Kansas Administrative Regulations

Department of Health and Environment

Article 29.—Solid Waste Management

28-29-2101. Financial assurance for closure and postclosure.

In K.A.R. 28-29-2101 through K.A.R. 28-29-2113, "facility" shall mean a solid waste disposal area, a solid waste processing facility, or both.

(a) Evidence of financial assurance. The owner or operator of each facility shall submit to the department evidence of financial assurance for the facility for the cost of closure, postclosure, or both, as specified in K.S.A. 65-3407, and amendments thereto. The financial assurance shall meet the following requirements:

(1) Be continuous during the active life of the facility and the required postclosure care period;

(2) be in an amount that is equal to or greater than the accepted or revised amount as specified in subsection (e) of this regulation;

(3) be available when needed; and

(4) be legally enforceable.

(b) Financial assurance methods.

(1) Allowable financial assurance methods shall consist of the following:

(A) A funded trust fund, as specified in K.A.R. 28-29-2103;

(B) a surety bond guaranteeing payment, as specified in K.A.R. 28-29-2104;

(C) a surety bond guaranteeing performance, as specified in K.A.R. 28-29-2105;

(D) an irrevocable letter of credit, as specified in K.A.R. 28-29-2106;

(E) an insurance policy, as specified in K.A.R. 28-29-2107;

(F) a corporate financial test, as specified in K.A.R. 28-29-2108;

(G) a corporate financial guarantee, as specified in K.A.R. 28-29-2109;

(H) a local government financial test, as specified in K.A.R. 28-29-2110;

(I) a local government guarantee, as specified in K.A.R. 28-29-2111;

(J) use of ad valorem taxing authority for a local government subdivision of the state that owns or operates a solid waste facility other than a municipal solid waste landfill, as specified in K.A.R. 28-29-2112; and

(K) the following simplified financial instruments, as specified in K.A.R. 28-29-2113:

(i) A simplified permit bond for facilities with a closure cost estimate of $100,000 or less;

(ii) a simplified irrevocable letter of credit for facilities with a closure cost estimate of $100,000 or less; and

(iii) an assigned certificate of deposit for facilities with a closure cost estimate of $25,000 or less.

(2) Any owner or operator may use a combination of instruments or methods as specified in these regulations, except that a method using a financial instrument guaranteeing performance shall not be used in combination with an instrument guaranteeing payment. Each method used in combination shall satisfy the requirements specified in these financial assurance regulations for its use.

(3) Any board of county commissioners that has established a dedicated fee fund pursuant to K.S.A. 65-3415f, and amendments thereto, may reduce the amount of financial assurance demonstrated by any other allowable method by the current balance accumulated in the dedicated fee fund at the time that the evidence of financial assurance is submitted.

(4) If the financial assurance is a purchased financial instrument, it shall be purchased from a financial, insurance, or surety institution meeting the quality and reliability standards suitable to institutions of that type and the standards specified in these financial assurance regulations.

(c) Calculation of financial assurance. The owner or operator of each facility shall meet the following requirements when calculating the amount of financial assurance for the current estimated cost to provide for closure, postclosure, or both.

(1) The owner or operator shall meet the following requirements to determine the area or capacity to be included in the calculation of estimated cost.

(A) For each solid waste processing facility, the amount of closure financial assurance shall be calculated as the cost of removing and disposing of the greatest volume of waste allowed by terms and conditions of the permit, and all other costs relevant to certification of final closure, including certification.

(B) For each solid waste disposal area, the amount of closure financial assurance shall be calculated as the cost to complete final closure of the largest area to lack final cover at any one time before the next annual permit renewal. The calculated cost shall include the cost to complete all closure activities in a manner consistent with the approved facility closure plan.

(C) For each solid waste disposal area, the amount of postclosure financial assurance shall be calculated as the cost to be incurred for the largest area to have waste in place before the next annual permit renewal. The calculated cost shall include the cost to conduct the following, in a manner consistent with the approved facility postclosure plan, during the postclosure period of 30 years and any extensions of the postclosure period required by the secretary:

(i) Care and maintenance of the area, including all appurtenances; and

(ii) all required environmental monitoring.

(2) The owner or operator shall calculate the amount of financial assurance required by applying third-party costs to the activities listed in the closure plan and postclosure plan. The resulting amount shall not be discounted, nor shall any offset for the sale of recoverable materials be subtracted. Third-party costs shall be determined from one or more of the following sources:

(A) Representative costs supplied by the department;

(B) actual invoices paid by the owner or operator for the same or similar work;

(C) written bids from professional contractors having no other financial interest in the facility or its use; or

(D) authoritative costing tables issued by publishers recognized for their research into the costs of the activities to be priced.

