

Risk Management Program Guidance

**Bureau of Environmental Remediation
Remedial Section**

Policy and Scope of Work # BER-RS-057



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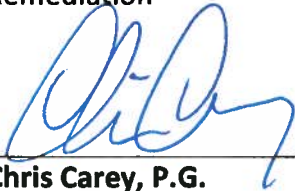
Concurrence



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Acronyms and Abbreviations

BER	Bureau of Environmental Remediation
EUC	Environmental Use Control
KDHE	Kansas Department of Health and Environment
K.S.A.	Kansas Statute Annotated
K.A.R.	Kansas Administrative Regulations
NFA	No Further Action
RMP	Risk Management Plan
RMPA	Risk Management Plan Agreement
SOW	Scope of Work

Glossary

Affected or Threatened Media	Residual contamination is present or may become present in one or more environmental media and long-term monitoring or maintenance will be required.
Applicant	The person applying to participate in the risk management program.
Department	Kansas Department of Health and Environment
Low Risk	Risks under current conditions and reasonable future scenarios are minimal, such that active remediation is not required and are not likely to increase hazards or danger posed to nearby receptors.
Participant	Any person who has submitted an application for a risk management plan and the plan has been approved by the secretary, and any successor in interest to the risk management plan agreement.
Person	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.
Protective Structure	An engineered and/or naturally occurring physical structure considered part of the remedial action to control or respond to a release or threat of release of environmental contamination. Protective structures include, but are not limited to caps, fences, berms, dikes, drainage structures or other structures that may control exposure, migration or other releases of environmental contamination.
Risk	Measured or thoroughly evaluated potential adverse impact on human health, ecological communities, sensitive habitats, and natural resources.
Risk Management Plan (RMP)	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.
Risk Management Program	A mechanism for the long-term care and management of low-risk, low-priority sites that are not able to meet site closure or no further action requirements following source area reduction, if applicable, and complete delineation of all associated environmental contamination.

RMP Boundary	The area within a site to which the RMP applies. This may be inclusive of the entire site or portions of the site to which the RMP is applicable.
Rural	Relating to or characteristic of the country, farming, agricultural, and cities where the population is <1,000 per the latest census data.
Site	All areas and media to which environmental contamination or pollution has been released, transported, migrated or to which contamination may migrate.
Urban	Relating to or located in an incorporated city with a population \geq 1,000 per the latest census data.

1. Introduction

Introduction

The Risk Management Program provides a mechanism for the long-term care and management of low risk, low priority sites that are not able to meet requirements for unrestricted site closure or no further action (NFA). This program provides another option in the remediation tool box allowing for conditional closure of a site where the risks are managed or controlled under an established Risk Management Plan (RMP). For a complete overview of the Risk Management Program process, please refer to the flow chart provided in Appendix A.

The Risk Management Program Act, K.S.A. 2015 Supp. 65-34,176, was established in House Bill 2193, passed by the Kansas Legislature, signed by the Governor, and became effective July 1, 2015. Regulations for the program were developed with stakeholder input and became effective May 2016. This policy and scope of work (SOW) supplements the Risk Management Program statutes and regulations, provided in Appendix B, with additional definitions and outlines the processes and workings of the different aspects of the program.

Use and Limitations

This policy and SOW explains the eligibility requirements and RMP implementation for any site enrolled in the Risk Management Program. Per K.S.A. 2015 Supp. 65-34,176, sites subject to an agreement or order under the Kansas Department of Health and Environment (KDHE) Bureau of Environmental Remediation (BER) and posing a low risk to human health and the environment may be eligible for the Risk Management Program. Low risk, as defined by this policy, means risks under current conditions and reasonable future scenarios are minimal such that active remediation is not required, and are not likely to increase hazards or danger posed to nearby receptors.

An RMP may be established site-wide or, with department approval, applied to only a portion of a site. For example, the identified source area has been remediated to applicable cleanup standards, yet impacts in groundwater persist beneath multiple properties. The properties adversely affected by the groundwater plume could be addressed through an RMP (e.g., continued groundwater monitoring on a less frequent basis, every three years verses semi-annual or annual). Risk management plans may also be used in conjunction with environmental use controls (EUCs) to address impacts where established EUCs may not apply.

