

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 45:010. Definitions for 401 KAR Chapter 45.

RELATES TO: KRS 224.1-010, 224.50-760, ~~224.50-765~~

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations that are consistent~~[not inconsistent]~~ with the provisions of law administered by the cabinet. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit, pursuant to administrative regulations adopted by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes definitions for 401 KAR Chapter 45, concerning the management of special wastes and the training and certification of operators of special waste sites or facilities.

Section 1. Definitions.

(1) "Beneficial reuse":

(a) Means the use or reuse of special wastes~~[, other than solids, residues, and precipitate separated from or created in sewage from humans, households, or commercial establishments by the processes of a wastewater treatment plant that are subject to the provisions of 401 KAR 45:100,]~~ in a manner that complies with the environmental performance standards of 401 KAR 30:031 and all other applicable requirements of 401 KAR Chapter 45; and~~[.]~~

(b) Does not mean the use or reuse of biosolids that are subject to the provisions of 401 KAR 45:105.

(2) "Biosolids" is defined by KRS 224.50-765(1).

(3) "Certified operator" means a special waste site or facility operator who holds a valid certificate upon the successful completion of an approved training course and examination. The categories of certified operator shall be:

(a) Composting operator;~~[.]~~

(b) Interim operator;~~[.]~~

(c) Landfarming operator;~~[.]~~ and

(d) Landfill operator.

(4) ~~[(3)]~~ "Closure" is defined by KRS 224.1-010(4).

(5) ~~[(4)]~~ "Coal combustion by-products":

(a) Means special waste including fly ash, bottom ash, or scrubber sludge residues produced by coal-fired electrical generating units;~~[.]~~ and

(b) Does not mean residues of refuse derived fuels such as municipal waste, tires, or solvents.

(6) ~~[(5)]~~ "Composting" is defined by KRS 224.1-010(6).~~[Means the process by which biological decomposition of organic special waste is carried out under controlled aerobic conditions, and that stabilizes the organic fraction into a material that can easily and safely be stored, handled, and used in an environmentally acceptable manner. Composting.]~~

~~[(a)] [May include a process that creates an anaerobic zone within the composting material; and]~~

~~[(b)] [Does not include simple exposure of special waste under uncontrolled conditions resulting in natural decay.]~~

(7) ~~{(6)}~~ "Composting operator" means a certified operator who is ~~{the individual}~~ responsible for ensuring compliance with all permit conditions at a composting facility and who is ~~{reasonably}~~ available to the facility during operations.

(8) ~~{(7)}~~ "Construction permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to commence site preparation prior to the disposal or management of special waste.

(9) ~~{(8)}~~ "Construction and Operation~~{Construction/operation}~~ permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to accept special waste for disposal or management. This permit is issued only after the construction of the site or facility has been certified as complete by the cabinet and the necessary financial assurance has been executed.

(10) ~~{(9)}~~ "Formal permit" means a permit for special waste landfills, landfarming operations, and composting operations issued by the cabinet after review of the designated application form and completion by the applicant of the requirements of this chapter.

(11) ~~{(10)}~~ "Horizontal expansion" means any increase in the capacity of a special waste landfill that expands the waste boundary of the landfill beyond the original waste boundaries contained in the approved permit application.

(12) ~~{(11)}~~ "Interim operator" means a person who assumes the position of a special waste site or facility operator in the absence of a designated certified operator pursuant to 401 KAR 45:090, Section 11.

(13)

(a) ~~{(12)}~~ "Landfarming facility" means a special waste site or facility for land application of sludges or other special waste by methods contained in this chapter,~~{any method}~~ for purposes of disposal.

(b) Disposal ~~{it}~~ can be on any piece or pieces of land, subject to approval, and may~~{can}~~ improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and does~~{will}~~ not disturb the soil below three (3) feet from the surface.

(14) ~~{(13)}~~ "Landfarming operator" means a certified operator who is ~~{the individual}~~ responsible for ensuring compliance with all permit conditions at a landfarming site or facility and who is ~~{reasonably}~~ available to be at the site or facility during operations.

