost of closure, postclosure, corrective action, or any combination of these, increases to an amount greater than the amount of the letter of credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the letter of credit to be increased to the new amount and submit evidence of the increase to the department, or obtain other financial assurance as specified in K.A.R. 28-29-2101(b) to cover the increase. Whenever the current cost of closure, postclosure, corrective action, or any combination of these, decreases, the owner or operator may request approval from the department to decrease the amount of the letter of credit. The request shall be evaluated by the department, and the amount shall be decreased consistent with the department's evaluation.

(g) Failure to perform closure, postclosure, and corrective action. The amount of the letter of credit, in whole or in part, shall be drawn by the department following a determination by the department of either of the following:

(1) That the owner or operator has failed to perform closure, postclosure, or corrective action, or any combination of these, in accordance with the closure, postclosure, or corrective action plan, or any combination of these, when required; or

(2) that the owner or operator has failed to perform according to the terms and conditions of the permit.

(h) Failure to supply alternate financial assurance. If the owner or operator does not establish alternate financial assurance as specified by this regulation and does not obtain written approval for its use from the department within 90 days after the date by which both the owner or operator and the department have received a notice from the issuing institution that it has decided not to renew the letter of credit beyond the current expiration date, the amount of the letter of credit may be drawn by the department.

(i) Termination of the letter of credit by the owner or operator. The owner or operator may request termination of the letter of credit if any of the following occurs:

(1) The owner or operator substitutes an alternative method of financial assurance as specified in K.A.R. 28-29-2101(b) and obtains written approval for its use from the department.

(2) The owner or operator is released by the department from further obligation for closure or postclosure, or both, at the facility.

(3) The owner or operator completes required corrective action and is released from further obligation by the department or any court of competent jurisdiction.

(j) The provisions of this regulation shall apply on and after February 24, 2000. (Authorized by K.S.A. 1998 Supp. 65-3406; implementing K.S.A. 1998 Supp. 65-3407, as amended by L. 1999, Ch. 112, Sec. 1; effective Feb. 24, 2000.)