This policy and SOW is intended for use by persons voluntarily participating in the KDHE BER Risk Management Program and is not intended for use by persons participating in other programs outside the BER.

2. Eligibility and Application Process

Eligibility

In order to participate in the Risk Management Program, a site or portion of a site to which the RMP applies must meet the following criteria:

- Subject to an agreement or order under the authority of KDHE BER;
- poses a low risk to human health and the environment;
- the extent of environmental contamination has been clearly defined;
- source reduction has been completed, if necessary;
- contaminant concentration trends are not dependent on continued operation and maintenance of active remediation systems;
- the associated groundwater contaminant plume is stable or shrinking, if applicable,
- imminent future exposure to contaminated media is not likely; and
- all current complete exposure pathways have been addressed.

KDHE encourages discussions with the prospective participant to determine whether or not a site is likely to meet the above listed criteria prior to submitting an application. Once an eligibility determination has been made, a Risk Management Program application package may be submitted to the BER for review.

Application Package

Each person electing to enroll a site in the program shall submit an application on a form provided by KDHE. Additionally, the application must be accompanied by the required attachments, described below. A copy of the Risk Management Program application form is provided in Appendix C.

Site Location Map⁺: Identifies the location of the site with a clear outline of the associated source area(s) and contaminant plume(s) boundary.

Parcel Map and Owner Identification⁺: Clearly identifies the parcels located within the site to which the RMP applies (“RMP boundary”). The property owner and contact information (name, address, phone number, and email) must be provided for each parcel identified. If the occupant of a particular parcel differs from the owner, occupant contact information must also be provided. Whether included on the parcel map or provided as a separate attachment, parcel ownership/occupant information must be legible and easily attributable to the corresponding parcel.

⁺ The site location and parcel identification maps may be combined into a single figure.

Proof of Notification and Acknowledgment: Written notification to all property owners and occupants within the RMP boundary and documented proof that said owners/occupants received the notification is required per K.S.A. 65-34,176 and K.A.R. 28-74-2. Examples of documented proof may include written correspondence or email exchange between the person applying to the program (“applicant”) and owner/occupant, copy of certified mail receipts, existing access agreements, or other documentation demonstrating that the applicant provided notice to the owner/occupant. In addition, K.S.A. 65-34,176 and K.A.R. 28-74-4 authorize KDHE and its agents to have access to the site as necessary to monitor and inspect all RMP activities, in particular areas of the site containing monitoring stations or protective structures. The Risk Management Program application includes a Consent for Access to Property (“access”) form that must be signed by each property owner or authorized occupant if the applicant does not own the property or properties on which a monitoring station or protective structure exists. As stated in the access form, KDHE will provide, at a minimum, three days notice prior to conducting a visit. A signed access form will serve as written notification and will be accepted by KDHE as documented proof of such notification. The access form may also be utilized as the written notification mechanism for any other property within the RMP boundary.

If an applicant encounters a property owner or occupant who will not grant consent for access, KDHE may still render the application package complete given that the applicant has demonstrated multiple attempts have been made to obtain a signed access form (e.g., correspondence between the applicant and owner/occupant, copies of certified mail receipts that the consent form was mailed and not returned or returned unsigned, email exchange, etc.) and KDHE determines lack of access to that particular property will not hinder risk management activities.

Risk Management Plan: A draft RMP shall be submitted with the application for KDHE review and approval. The draft RMP must include, at a minimum, the requirements outlined in K.A.R. 24-74-3. Additional requirements are further discussed in Section 3.

Signature Page: By signing the application, the applicant agrees: they have voluntarily applied to the KDHE BER Risk Management Program to provide long-term care of a site where residual contamination is above cleanup standards; the information provided in the application is true, accurate, and complete to the best of their knowledge at the time of submittal; to enter into an RPMA with KDHE; and to reimburse KDHE for costs incurred while processing the application package and reviewing the draft RMP. Such oversight costs will be incorporated into the pre-existing billing process for the site; as a one-time payment amount; or, per K.A.R. 28-74-3, invoiced to the applicant. Execution of the

application does not constitute an RMP. An RMP is not effective until an RMPA has been executed.

