

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

401 KAR 45:030. Obtaining a special waste site or facility permit.

RELATES TO: KRS 146.200-146.990, ~~224.1[224.01]~~, 224.10, 224.40, 224.50, 224.70, 224.99, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.10-210, 224.40-305, 224.40-330, 224.50-760, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

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 operating standards applicable to all special waste sites or facilities. This administrative regulation establishes the procedures for obtaining a permit for a special waste site or facility. This administrative regulation does not establish permitting or permit application standards for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility those requirements are contained in 401 KAR 45:105.

Section 1. The Objective and Requirements of the Application for a Special Waste Formal Permit.

- (1) All applicants for a special waste formal permit shall submit an application, on the designated application form, that contains all of the information specified in this administrative regulation. The applicant shall submit the application on a form ~~incorporated by reference[approved]~~ by the cabinet and signed in accordance with Section 10 of this administrative regulation. Engineering drawings, specifications and studies shall be certified by a professional engineer registered in Kentucky.
- (2) The contents of the application shall be accurate and complete before the cabinet makes a preliminary determination to issue a special waste formal permit.

Section 2. Scope of the Permit Requirements.

- (1) Except as otherwise provided in this section, any person managing special waste shall maintain a special waste site or facility permit as specified in Section 2 of 401 KAR 45:020.
- (2) Specific exclusions.
 - (a) The disposal of mining overburden, coal mining wastes, refuse, and coal mining by-products returned to the mine site of generation, including any nonhazardous waste generated directly as a result of the mining operation, shall not require a special waste site or facility permit. Owners or operators disposing of the materials in this subsection shall obtain and be regulated by the appropriate permit issued pursuant to KRS Chapter 350.
 - (b) Persons managing special waste during emergency situations ~~including[such as]~~:
 1. A spill of a special waste;
 2. An imminent and substantial threat of a spill of special waste; or
 3. A spill of a material which, when spilled, becomes a special waste.
- (3) Specific inclusions.

~~[(a)] [Owners and operators of sites or facilities with permits under other programs for certain aspects of the facility operation shall also obtain the required special waste site~~

~~or facility permit.]~~

~~[(b)]~~ Any person who initiates or continues special waste containment or disposal activities after emergency actions are complete~~[situations are taken]~~ shall be subject to all applicable requirements of this chapter for those activities.

(4)

(a) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility.

(b) A permit-by-rule for any unit for which a permit has not been issued or denied shall not be affected by the issuance or denial of a permit to any other unit at the facility.

Section 3. Considerations of State and Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable state and federal laws.

These laws include~~[but are not limited to]~~:

(1) 16 USC 661 et seq. (the Fish and Wildlife Coordination Act of 1958, as amended);

(2) 16 USC 1273 et seq. (the National Wild and Scenic Rivers System);

(3) 16 USC 1531 et seq. (the Endangered Species Act of 1983, as amended) and 50 CFR Part 402;

(4) KRS 146.200 to 146.360 and 400 KAR Chapter 4~~[401 KAR Chapters 4 and 5]~~ (the Wild Rivers System); and

(5) KRS 146.410 to 146.990 and 400 Chapters 2 and 3~~[KAR Title 400]~~ (the Nature Preserves System).

Section 4. Limitations of a Permit.

(1) A permit may be modified or revoked during its term for cause as established~~[set forth]~~ in 401 KAR 45:040 and in 401 KAR Chapter 40.

(2) The issuance of a permit shall not convey any property rights or any exclusive privilege.

(3) The issuance of a permit shall not authorize any injury to persons or property or invasion of other private property rights, or any infringement of state or local laws or administrative regulations.

