Kansas Administrative Regulations

Department of Health and Environment

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

28-29-2105. Financial assurance provided by a surety bond guaranteeing performance.

(a) Performance guarantee bond. 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 performance guarantee bond that conforms to the requirements of this regulation and by submitting the original bond to the department.

(1) Each owner or operator of a new facility shall submit to the department the bond for closure or postclosure, or both, 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 bond to the department within the times specified in K.A.R. 28-29-2102(d).

(3) The surety institution shall meet the following criteria:

(A) Be unrelated to the owner or operator;

(B) have the authority to issue surety bonds in Kansas; and

(C) be listed as an acceptable surety institution on federal bonds.

(b) Form of the performance guarantee bond. The wording of the performance guarantee bond shall be identical to the wording in the document provided by the department. If the penal sum of the bond is increased during the life of the bond, the owner or operator shall provide written acceptance of the new amount, indicated by a signed acceptance placed on the certificate of increase issued by the surety institution. The original signed and accepted certificate of increase shall be filed with the department.

(c) Standby trust fund. Any owner or operator who uses a performance guarantee bond 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 performance guarantee bond. Under the terms of the bond, all payments from the penal sum shall be deposited by the surety 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 requirement 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 performance guarantee bond for closure and postclosure. The performance guarantee bond for closure or postclosure, or both, shall require that the owner or operator perform either of the following:

(1) Perform final closure or postclosure, or both, in accordance with the closure or postclosure plan, or both, and any other requirements of the permit and the department or a court of competent jurisdiction whenever required to do so; or

(2) provide alternate financial assurance as specified in these financial assurance regulations and obtain the department's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the department have received a notice of cancellation from the surety institution.

(e) Provisions of the performance guarantee bond for corrective action. A performance guarantee bond for corrective action shall require that the owner or operator perform either of the following:

(1) Perform corrective action according to the corrective action plan or according to an order from the department or any court of competent jurisdiction whenever required to do so; or

(2) provide alternate financial assurance as specified in these financial assurance regulations and obtain the department's written approval for the assurance provided,

within 90 days after the date by which both the owner or operator and the department have received a notice of cancellation from the surety institution.

(f) Liability of the surety institution. Under terms of the bond, the surety institution shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(g) Penal sum of the bond. The penal sum of the bond for closure, postclosure, or both, shall be at least the amount of the current cost estimate for closure or postclosure, or both. The penal sum of the bond for corrective action shall be at least the amount of the current cost estimate for corrective action for the entire corrective period.

(h) Increase in the penal sum of the bond. Whenever the current cost of closure, postclosure, corrective action, or any combination of these, increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum 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 penal sum of the bond. The request shall be evaluated by the department, and the amount shall be decreased consistent with the department's evaluation.

(i) Cancellation of the bond by the surety institution. Under terms of the bond, the surety institution may cancel the bond by sending notice of cancellation by certified mail to both the owner or operator and the department. Cancellation shall not occur, however, during the 120 days following the date by which the notice of cancellation has been received by both the owner or operator and the department, as evidenced by the return receipts.

(j) Cancellation of the bond by the owner or operator. The owner or operator may request cancellation of the bond from the department 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.

(k) 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 *****