If an application package is determined by KDHE to be incomplete, KDHE will provide the applicant with written notification identifying the missing documentation, data, or other needed information. The applicant may then submit the required information or withdraw the application. KDHE may consider the application void if a complete response has not been received from the applicant within 60 calendar days from the date the information was requested. Upon receiving a complete application package, KDHE will proceed with a formal review of the RMP.

3. Risk Management Plan and Agreement

Risk Management Plan

An RMP as defined by statute is a long-term care plan intended to protect human health and the environment at a site where residual contamination remains above cleanup standards. The RMP established must appropriately manage site-specific risks and the long-term care. All RMPs established under the KDHE Risk Management Program may include, but are not limited to:

- A brief summary of historical and current site conditions, remedial actions taken, and current and reasonably anticipated future uses of the property or properties;
- a map clearly defining the extent of residual environmental contamination including source areas and dissolved phase (e.g., groundwater and vapor) contaminant plumes;
- a potentiometric surface map;
- a groundwater isoconcentration map(s) for identified contaminants;
- a description of planned monitoring, inspection, or maintenance activities and the frequency for which these activities will be performed;
- a plan for completing routine owner/occupant verification and providing notice to current property owners and occupants affected by an RMP;
- a plan for completing routine verification and updates to an existing receptor survey to ensure new receptors are identified;
- a process for evaluating the effectiveness of the RMP including redefining the area to which an RMP applies and establishing the conditions under which RMP activities may cease;
- as applicable, a soil waste management plan, operation and maintenance plan, long-term groundwater monitoring plan, standard operating procedures for routine activities completed under the RMP, and additional components per K.S.A 65-34,176; and
- a reporting format and frequency.

KDHE will review the draft RMP and send a written letter to the applicant indicating approval or noting deficiencies in the RMP that need to be addressed. The applicant will then have 60 calendar days to submit the required information or a revised RMP for further review and approval. An approved RMP shall be implemented upon the effective date of the RMPA.

If KDHE and the applicant are unable to agree on an appropriate RMP for the site, KDHE shall provide written notice to the applicant that the application is void and shall invoice, as applicable, the applicant for the costs incurred by KDHE to process the application package and review the draft RMP. KDHE costs in this regard are not anticipated to exceed \$500. Payment of the invoice will be due upon receipt. An applicant may reapply if the issues that caused the impasse are no longer relevant or KDHE and the applicant are able to agree on an appropriate RMP.

Risk Management Plan Agreement

KDHE shall draft an RMPA after approving the RMP. The RMPA will clearly define the requirements and responsibilities that apply to KDHE and the participant and will establish the funding obligation required by K.S.A. 65-34,176. Funding requirements are further discussed in Section 4. KDHE will send the RMPA to the participant for signature; the participant will return to KDHE the original agreement with the participant's signature and the requisite funding; and KDHE's Secretary will sign the agreement. The RMPA becomes effective upon the secretary's signature. A copy of the executed RMPA will be maintained in the administrative record site file and made available to the public upon request.

A participant's obligations set forth in the RMPA may be transferred to another person upon approval by KDHE. A written request must be submitted to KDHE indicating both the participant and the transferee agree to such a transfer. Upon KDHE's approval of the transfer request, an amendment to the existing RMPA shall be executed transferring the responsibilities from the participant to the transferee.

If site conditions change or new information becomes available warranting additional action to be taken outside of an RMP, an executed RMPA and amendments thereto do not absolve any party of environmental liability associated with the site under state and federal law.

4. Funding

KDHE will evaluate each site based on its setting (urban vs rural) and area within the RMP boundary, contaminant(s) of concern, affected or threatened media, and monitoring/inspection frequency of long-term care activities, then assign the site to a program classification, further described below. The funding requirement for an RMP will be based on the designated class plus KDHE oversight costs. KDHE oversight costs include those incurred to review and process the application package and draft RMP, oversight of RMP implementation for the duration of the

RMP (assumed 30 years unless some other timeframe is designated in the RMP) and tracking the RMP requirements. The one-time payment submitted to KDHE will be calculated according to the program classification designated by KDHE for each site. An outline of each program class is provided below in Table 1.

