Kansas Administrative Regulations

Department of Health and Environment

Article 73.—Environmental Use Controls Program

28-73-5. Financial assurance.

(a) Any applicant requesting approval of an environmental use control for a category 3 property may be required by the secretary to provide and maintain financial assurance in an amount equal to or greater than one or both of the following:

(1) The estimated amount of the funding requirement set out in the long-term care agreement as provided by K.A.R. 28-73-4; and

(2) the estimated amount of the funding necessary to implement contingent remedies that will be used to protect public health and safety and the environment if the proposed remedial activity fails.

(b) Each applicant required by the secretary to provide and maintain financial assurance shall submit a detailed written estimate to the secretary, in current dollars, of the estimated amount of financial assurance required as specified in subsection (a) and shall propose one or more methods of financial assurance. The written estimate and the proposed method or methods of financial assurance shall be reviewed by the secretary and either approved or, if the secretary determines that either the written estimate or the proposed financial assurance method is inadequate, disapproved. If the secretary disapproves the written estimate or the proposed financial assurance method, or both, a written notice shall be provided by the secretary to the applicant explaining the basis for the disapproval. The applicant may correct the identified inadequacies and submit a revised written estimate and proposed financial assurance method to the secretary for further review.

(c) Once approved by the secretary, the initial amount and method of financial assurance shall be documented in the long-term care agreement for the eligible property.

(d) Each applicant required to provide and maintain financial assurance shall submit proof of the initial, approved financial assurance to the secretary before the environmental use control agreement is issued.

(e) On or before March 31 of each calendar year, each owner, as defined by the act, who entered into a long-term care agreement that establishes a financial assurance requirement shall submit to the secretary a revised written estimate, in current dollars, of the amount of financial assurance required in subsection (a).

(f) The revised written estimate shall be reviewed by the secretary. Written notice that the revised written estimate has been approved or that additional adjustments are required to the revised written estimate or method of financial assurance shall be provided by the secretary. Adjustments to the amount of the required financial assurance or the financial assurance method, or both, may be required for any of the following reasons:

(1) Changes in the estimated costs of the funding requirement for the eligible property as specified in paragraph (a)(1);

(2) changes in the estimated costs of implementing contingent remedies that will be used to protect public health and safety and the environment if the proposed remedial activity fails as specified in paragraph (a)(2);

(3) changes in the risks to public health and safety and the environment posed by a potential release from the eligible property;

(4) documented changes in the financial viability of an owner or the provider of a financial assurance method; or

(5) changes in estimated costs based on inflation.

(g) Each owner required by the secretary to maintain financial assurance shall submit an updated proof of financial assurance within 45 days of receipt of the secretary's written notice in subsection (f). The proof shall be based on the approved amount and method of financial assurance described in the notice.

(h) Each applicant who enters into an environmental use control agreement for a category 3 property that includes a financial assurance requirement shall comply with the following conditions:

(1) Provide and continuously maintain financial assurance in an amount equal to or greater than the latest approved written cost estimate throughout the period the environmental use control agreement is in effect; and

(2) comply with the provisions of the document titled, "procedure for demonstrating financial assurance at property with environmental use controls" as published by the department on August 31, 2005, and hereby adopted by reference.

(Authorized by K.S.A. 2004 Supp. 65-1,232; implementing K.S.A. 2004 Supp. 65-1,224 and 65-1,226; effective April 7, 2006.)