Kansas Administrative Regulations

Department of Health and Environment

Article 29.—Solid Waste Management—Part 1. Definitions and Administration Procedures.

28-29-20. Restrictive covenants and easements.

(a) Permitted soild waste disposal areas. Each owner of a solid waste disposal area that is required to have a permit and where wastes will remain at the solid waste disposal area after closure may be required by the secretary to execute a restrictive covenant or easement, or both. The restrictive covenant with the register of deeds' stamp or the easement, or both, shall be submitted to the department before the permit is issued.

(b) Solid waste disposal areas without a permit. Each owner of a solid waste disposal area approved by the secretary under K.S.A. 65-3407c, and amendments thereto, may be required by the secretary to execute a restrictive covenant.

(c) Restrictive covenant. If required, the owner shall execute and file with the county register of deeds a restrictive covenant to run with the land that fulfills the following requirements:

(1) Covers all areas that have been or will be used for waste disposal;

(2) specifies the location of the solid waste disposal area. Acceptable methods to determine the location shall include the following:

(A) Obtaining a legal description by measuring from the property boundaries;

(B) obtaining a legal description by measuring from a permanent survey marker or benchmark; and

(C) obtaining the latitude and longitude, accurate to within five meters, using a global positioning system;

(3) specifies the uses that may be made of the solid waste disposal area after closure;

(4) requires that use of the property after closure be conducted in a manner that preserves the integrity of waste containment systems designed, installed, and used

during operation of the solid waste disposal areas, or installed or used during the postclosure maintenance period;

(5) requires the owner or tenant to preserve and protect all permanent survey markers and benchmarks installed at the solid waste disposal area;

(6) requires the owner or tenant to preserve and protect all environmental monitoring stations installed at the solid waste disposal area;

(7) requires subsequent property owners or tenants to consult with the department during planning of any improvement to the site and to receive approval from the department before commencing any of the following:

(A) Excavation or construction of permanent structures;

(B) construction of drainage ditches;

(C) alteration of contours;

(D) removal of waste materials stored on the site;

(E) changes in vegetation grown on areas used for waste disposal;

(F) production, use, or sale of food chain crops grown on land used for waste disposal; or

(G) removal of security fencing, signs, or other devices installed or used to restrict public access to waste storage or solid waste disposal areas; and

(8) provides terms whereby modifications to the restrictive covenant or other land uses may be initiated or proposed by property owners.

(d) Easement. If required, the owner shall execute an easement allowing the secretary, or the secretary's designee, to enter the premises to perform any of the following:

(1) Complete items of work specified in the site closure plan;

(2) perform any item of work necessary to maintain or monitor the area during the postclosure period; or

(3) sample, repair, or reconstruct environmental monitoring stations constructed as part of the site operating or postclosure requirements.

(e) Conveyance of easement, title, or other interest to real estate. Each offer or contract for the conveyance of easement, title, or other interest to real estate used for the long-term storage or disposal of solid waste shall contain a complete disclosure of

all terms, conditions, and provisions for long-term care and subsequent land uses that are imposed by these solid waste regulations or the solid waste disposal area permit. The conveyance of title, easement, or other interest in the property shall not be consummated without adequate and complete provisions for the continued maintenance of waste containment and monitoring systems.

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

(g) Fees. All document-recording fees shall be paid by the property owner.

(h) Federal government applicants and owners.

(1) For federal government applicants and owners, the term "restrictive covenant" shall be replaced with "notice of restrictions" throughout this regulation.

(2) The restrictions shall be recorded in the base master plans or similar documents.

(3) If property that is owned by the federal government and that has a notice of restrictions filed according to this regulation is transferred to an entity other than the federal government, at the time of transfer the owner shall file a restrictive covenant that meets the requirements of this regulation.

(Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982; amended May 30, 2003.)

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