Please note, the one-time payment provides the required funding for KDHE oversight which includes tracking the terms and requirements of the RMP, reviewing monitoring/inspection reports, overseeing work conducted in accordance with the RMP, etc. The one-time payment does not cover costs incurred by the participant to implement the RMP and comply with the terms and conditions of the RMPA.

Table 1: Risk Management Program Classifications

	Site Setting and Affected Area		Affected or Threatened Media					Contaminants of Concern		Monitoring Frequency (years)			
	Urban (acres)	Rural (mile)	Soil	GW	Soil & GW	SW &/or SED	IA	Single COC	Multiple COCs	5	3	2	1
Class I	NA	NA	X					X	X	X			
Class II	≤ 10	≤0.25	X	X	X			X		X			
Class III	≤ 20	≤0.5	X	X	X			X	X	X	X		
Class IV	≤ 20	≤0.75	X	X	X	X		X	X	X	X	X	
Class V	> 20	> 0.75	X	X	X	X	X	X	X		X	X	X

Notes:

NA – not applicable; COC – Contaminants of Concern; GW – Groundwater; IA – Indoor Air; SED – Sediment; SW – Surface Water

Class I

Funding for Class I will be based on a minimum of \$2,500. The RMP boundary may not be restricted in size, but residual impacts are limited to soil and may include multiple contaminants. The anticipated frequency of long-term care activities is once every five years.

Class II

Funding for Class II will be based on a minimum of \$6,000. The RMP boundary does not exceed 10 acres in an urban setting or extend beyond a 0.25 mile radius in a rural setting and residual impacts are limited to a single contaminant in soil, groundwater, or both. The anticipated frequency of long-term care activities is once every five years.

Class III

Funding for Class III will be based on a minimum of \$12,000. The RMP boundary does not exceed 20 acres in an urban setting or extend beyond a 0.5 mile radius in a rural setting and residual

impacts may include multiple contaminants in soil, groundwater, or both. The anticipated frequency of long-term care activities is once every three to five years.

Class IV

Funding for Class IV will be based on a minimum of \$18,000. The RMP boundary does not exceed 20 acres in an urban setting or extend beyond a 0.75 mile radius in a rural setting and residual impacts may include multiple contaminants in soil, groundwater, or both. Additionally, the groundwater plume may have the potential to impact a nearby surface water body. The anticipated frequency of long-term care activities is once every two to five years.

Class V

Funding for Class V will be determined on a site-specific basis. The RMP boundary is greater than 20 acres in an urban setting or extends beyond a 0.75 mile radius in a rural setting and residual impacts may include multiple contaminants in soil, groundwater, or both. Additionally, the groundwater plume may have the potential to impact a nearby surface water body and the potential exists for vapor intrusion which may require periodic evaluation. The anticipated frequency of long-term care activities is annually or every two to three years.

5. RMP Termination

A participant may request termination of an RMP and associated RMPA by demonstrating to KDHE that the RMP is no longer necessary to protect human health and the environment or the participant proposes to meet the cleanup criteria resulting in an NFA or site closure without restrictions.

If a participant voluntarily selects to re-evaluate the remedial strategy for a site and implements remedial actions resulting in an unrestricted NFA or site closure requirements, such activities may be performed under the Risk Management Program. An amendment to the existing RMPA would be required to account for the additional work. If at the conclusion of such remedial actions it can be demonstrated that the RMP is no longer necessary, the RMP and RMPA (including amendment) will be terminated.

For sites designated Class III or higher, KDHE may consider a partial refund of the one-time payment discussed in Section 4 if:

- the participant undertakes additional remedial actions that render the RMP unnecessary, as described herein, or
- it is demonstrated within the first monitoring period that the RMP is no longer necessary to protect human health and the environment.

KDHE will not issue a refund for sites designated as Class I or Class II or under any other circumstance.