(15) ~~{(14)}~~ "Landfill operator" means a certified operator who has~~{is the individual with}~~ primary responsibility for management and operation of a special waste landfill to assure compliance with all permit conditions and is ~~{reasonably}~~ available to be at the site or facility during operations.

(16) ~~{(15)}~~ "Postclosure" means the routine care, maintenance, and monitoring of a special waste site or facility following closure of the facility.

(17) "Responsible corporate officer" means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

(b) The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million; or

(c) A person who, pursuant to a corporation resolution, is designated to act on behalf and bind the corporation on all matters relating to permit applications and modifications.

(18) ~~{(16)}~~ "Special waste":

(a) Is defined~~{established}~~ by KRS 224.50-760(1)(a); and

(b) Does not include special wastes that are coal combustion residuals governed by 401 KAR Chapter 46.

(19) ~~(17)~~ "Special waste site or facility" means any land, real property, appurtenance, building, structure, or installation where special waste is managed, processed, beneficially reused, or disposed.

~~[Section 2.] [Acronyms and Abbreviations. The acronyms and abbreviations used in this chapter are listed in Table 1.]~~

[Table 1. Acronyms and Abbreviations]
[C.F.R.] [Code of Federal Regulations]
[EPA] [Environmental Protection Agency]
[FDIC] [Federal Deposit Insurance Corporation]
[FSLIC] [Federal Savings and Loan Insurance Corporation]
[KAR] [Kentucky Administrative Regulations]
[KPDES] [Kentucky Pollutant Discharge Elimination System]
[KRS] [Kentucky Revised Statutes]
[NCUA] [National Credit Union Administration]
[NPDES] [National Pollutant Discharge Elimination System]
[PCB] [Polychlorinated Biphenyls]
[POTW] [Publicly Owned Treatment Works]
[U.S.C.] [United States Code]
[USDA] [United States Department of Agriculture]
[USGS] [United States Geological Survey]

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" as the subject line, and state in the body of the message if you plan to speak during the hearing. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation defines term necessary for the correct interpretation on the administrative regulations in 401 KAR Chapter 45.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary for a correct understanding of the requirements in this chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The authorizing statues provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation defines special waste terms for Chapter 45.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation defines the terms that will aid the regulated community in understanding the requirements in this chapter.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment adds a new term and makes other corrections to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to correctly interpret the requirements of 401 KAR Chapter 45 related to biosolids.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the authorizing statutes by adding the statutory term of "Biosolids" as defined in KRS 224.50-765.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment will define the term "biosolids" in order to aid the regulated community in the correct interpretation of 401 KAR 45:105 which was promulgated in order to implement the requirement of KRS 224.50-765.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The regulated entities will simply need to use the new definition in this amendment to correctly interpret the administrative regulations in this chapter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There will be no additional cost to the regulated entity to comply with this amendment. The same application fee will apply to this process and the costs of complying with 401 KAR 45:105 will be either the same or less than the current process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The entities will benefit by using the defined term to interpret the new administrative regulation (401 KAR 45:105) related to the management of biosolids.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will not be a cost to the agency to implement this amendment

(b) On a continuing basis:

There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The funding source for this program will be a mix of restricted funds from the fees charged for application review and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There will not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement this new process.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There are not any new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied?

All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation will impact not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.10-100(28), 224.40-305, 224.50-760(1)(d)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate any additional revenue. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation will not generate any additional revenue. The current application fees will continue after these amendments are effective.

(c) How much will it cost to administer this program for the first year?

There should not be an additional cost associated with implementation of these amendments.

(d) How much will it cost to administer this program for subsequent years?

There should not be an additional cost associated with implementation of these amendments. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation:

The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

The Cabinet does not anticipate there to be a significant cost savings with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

The Cabinet does not anticipate there to be a significant cost savings with the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year?

The addition of the definition of biosolids will not result in a cost increase for the regulated entity.

(d) How much will it cost the regulated entities for subsequent years?

The addition of the definition of biosolids will not result in a cost increase for the regulated entity. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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Cost Savings (+/-): There is not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation:

The amendment to this administrative regulation is simply the insertion of a definition that will be most impactful in 401 KAR 45:105. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This proposal will not have a major economic impact as defined KRS 13A.010(13).