Kansas Administrative Regulations

Department of Health and Environment

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

28-29-2102. Financial assurance for corrective action.

Reference to the "facility" in these financial assurance regulations shall mean a solid waste disposal area or a solid waste processing facility, or both.

(a) Requirement to provide financial assurance. Each owner or operator of a facility who is required to undertake a corrective action program pursuant to the provisions of K.A.R. 28-29-114, or by order of any court of competent jurisdiction, shall provide evidence of financial responsibility for the cost of corrective action in the manner and form prescribed by these financial assurance regulations. Each owner or operator required to perform corrective action for a facility shall provide and maintain financial assurance that is continuous, adequate in amount, available when needed, and legally enforceable.

(b) Financial assurance methods. Allowable financial assurance methods shall be those specified in K.A.R. 28-29-2101(b).

(c) Provider of the financial assurance. The financial assurance for corrective action shall be supplied by one of the providers specified in K.A.R. 28-29-2101(c).

(d) Demonstration of financial assurance, when required. Each owner or operator required to undertake a program of corrective action shall provide a demonstration of financial assurance to the department at the following times:

(1) Within 120 days following whichever of the following dates is earliest:

(A) The date that the selected remedy was filed with the department by the owner or operator according to the provisions of K.A.R. 28-29-114(b); or

(B) the date that the secretary informed the facility of the amount of financial assurance required based on a probable remedial cost estimate; and

(2) annually during the corrective action period, on or before the anniversary of the date the first financial assurance demonstration was required.

(e) Review of financial assurance demonstrations. Financial assurance demonstrations shall be reviewed by the department and either approved or disapproved. A financial assurance method that has been disapproved by the department shall be replaced with an alternate method as specified in these financial assurance regulations to maintain continuous assurance during the corrective action period. A purchased financial instrument that has been disapproved because of wording or the quality of the issuing institution, or for any other reason, shall be replaced by an instrument acceptable to the department or by another method listed in K.A.R. 28-29-2101(b)(1), to maintain continuous assurance.

(f) Calculation of required financial assurance.

(1) The financial assurance requirement shall be based upon the total cost accumulated in a detailed estimate of the cost of the corrective action plan for implementing the remedy approved or specified by the department according to K.A.R. 28-29-114(b).

(2) A probable remedial cost estimate for the financial assurance required to implement corrective measures at the facility may be developed by the secretary before a remedy is submitted by the facility and approved by the department.

(3) If a trust fund is selected to provide the financial assurance, a separate estimate shall be made of the cost to be incurred during each year of the corrective action plan.

(4) The corrective action plan shall be priced using one or more of the sources specified in K.A.R. 28-29-2101(f)(2).

(5) The total amount of the corrective action plan shall not be discounted, nor shall any offset for the sale of recoverable materials be subtracted.

(6) If the amount does not include a specific allowance to pay for contingent events, an amount equal to 10 percent of the total cost shall be added for the purpose of determining the amount of financial assurance required.

(g) Evaluation of amount of financial assurance. Upon receipt of a priced corrective action plan from the owner or operator, the plan shall be evaluated by the department to determine if the amounts calculated are sufficient for determining the amount of financial assurance required, or revisions shall be made by the department in accordance with the evaluation if the amounts are not sufficient. The adequacy of the

physical actions planned and the pricing sources shall be considered in the departmental evaluation. Each owner or operator shall demonstrate financial assurance equal to the amount accepted or determined by the department.

(h) Annual updates to financial assurance. Each owner or operator shall update the financial assurance amount on or before the anniversary of the date the first financial assurance demonstration was required by this regulation. The financial assurance amount shall be updated by using one or more of the methods specified in K.A.R. 28-29-2101(h).

(i) Failure of the financial assurance method, or an inadequate amount of financial assurance. Each owner or operator required to process a corrective action plan who obtains information that a financial assurance instrument or other method in use 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 in no event later than 90 days after obtaining the information.

(j) Release from the requirement to provide financial assurance. Each owner or operator required to provide financial assurance for corrective action shall be released from the requirement when the department or any court having jurisdiction releases the owner or operator from further obligation to perform corrective action activities at the facility.

(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 *****