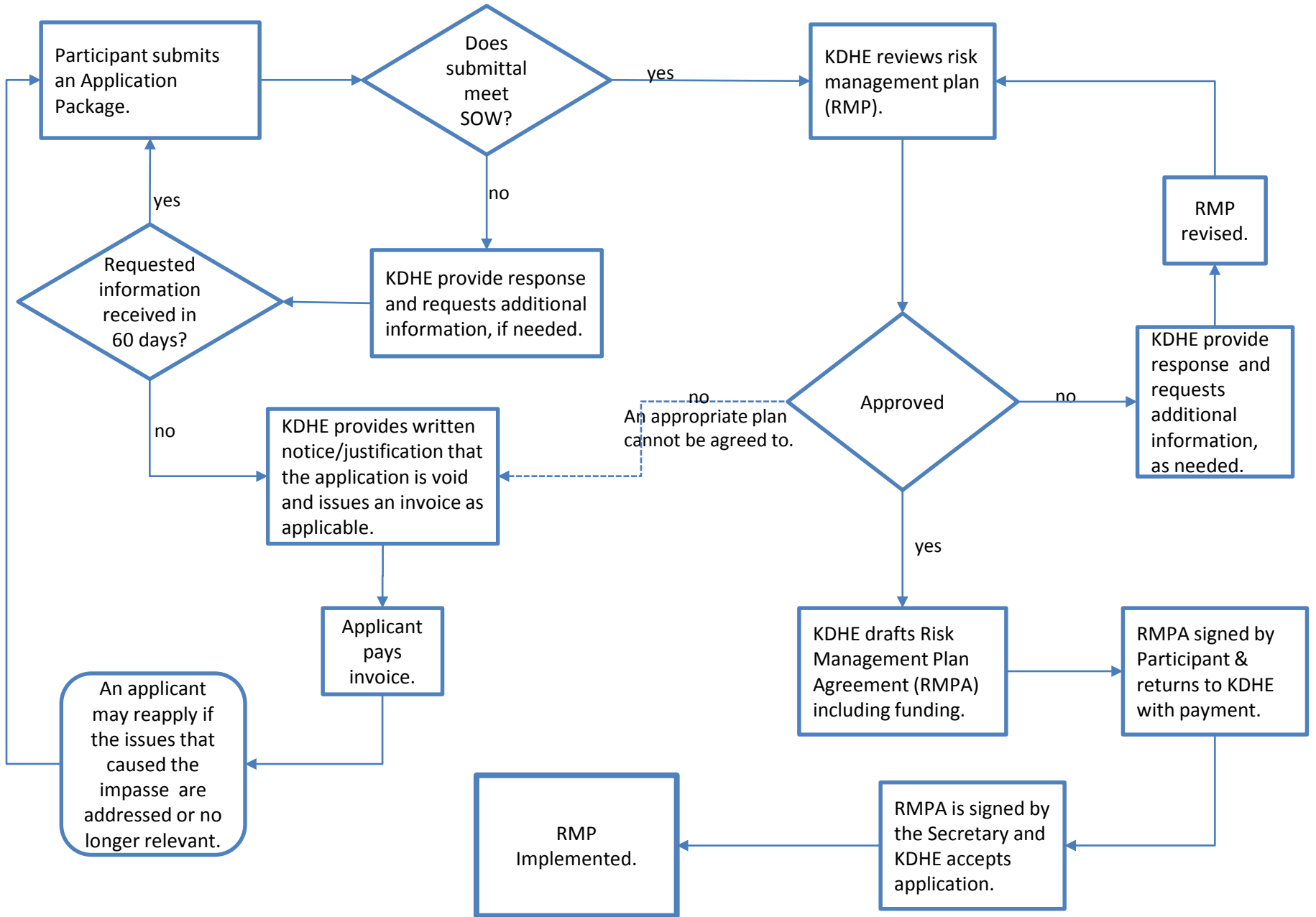
Per K.S.A. 65-34,176, KDHE may retract the RMP and terminate the RMPA if site conditions change or new information is made available to KDHE, and following KDHE's request, the participant does not address the changed conditions.