(3) If the calculated amount does not include a specific allowance to pay for contingent events, the owner or operator shall add an amount equal to 10% of the total cost for the purpose of determining the amount of financial assurance required.

(4) The owner or operator shall submit the cost estimates on worksheets provided by the department or on other forms that contain the same information.

(d) When submissions are required. The owner or operator of each facility shall submit evidence of financial assurance to the department at the following times:

(1) Before the facility permit is issued by the secretary, including transferred permits;

(2) before a permit modification is issued by the secretary;

(3) annually during the active life of the facility, on or before the permit renewal date; and

(4) annually during the required period of postclosure, on or before the permit renewal date that was effective during the active life of the facility.

(e) Evaluation of amount of financial assurance.

(1) Upon receipt of the closure cost estimate, postclosure cost estimate, or both, from the owner or operator, the estimate or estimates shall be evaluated by the department to determine if the estimated amount of financial assurance is acceptable, according to the following criteria:

(A) The activities planned meet the requirements of the Kansas solid waste statutes and regulations, comply with all permit conditions, and are protective of public health and safety and the environment; and

(B) the method of estimating costs for the planned activities meets the requirements of this regulation.

(2) Revisions shall be made by the department in accordance with the evaluation, if the cost estimate factors are not acceptable.

(f) Annual updates to financial assurance. The owner or operator shall update the financial assurance amount, on or before the annual renewal date of each permit during the active life of the facility and annually during the required period of postclosure care, by recalculating the cost of closure, postclosure care, or both, using current dollars, or by the addition of an inflation factor to the amount accepted by the department for the prior year.

(1) If a change to any of the following has occurred that will change the cost of closure, postclosure, or both, the owner or operator shall recalculate the affected cost or costs, consistent with the change:

(A) The closure plan, as submitted or as approved;

(B) the postclosure plan, as submitted or as approved; or

(C) the conditions at the facility.

(2) If the inflation factor is used, the financial assurance instrument or other method of demonstrating financial assurance shall be adjusted to the updated amount according to the following formula:

$$\frac{IPD_y}{IPD_{y-1}} \times FA_{y-1} = FA$$

where:

IPD_y represents the current annual implicit price deflator for the gross domestic product;

IPD_{y-1} represents the previous year's implicit price deflator for the gross domestic product;

FA_{y-1} represents the previous year's approved estimate of closure or postclosure, or both; and

FA represents the current estimated cost of closure or postclosure, or both.

(g) Failure of the financial assurance method, or an inadequate amount of financial assurance. Each owner or operator of a facility who obtains information that a financial assurance instrument or other method has failed to meet the standards established by these financial assurance regulations for its use, or that the amount of financial assurance provided has become inadequate for reasons other than general annual price inflation, shall provide alternate or increased financial assurance of the type and within the time periods specified in these financial assurance regulations, but not later than 90 days after obtaining the information.

(h) Release from the requirement to provide financial assurance. Each owner or operator shall be released from the requirement to provide financial assurance for a facility for closure or postclosure care, or both, when the owner or operator is released by the department from further obligation to perform closure activities, postclosure activities, or both, at the facility.

(i) Exception for certain closed municipal solid waste landfills. The financial assurance requirements of subsection (a) of this regulation shall not apply to closed municipal solid waste landfills that are exempted from K.A.R. 28-29-101 through K.A.R. 28-29-120 according to the closure dates specified in K.A.R. 28-29-100.

(j) Exception to the requirement for postclosure financial assurance for facilities other than municipal solid waste landfills. Postclosure financial assurance shall not be required by the secretary for a facility that is not a municipal solid waste landfill unless the secretary determines that recurring environmental monitoring is required during the entire postclosure period.

(k) Exception to the closure plan pricing requirements for waste tire permittees. No waste tire processing facility, waste tire collection center, mobile waste tire processor, or waste tire transporter permittee shall be subject to the closure plan pricing requirements of subsections (c) and (f) of this regulation. The permittee shall determine the amount of financial assurance according to the following criteria:

(1) Waste tire processing facilities and waste tire collection centers. The amount of financial assurance shall correspond to the closure cost estimate, as specified in K.A.R. 28-29-30.

(2) Mobile waste tire processors. The amount of financial assurance shall be $1,000.00.

(3) Waste tire transporters. The amount of financial assurance shall correspond to the average number of passenger tire equivalents (PTEs) transported per month, according to the following schedule:

PTEs transported	**Financial assurance**
0 through 1,000	$1,000.00
1,001 through 10,000	$5,000.00
more than 10,000	$10,000.00

(Authorized by K.S.A. 65-3406 and 65-3424h; implementing K.S.A. 2006 Supp. 65-3407 and K.S.A. 2006 Supp. 65-3424b; effective Feb. 24, 2000; amended Oct. 26, 2007.)