Kansas Administrative Regulations

Department of Health and Environment

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

28-29-2108. Financial assurance provided by the corporate financial test.

(a) Corporate financial test. Any corporate 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 passing a financial test based on the current financial condition of the permitted corporation as specified in this regulation. Related corporations may not be summed or otherwise combined for the purpose of the financial test, but majority-owned subsidiary corporations of the permitted corporation may be consolidated.

(b) The financial component.

(1) The owner or operator shall satisfy one of the following three conditions:

(A) A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB, as issued by Standard & Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's;

(B) a ratio of less than 1.5, obtained by dividing total liabilities by net worth; or

(C) a ratio of greater than 0.10, obtained by dividing the sum of net income plus depreciation, depletion, and amortization, minus $10 million, by total liabilities.

(2) The tangible net worth of the owner or operator shall be greater than either of the following:

(A) The sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by the financial test plus $10 million; or

(B) $10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities in the financial statements, if all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by the financial test are recognized as liabilities in the owner's or operator's audited annual financial statements.

(3) The owner or operator shall have assets located in the United States amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations or guarantees covered by the financial test as described in subsection (d) of this regulation.

(c) Record keeping and reporting requirements.

(1) The owner or operator shall place a copy of the following items in the facility's operating record and file the originals with the department:

(A) A letter signed by the owner's or operator's chief financial officer that is identical to the form provided by the department and that meets the following criteria:

(i) Lists all the current cost estimates for closure, postclosure, and corrective action and any other environmental obligations or guarantees covered by any financial test under state or federal laws and regulations in any jurisdiction; and

(ii) provides evidence demonstrating that the permitted corporate entity meets the requirements of the financial component of subsection (b) of this regulation;

(B) a copy of the permitted corporate entity's most recent corporate annual financial statements containing a report of independent certified public accountants, including an unqualified opinion. An adverse opinion, disclaimer of opinion, or qualified opinion shall be cause for the department to disapprove use of the corporate financial test. A qualified opinion may be evaluated by the department. Use of the financial test may be approved or disapproved by the department based on its evaluation;

(C) a special report of independent certified public accountants based on applying agreed-upon procedures engaged in accordance with professional auditing standards and stating the following:

(i) The accountant has compared the data in the chief financial officer's letter that is specified as coming from the most recent year-end audited financial statements to the audited financial statements; and

(ii) in connection with this procedure, the accountant found the data to be in agreement; and

(D) if the chief financial officer's letter provides a demonstration that the permitted corporate entity has assured environmental obligations in the manner provided in

paragraph (b)(2)(B) of this regulation, a special report of independent certified public accountants that meets the following criteria:

(i) Provides verification that all of the environmental obligations covered by the financial test have been recognized as liabilities in the most recent annual financial statements;

(ii) describes the methods used to measure and report on these obligations; and

(iii) provides verification that the tangible net worth of the permitted corporate entity is at least $10 million plus the amount of any guarantees provided.

(2) After the initial placement of the items listed in paragraph (c)(1) of this regulation in the facility operating record and the initial filing of the originals with the department, the owner or operator shall annually update the information in the operating record and file the updated originals with the department. The updated information shall be placed in the operating record and filed with the department within 90 days following the close of the owner's or operator's most recently completed fiscal year.

(3) The owner or operator shall no longer be required to submit the items specified in paragraph (c)(1) of this regulation or otherwise comply with the requirements of this regulation if any of the following occurs:

(A) 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.

(B) The owner or operator is released by the department from further obligation for closure, or postclosure, or both, at the facility.

(C) The owner or operator completes required corrective action and is released from further obligation by the department or any court of competent jurisdiction.

(4) If the owner or operator determines that the permitted corporate entity no longer meets the requirements of subsection (b) of this regulation, the owner or operator shall, within 120 days following the owner's or operator's most recent fiscal year end, obtain alternate financial assurance as specified in K.A.R. 28-29-2101(b) and obtain approval from the department for its use.

(5) Based on the department's reasonable belief that the owner or operator may no longer meet the requirements of subsection (b) of this regulation, the owner or operator

may be required by the department at any time to provide reports of its financial condition, including or in addition to current financial test documentation as specified in subsection (c) of this regulation, for evaluation. If the department evaluation results in a determination that the owner or operator no longer meets the requirements to use the financial test, the owner or operator shall provide alternate financial assurance as specified in K.A.R. 28-29-2101(b).

(d) Calculation of costs to be assured. Each owner or operator using the corporate financial test to provide financial assurance for closure, postclosure, and corrective action shall combine the current cost estimates for the permitted facility with all other environmental obligations or guarantees also assured by any financial test in any local, state, federal, or foreign jurisdiction. The combined environmental cost shall then be used in the financial test calculations provided to the department by the owner or operator. The environmental obligations of consolidated subsidiary corporations that are assured by the financial test shall also be included in the combined environmental obligations covered by the test.

(e) 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 *****