

## 2018 Kansas Statutes

### **65-34,176. Risk management program act; risk management fund, expenditures; rules and regulations.**

(a) (1) For a site to be eligible to participate in the risk management program, the secretary shall make a finding that the site:

(A) Is subject to an agreement or order under the authority of the secretary's bureau of environmental remediation; and

(B) poses a low risk to human health and the environment.

(2) In making eligibility determinations, the secretary shall have authority to consider such additional factors as deemed relevant.

(3) Any changes in site conditions or property use that results in a change in the risks posed by the site shall make a site ineligible for acceptance or continued participation in the risk management program.

(b) (1) Funding for the risk management plan may be satisfied by the secretary where adequate funding is supplied by federal grants, designated fee funds or other funding sources. The secretary shall remit to the state treasurer, in accordance with K.S.A. 75-4215, and amendments thereto, all moneys received from this act. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the risk management fund. Funding requirements for the risk management plan payment will be based on the size and risk of the site to which the risk management plan applies, amount of contaminated groundwater, toxicity and mobility of the contaminants, frequency of long term care activities and oversight costs, as determined by the secretary.

(2) Upon acceptance of the application, participants shall make a one-time payment for the risk management plan of a minimum of \$2,500.

(c) (1) There is hereby established in the state treasury the risk management fund. Moneys from the following sources shall be deposited in the state treasury and credited to the fund:

(A) Moneys collected from the one-time payments;

(B) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for purposes of the fund; and

(C) interest attributable to the investment of moneys in the fund.

(2) Moneys in the risk management plan fund shall be expended only for the costs of:

(A) Review of risk management applications;

(B) oversight of risk management plan requirements;

(C) implementation of the risk management plan upon failure of the participant;

(D) activities performed by the secretary to address immediate or emergency threats to human health or the environment related to properties subject to risk management plans;

(E) development, operation and maintenance of the risk management plan tracking system; and

(F) administration and enforcement of the provisions of this act.

(3) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the risk management fund interest earnings based on the:

(A) Average daily balance of moneys in the risk management fund for the preceding month; and

(B) net earnings rate of the pooled money investment portfolio for the preceding month.

(4) All expenditures from the risk management plan fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or the secretary's designee for purposes set forth in this section.

(d) (1) A risk management plan shall terminate if it is demonstrated to the secretary's satisfaction that the risk management plan is no longer necessary to protect human health or the environment. Any person shall submit a request to the secretary for approval to terminate a risk management plan. The secretary shall review the request and provide the secretary's decision to approve or deny the request within 120 days after the secretary's receipt of the request. If the secretary denies the request, justification shall be provided with a written explanation of the denial including that the person has not provided the documentation to demonstrate that the request is protective of human health and the environment, as determined by the secretary.

(2) A risk management plan agreement shall be an enforceable contract, that may be transferred to another person upon approval by the secretary. Any risk management plan may be modified by mutual written agreement by the person and the secretary. The secretary shall not acquire any liability by virtue of approving a risk management plan or by approving expiration of all or a portion of a risk management plan.

(e) A risk management plan pursuant to this section may include or require:

(1) Prompt notification to the secretary of any transfer of property that is the subject of a risk management plan, such notice to be given by the participant;

(2) prompt notification to the secretary of any change in use of the property that is the subject of a risk management plan;

(3) maintenance of protective structures or remedial systems at the site, such as soil caps, soil covers, soil surfaces, berms, drainage structures, vegetation, monitoring wells or other structures or systems;

(4) access to the property by agents of the secretary as necessary to inspect and monitor the risk management plan activities;

(5) any other obligations necessary to reduce or eliminate risks or threats to human health and the environment from the site; or

(6) restrictions, prohibitions and zoning requirements placed on property in the site by a local or state government. Such restrictions, prohibitions and zoning requirements may be utilized in addition with any risk management plan activities approved by the secretary. This provision does not grant or expand authority of local government to restrict, prohibit, zone or regulate land.

(f) Upon receipt of information that an approved risk management plan is not being implemented as written or that property subject to an approved risk management plan presents a hazard to human health or the environment, the secretary may take such actions as may be necessary to protect human health or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the participant to take such steps as are necessary to correct any deficiencies and fully implement the approved risk management plan.

(2) Issuing an order retracting the approval of the risk management plan and require the participant to implement remediation of the site to a cleanup standard that will allow for unrestricted use of the site.

(3) Assessing an administrative penalty of up to \$500 per day for failure to comply with the terms of the risk management plan.

(4) Performing actions required by the risk management plan and recovering any and all costs from the person responsible for performance of such actions.

(5) Commencing an action enjoining acts or practices set forth in the approved risk management plans or

requesting that the attorney general or appropriate district or county attorney commence an action to enjoin such actions that result in approved risk management plans not being implemented or not being fully or properly implemented or that present a substantial and imminent threat or hazard to human health or the environment.

(g) Prior to the secretary's approval of the risk management plan, the participant shall provide written notification to all property owners and occupants within the site and provide proof of such notification to the secretary. The secretary may choose based on public interest to initiate and participate in public meetings to discuss the pending risk management plan.

(h) Any person adversely affected by any order or decision of the secretary pursuant to this act, within 15 days after service of the order or decision, may request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(i) As used in this section:

(1) "Long term care" means any activity, approved in the risk management plan, that provides assurances that the contamination at the site is not impacting human health;

(2) "owner" means any owner of record of property or authorized representative;

(3) "participant" means any person who has submitted an application for a risk management plan and the plan has been approved by the secretary and successor in interest to the risk management plan agreement;

(4) "person" means any individual, trust, firm, joint stock company, public or private corporation, limited liability company or partnership, the federal government or any agency or instrumentality thereof, any state, state agency, instrumentality, political or taxing subdivision thereof or any interstate body;

(5) "property" means real property;

(6) "remedial activity" means any assessment, cleanup or other action necessary or appropriate to respond to a release or threat of release of environmental contamination at a site;

(7) "risk management plan" means a long term care plan approved by the secretary and intended to protect human health and the environment at a site where residual contamination is above cleanup standards;

(8) "risk management plan agreement" means an enforceable agreement between the participant and the secretary that enacts the risk management plan;

(9) "secretary" means the secretary of health and environment; and

(10) "site" means all areas and media to which environmental contamination or pollution has been released, transported, migrated or to which contamination may migrate.

(j) The secretary shall adopt rules and regulations to implement the provisions of this act.

(k) The provisions of this section are declared to be severable and if any provision, word, phrase or clause of the section or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this section or the application thereof.

**History:** L. 2015, ch. 29, § 1; July 1.