Appendices

Appendix A

Risk Management Program Process Flow Chart

Risk Management Program Process



Appendix B

K.S.A. 65-34,176

K.A.R. 28-74-1 through 28-74-4

Risk Management Program



Statute
K.S.A. 65-34,176

CHAPTER 29

HOUSE BILL No. 2193

AN ACT concerning the secretary of health and environment; relating to environmental remediation; risk management program act; voluntary cleanup and property redevelopment act; amending K.S.A. 65-34,167, 65-34,168 and 65-34,169 and repealing the existing sections; also repealing K.S.A. 65-34,170.

Be it enacted by the Legislature of the State of Kansas:

New Section 1.

- (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 onetime 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.

Permanent Administrative Regulations
Article 74. – Risk Management Program

28-74-1. Definitions. For purposes of this article, each of the following terms shall have the meaning specified in this regulation: (a) “Acceptance” means that an application for the risk management program has been approved by the secretary and a risk management plan agreement has been signed by the secretary.

(b) “Department” means Kansas department of health and environment.

(c) “Environmental contamination” has the meaning specified in K.A.R. 28-73-1(d).

(Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective May13, 2016.)

Permanent Administrative Regulations
Article 74. – Risk Management Program

28-74-2. Application. (a) Each prospective participant shall submit a completed application to the secretary on a form provided by the department. Each application shall include the following information:

(1) A map identifying the location of the site and the area within the site to which the risk management plan applies;

(2) a map identifying all parcels within the site to which the risk management plan applies including ownership of each parcel;

(3) documentation that the applicant provided written notification to all property owners and occupants within the site to which the risk management plan applies and proof that those property owners and occupants received the notification; and

(4) a draft risk management plan for review and consideration for approval.

(b) If an application is determined to be incomplete by the secretary, written notification shall be provided to the applicant identifying the documentation, data, or other information that is needed to complete the application. The applicant may then submit the required information or withdraw the application. The application shall be considered void if a complete response has not been received from the applicant within 60 calendar days from the date of the written request for additional information from the department. (Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective May 13, 2016.)

Permanent Administrative Regulations
Article 74. – Risk Management Program

28-74-3. Risk management plan. (a) Each risk management plan shall include the following:

- (1) Demonstration that all of the following conditions have been met:
 - (A) The extent of the environmental contamination has been determined;
 - (B) the source reduction has been completed, if necessary;
 - (C) the contaminant concentration trends are not dependent on the continued operation and maintenance of active remediation systems;
 - (D) the associated groundwater contaminant plume is stable or shrinking, if applicable;
 - (E) imminent future exposure is not likely; and
 - (F) all current complete exposure pathways have been addressed;
 - (2) any site-specific requirements for monitoring, inspection, or maintenance;
 - (3) a process for completing routine verification of and notices to property owners and occupants;
 - (4) a description of the specific terms and conditions that shall be in effect for the duration of the risk management plan; and
 - (5) a process for redefining the area within the site to which the risk management plan applies.
- (b) Upon review of each draft risk management plan, a notification shall be issued to the applicant either approving the draft risk management plan or noting deficiencies in the draft risk management plan and describing the modifications necessary to address the deficiencies. The applicant may then submit a revised draft risk management plan for the secretary's approval.

Permanent Administrative Regulations
Article 74. – Risk Management Program

(c) If the secretary and the applicant are unable to agree on an appropriate risk management plan, notification that the application is void shall be provided by the department to the applicant. An invoice for the costs incurred by the department to process the application package and review the draft risk management plan shall be included in the notification.

(d) Each risk management plan shall be implemented upon the effective date of the risk management plan agreement. (Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective May 13, 2016.)

Permanent Administrative Regulations
Article 74. – Risk Management Program

28-74-4. Risk management plan agreement. (a) Pursuant to K.S.A. 2015 Supp. 65-34,176 and amendments thereto, a risk management plan agreement shall be required for each site.

(b) Upon approval of a risk management plan, a risk management plan agreement shall be issued by the secretary and shall include the following information:

(1) A description of site conditions and specifications of any monitoring, inspection, or maintenance requirements proposed by the participant and approved by the secretary;

(2) a description of the area within the site to which the risk management plan applies;

(3) authorization for agents of the department to have access to the site as necessary to monitor and inspect all risk management plan activities, as required by the act;

(4) identification of the one-time payment to reimburse the department for all direct and indirect costs incurred by the department in implementing and administering the risk management plan required by K.S.A. 2015 Supp. 65-34,176, and amendments thereto;

(5) a description of the specific terms and conditions that shall be applied as part of the risk management plan for the area within the site to which the risk management plan applies;
and

(6) a description of the enforcement provisions authorized by K.S.A. 2015 Supp. 65-34,176, and amendments thereto.

