

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

401 KAR 45:020. Types of special waste permits.

RELATES TO: KRS ~~224.1[224.01]~~, 224.10, 224.40, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to ~~promulgate[adopt]~~ administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or ~~allow[permit]~~ the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This administrative regulation ~~establishes[sets forth]~~ the classification of special waste sites or facilities for permitting ~~purposes~~.

Section 1. Overview. This administrative regulation ~~establishes[sets forth]~~ the type of permit a person is required to obtain prior to engaging in the disposal or management of special waste. ~~[The transition period for complying with requirements of this chapter is contained in Section 4 of this administrative regulation.]~~

Section 2. Permit Types. This section establishes the following types of special waste site or facility permits:

(1) Formal permit. A formal permitting process is established that includes the submittal of a complete application, review of the application, and permit issuance or denial by the cabinet. A formal permit shall be obtained by persons engaged in the following activities:

(a) Special waste landfill. This is a category of waste site or facility designed and operated to accept for disposal a limited number of special wastes that are characterizable. The administrative and technical requirements for a special waste landfill are found in 401 KAR 45:030 and 401 KAR 45:110.

(b) Landfarming and composting. This is a category of special waste site or facility that landfarms or composts special waste.

1. A special waste ~~landfarming or~~ composting site or facility that manages municipal wastewater treatment sludge is classified as a Type A or Type B facility according to the metal concentrations of the sludge and volume of sludge accepted at the site as specified in Section 2 of 401 KAR 45:100. A Type B facility may be exempt from some of the requirements of a formal permit as specified in Section 2 of 401 KAR 45:100.

2. Other special waste landfarming or composting is the category of site or facility that manages special waste, other than municipal wastewater treatment sludge, which is classified using parameters set forth in this administrative regulation and additional parameters based upon the source, chemical and physical characteristics of the waste, volume of waste, and its potential for adverse impact on human health or the environment. Other special waste landfarming or composting facilities shall be classified as either a Type A or Type B facility in accordance with Section 2 of 401 KAR 45:100.

3. Landfarming of biosolids is the application to the land of sludges from the treatment of domestic sewage or sewage sludge from a treatment facility and is managed in accordance with 401 KAR 45:105.

(2) Permit-by-rule. This is a category of waste site or facility permit for certain special waste management practices listed in 401 KAR 45:060 that are deemed to have a permit without the owner or operator having made application or registration with the cabinet.

(3) Registered permit-by-rule. This is a category of waste site or facility permit for certain special waste management practices listed in 401 KAR 45:070 that are deemed to have a permit without further action by the cabinet upon acknowledgement by the cabinet of a complete registration by the owner or operator.

(4) Emergency permit. This is a category of special waste site or facility permit for the short-term storage or disposal of special waste generated during certain emergency situations.~~[-]~~ These permits are issued in accordance with 401 KAR 45:135.

(5) Research, development, and demonstration permit. This is a category of special waste or facility permit to demonstrate unproven technology. These permits are~~[-]~~ issued in accordance with 401 KAR 45:135.

Section 3. Special Waste Formal Permit Phases. The application process to obtain a formal permit shall consist of two (2) phases as follows:

(1) Upon approval of a permit application, the cabinet shall issue a construction permit that authorizes the owner or operator to commence construction of a site or facility in accordance with the terms and conditions of the construction permit; and

(2) Upon completion of the construction phase the owner or operator shall notify the cabinet that construction of the special waste site or facility is complete, in accordance with Section 1(11) of 401 KAR 45:140~~[-, that construction of the site or facility is complete]~~. The cabinet shall inspect the site or facility to ensure compliance with all construction permit requirements, and, upon execution of financial assurance and the submission of a fee specified in Section 2(1)(d) of 401 KAR 45:250, the cabinet shall issue a construction and operation~~[-construction/operation]~~ permit.

~~[Section 4.] [Transition from Solid Waste Site or Facility Permits to Special Waste Site or Facility Permits.]~~

~~[(1)] [Within six (6) months of June 24, 1992, any person that possesses a solid waste landfill or landfarming permit that disposes of special waste as defined in KRS 224.50-760 issued before the effective date of this administrative regulation shall file a notice with the cabinet that states the operator's intent to meet the requirements of this chapter by July 1, 1993.]~~

~~[(2)] [After July 1, 1993, no person shall operate a special waste landfill or special waste landfarming facility unless one (1) of the paragraphs of this subsection is satisfied and the owner or operator has complied with subsection (1) of this section:]~~

~~[(a)] [The facility owner or operator possesses a permit issued or continued under 401 KAR Chapters 47 and 48;]~~

~~[(b)] [The facility owner or operator possesses a permit issued or modified to meet the technical standards of this chapter;]~~

~~[(c)] [An application for a permit modification for closure or conversion to a different classification under this chapter has been filed with the cabinet within twelve (12) months of June 24, 1992, and the cabinet has not yet rendered a decision with respect to the complete application; or]~~

~~[(3)] [An owner or operator of a site or facility that was previously regulated as a solid waste registered permit by rule, but is now regulated as a special waste registered permit by rule under 401 KAR 45:070, shall be deemed to have a special waste registered permit by rule without having to resubmit a registration.]~~

~~[(4)] [An owner or operator of a site or facility that was previously regulated as a solid waste permit by rule, but is now regulated as a special waste registered permit by rule, shall register with the cabinet in accordance with 401 KAR 45:070 by December 31, 1992.]~~

~~[Section 5.] [Solid Waste Facility Applications Pending on the Effective Date of this Administrative Regulation. Applications pending on June 24, 1992, shall be revised to meet all requirements of this chapter prior to being determined technically complete.]~~

~~[Section 6.] [Closure Criteria for Sites or Facilities Not Applying for a Special Waste Permit. Any person disposing of special waste under a solid waste landfill or landfarming permit issued before June 24, 1992, who elects to cease operation at the facility by July 1, 1993, shall comply with the closure requirements of the solid waste permit and 401 KAR Chapters 47 and 48.]~~

REBECCA GOODMAN, Secretary

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 lists the types of permits that are available to individuals that manage special wastes.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary for individuals to know the types of permits that may be required for management of special wastes.

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

The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation lists the types of permits that are available to individuals that manage special wastes.

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

This administrative regulation aids in the effective administration of the statutes by listing the types of permits available to manage special wastes and providing information on the phases of each permit type.

(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 clarifies that the regulation of biosolids is captured in 401 KAR 45:105 is not part of the landfarming requirements of non-wastewater treatment plant sludges.

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

This amendment is necessary in order to direct readers to the correct location for the regulation of biosolids due the passage of SB 213 from the 2023 Legislative Session.

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

The amendment conforms to the authorizing statutes by clarifying that regulation of biosolids is contained in 401 KAR 45:105 and is in conformance with KRS 224.50-765.

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

This amendment clearly directs individuals interested in managing wastewater treatment plant sludges to 401 KAR 45:105 and also clarifies that the regulation of those same solids are no longer part of the requirements in 401 KAR 45:100.

(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 use the amended information in this administrative regulation to identify the location of requirements related to the management of biosolids as defined in KRS 224.50-765.

(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 knowing the location of information 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 biosolids process that is established in 401 KAR 45:105.

(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?

No. 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, 224.40-305, 224.50-760.

(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. The cabinet currently permits wastewater treatment plant sludges for land application and composting. The new process will use the same personnel and funding.

(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.

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

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 directs applicants to 401 KAR 45:105 for the requirements of land applying biosolids. 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).