Kansas Administrative Regulations

Department of Health and Environment

Article 29.—Solid Waste Management—Part 10. Financial Requirements.

28-29-2109. Financial assurance provided by the corporate guarantee.

(a) Corporate guarantee. Any owner or operator of a permitted solid waste disposal area or processing facility may meet the requirements of K.A.R. 28-29-2101 or K.A.R. 28-29-2102, or both, by obtaining a written guarantee for closure, postclosure, or corrective action costs, or any combination of these as specified in this regulation.

(1) The guarantor shall comply with the following:

(A) The requirements for owners or operators using the corporate financial test as specified in K.A.R. 28-29-2108(b);

(B) the record keeping and reporting requirements in K.A.R. 28-29-2108(c); and

(C) the terms of the guarantee.

(2) The guarantor shall be one of the following:

(A) The direct or higher-tier parent corporation of the owner or operator; or

(B) a corporation having the same parent corporation as the owner or operator.

(b) Form of the corporate guarantee. The guarantor shall provide a written guarantee that is worded identically to the document provided by the department.

(c) Effective date of the guarantee. A guarantee of closure, postclosure, or both, for a new permit shall be in force before the permit is issued by the department. A guarantee for corrective action shall be in force within the times specified in K.A.R. 28-29-2102 (d).

(d) Record keeping and reporting requirements. Copies of the guarantee, with original signatures, shall be placed in the facility operating record of the owner or operator and filed with the department, accompanied by the documents specified for use by the owner or operator in K.A.R. 28-29-2108(c), that shall be completed using the financial information and reports of the guarantor corporation. These documents shall be updated and filed annually.

(e) Consideration for the guarantee. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer shall describe the value received in consideration for the guarantee.

(f) Provisions of the guarantee. The terms of the written guarantee shall specify the following remedies:

(1) If the owner or operator fails to perform closure, postclosure, corrective action, or any combination of these, for the permitted facility covered by the guarantee when required by the department or any court of competent jurisdiction, the guarantor shall perform either of the following remedies:

(A) Perform or pay a third party to perform closure, postclosure, corrective action, or any combination of these, as required by the department or any court of competent jurisdiction; or

(B) establish a fully funded trust fund as specified in K.A.R. 28-29-2103, in the name of the owner or operator, in the amount of the current cost estimate for closure, postclosure, corrective action, or any combination of these, whichever is greatest.

(2) The guarantee shall remain in effect unless the guarantor sends prior notice of cancellation by certified mail to both the owner or operator and the department. Cancellation shall not occur, however, during the 120 days beginning on the date by which both the owner or operator and the department have received the notice of cancellation, as evidenced by the return receipts.

(3) If the guarantee is canceled, the owner or operator shall, within 90 days following the date by which both the owner or operator and the department have received the cancellation notice, obtain alternate financial assurance as specified in K.A.R. 28-29-2101(b) and obtain the approval of the department for its use. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide the alternate financial assurance in the name of the owner or operator within 120 days following the date by which both the department and the owner or operator have received the cancellation notice.

(g) Failure of the guarantee. If the corporate guarantor no longer meets the requirements of K.A.R. 28-29-2108(b), the owner or operator shall, within 90 days, obtain alternate financial assurance and obtain the approval of the department for its

use. If the owner or operator fails to provide alternate financial assurance as specified in K.A.R. 28-29-2101(b) within the 90-day period, the guarantor shall, within the next 30 days, provide the alternate financial assurance in the name of the owner or operator.

(h) Release of the guarantee. The owner or operator shall be no longer required to meet the requirements of this regulation 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, postclosure, or both, at the permitted 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.

(i) 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.)

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