(c) The risk management plan agreement shall be effective with the signature of the secretary.

Permanent Administrative Regulations
Article 74. – Risk Management Program

(d) Any participant may request a transfer of the obligations specified in the risk management plan agreement to another person. The following requirements for each transfer shall be met:

(1) Each participant requesting a transfer shall provide written notice to the department indicating that both the participant and the transferee agree to the transfer.

(2) A review of site conditions and consideration of the transferee's capacity to implement the risk management plan shall be factors in the secretary's determination of approving the transfer.

(3) The automatic transfer of risk management plan agreement obligations shall be prohibited. The participant and the transferee shall comply with the risk management plan agreement until an amendment conveying the responsibilities from the participant to the transferee has been executed.

(e) A long-term care agreement as required by K.S.A. 65-1,226, and amendments thereto, may replace a risk management plan agreement for a site where environmental use controls are established in conjunction with a risk management plan if the long-term care agreement meets the requirements of the risk management plan.

(f) If site conditions change or new information that could warrant additional action becomes available, a risk management plan agreement shall not absolve any party of environmental liability associated with the site under state and federal law. (Authorized by and implementing K.S.A 2015 Supp. 65-34,176; effective May 13, 2016.)

Appendix C

Risk Management Program Application Form

RISK MANAGEMENT PROGRAM APPLICATION FORM

SUBMIT COMPLETED APPLICATION TO:

Kansas Department of Health and Environment
 Long-term Stewardship and Information Management Unit
 1000 SW Jackson, Suite 410
 Topeka, Kansas 66612-1367



Section 1: Applicant Information

Participant:			
Address:	City:	State:	Zip Code:
Contact Person:			
Primary Phone:	Alternate Phone:	Email:	

Section 2: Site Information

Site/Facility Name:			
Address:			
City (or Township):		County:	Zip:
Township:	Range:	Section Quarter(s):	
Tax Lot # or Parcel Identification #:		Property Size (in acres):	
KDHE Project Code:			
KDHE Bureau of Environmental Remediation Program in which the Site is enrolled (check one):			
<input type="checkbox"/> State Cooperative <input type="checkbox"/> Voluntary Cleanup <input type="checkbox"/> Brownfields <input type="checkbox"/> Orphan Sites <input type="checkbox"/> Dry Cleaner Trust Fund <input type="checkbox"/> Above/Underground Storage Tank <input type="checkbox"/> Other _____			
Contaminant Type (check all that apply):			
<input type="checkbox"/> Solvents/degreasers <input type="checkbox"/> Pesticides (herbicides, insecticides, etc.) <input type="checkbox"/> Metals <input type="checkbox"/> Petroleum products <input type="checkbox"/> Inorganics (salt, soda ash, etc.) <input type="checkbox"/> PCBs <input type="checkbox"/> Acids/bases <input type="checkbox"/> Fertilizer (nitrate, ammonia) <input type="checkbox"/> Sludge <input type="checkbox"/> Paint/paint wastes <input type="checkbox"/> Other (list) _____			
Affected Media (check all that apply):			
<input type="checkbox"/> Surface Soil (< 2ft) <input type="checkbox"/> Subsurface Soil (≥ 2ft) <input type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water <input type="checkbox"/> Sediments <input type="checkbox"/> Indoor Air			
Does the potential exist for vapor intrusion? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Approximate size of the risk management plan boundary (acres or mile radius):			
Number of Parcels/Properties Affected:			
Have the following maps been attached?			
Site Location <input type="checkbox"/> Yes <input type="checkbox"/> No		Parcel/Property Map <input type="checkbox"/> Yes <input type="checkbox"/> No	
List of Property Owner(s) and Occupant(s) if different from Owner(s) (attached additional list as necessary):			
Name	Property Address	Owner/Occupant	Proof of Notice Attached
		<input type="checkbox"/> Owner <input type="checkbox"/> Occupant	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Owner <input type="checkbox"/> Occupant	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Owner <input type="checkbox"/> Occupant	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Owner <input type="checkbox"/> Occupant	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Owner <input type="checkbox"/> Occupant	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Owner <input type="checkbox"/> Occupant	<input type="checkbox"/> Yes <input type="checkbox"/> No

Section 3: Risk Management Plan

Receptors: for the risk management plan boundary.

Sensitive receptor land use (check all that apply):

- School (K-12)
 Childcare Facility
 Healthcare Facility
 Recreational
 Residential
 Public Water Supply
 Industrial Water Supply
 Wetlands
 Ecological
 Other (specify): _____

Abutting Land Use (check all that apply):

- Industrial
 Commercial
 Residential
 Agriculture
 Other _____

Has a groundwater plume that originated on-site migrated off-site? Yes No

Groundwater Class:

- potable
 non-potable*
 Not Applicable

* - per BER Policy No. BER-RS-045

Depth to Groundwater:

Water supply well receptor survey* completed: Yes No

If yes, number of water supply wells impacted:

If no, what is the distance to the nearest public or domestic water supply well: _____ feet

* - per BER Policy No. BER-RS-056

Permanent potable water supply provided:

Water Main

Date:

Treatment

Date:

Monitoring Frequency

Other (specify): _____

Distance to nearest downgradient surface water body: _____ feet/miles (circle one)

Provide name of water body and surface water classification:

Were potential impacts to ecological receptors evaluated including exposure pathways affecting aquatic and terrestrial life: Yes No Not Applicable

If yes, what level of evaluation was completed: Scoping Screening Risk Assessment

was the ecological receptor(s) impacted: Yes No

If yes, was the impact mitigated: Yes No

A draft Risk Management Plan has been attached: Yes No

Section 4: Application Terms and Signature

The undersigned has voluntarily applied to the Kansas Department of Health and Environment (KDHE) Bureau of Environmental Remediation (BER) Risk Management Program to manage residual contamination above regulatory requirements for unrestricted site closure or no further action. The undersigned acknowledges they are the authority to sign this application and enter into the Risk Management Program. The undersigned further acknowledges and agrees to reimburse KDHE for the costs incurred to review and process the application, including review of the draft risk management plan (RMP) even if KDHE and the applicant are unable to agree on an appropriate RMP.

By signing this document, the undersigned certifies that the information provided herein is true, accurate, and complete to the best of their knowledge at the time of submittal. The undersigned agrees to provide immediate notification to BER in the event new information becomes available that may be contrary to that provided herein. Providing false, inaccurate, or incomplete information to BER or failing to provide updated information as required may render the Site ineligible for participation in the program.

Execution of this application form does not constitute an RMP, and the undersigned may terminate this application at any time by notifying BER.

The application should be submitted to:
Risk Management Program
Bureau of Environmental Remediation
Kansas Department of Health and Environment
1000 SW Jackson, Suite 410
Topeka, KS 66612-1367

Name (print or type): _____ **Title:** _____

Signature: _____ **Date:** _____

CONSENT FOR ACCESS TO PROPERTY

The person signing below gives permission to the Kansas Department of Health and Environment (KDHE) to enter onto the property described below for the purpose of inspecting and monitoring risk management plan* (RMP) activities. Permission is granted to KDHE, and to its employees, agents, assigns, or contractors to enter this property in order to carry out the above activities pursuant to K.S.A. 65-34, 176 *et seq.*

This permission is being granted by or on behalf of the (check one):

owner occupant

of this property. KDHE assures the person signing below that advance notice, a minimum of three working days, will be provided prior to each visit and upon completion of the work specified above, any materials brought to the property by KDHE will be removed and the property will be left as nearly as reasonably possible to the condition it was in at the time KDHE began work at the Site.

ACCESS IS GRANTED FOR PROPERTY AT:

PROPERTY NAME _____

ADDRESS OR LEGAL LOCATION: _____

CITY: _____

Signature

Date

Print name of person signing

(Company name, if applicable)

(Title, if signing for a business)

*A copy of the proposed RMP is available upon request.