Section 5. Prohibition of Use of Unpermitted Facilities. No person shall deliver, or cause to be delivered, special waste to a site or facility unless the owner or operator has:

(1) ~~[Submitted a notice to the cabinet in accordance with Section 4(1) of 401 KAR 45:020 as an existing waste site or facility in operation on or before June 24, 1992;]~~

~~[(2)]~~ Qualified for a permit-by-rule in accordance with 401 KAR 45:060;

(2) ~~[(3)]~~ Obtained ~~[Qualified]~~ for a registered permit-by-rule in accordance with 401 KAR 45:070 or 401 KAR 45:100, Section 8;

(3) ~~[(4)]~~ Obtained a solid waste facility permit providing for the disposal of special waste in accordance with 401 KAR Chapters 47 and 48; or

(4) ~~[(5)]~~ Obtained a special waste formal permit in accordance with this chapter.

Section 6. Permit Required.

(1) No person shall engage in the management, processing, or disposal of special waste at a waste site or facility without first obtaining a permit from the cabinet as specified in this chapter.

(2) No person shall engage in the management, processing, or disposal of special waste and solid waste without first obtaining a permit from the cabinet as specified in 401 KAR Chapters 47 and 48.

(3) No person shall engage in the management, processing, or disposal of special waste and hazardous waste without first obtaining a permit from the cabinet as specified in 401 KAR Chapter~~[Chapters 31 to]~~ 39.

(4) An owner or operator shall maintain a valid permit during the active life of the special waste site or facility, including the closure and postclosure periods required under 401 KAR 45:100 and 401 KAR 45:110.

Section 7. New Special Waste Sites or Facilities.

(1) No person shall begin physical construction of a new special waste site or facility without having received a special ~~for solid~~ waste permit.

(2) An applicant for a special waste formal permit shall submit to the cabinet an application that contains the information specified in Section 8 of this administrative regulation.

(3) The site shall be designed in accordance with the applicable requirements of this chapter.

(4) If the cabinet determines during the review of the application that the proposed site cannot meet the requirements of this chapter, the cabinet shall deny the permit.

~~[(5)] [The cabinet shall make a preliminary determination to issue or deny an application for a special waste formal permit within 180 calendar days from initial receipt of the application.]~~

~~[(6)] [If the application is incomplete, the cabinet shall notify the applicant in writing of the deficiencies. Failure to submit any required information noted by the cabinet within ninety (90) calendar days of receipt of the deficiencies may be grounds for denial of the application. Periods of deficiency correction shall not be counted against the review time frame specified in subsection (5) of this section.]~~

Section 8. Application for a Special Waste Formal Permit.

(1) Any person who is required to have a special waste site or facility permit under this chapter shall sign and submit a complete application to the cabinet.~~[The application forms are:]~~

(a) Persons applying for a special waste landfill permit shall use form ~~[DEP 7094A entitled]~~ "Application for a Special Waste Landfill Permit" form DEP 7094A. ~~[(November 2016). The requirements contained in the special waste landfill permit application are incorporated in this administrative regulation by reference.]~~ The cabinet may require that additional information be included in the application to ensure that a draft permit conforms with the requirements of this chapter.~~[The permit application form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at ee.ky.gov/environmental-protection/waste;~~

(b) Persons applying for a special waste landfarming facility permit for the land application of special waste other than biosolids shall use ~~[form DEP 7021A entitled]~~ "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" form DEP 7021A and ~~[(November 2016), and form DEP 7021B entitled]~~ "Application for a Special Waste Landfarming Facility Permit" form DEP 7021B.~~[(November 2016). The requirements contained in forms DEP 7021A and DEP 7021B are incorporated in this administrative regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at ee.ky.gov/environmental-protection/waste; and]~~

(c) Persons applying for a special waste composting facility permit shall use ~~[form DEP 7021A entitled]~~ "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" form DEP 7021A and ~~[(November 2016), and form DEP 7094D entitled]~~ "Application for a Special Waste Composting Facility Permit" form

~~DEP7094D~~[(November 2016). The requirements contained in forms DEP 7021A and DEP 7094D are incorporated in this administrative regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at ee.ky.gov/environmental-protection/waste].

(2) Alternative application information may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer in accordance with 401 KAR 30:020, Section 2 that the alternative information results in information equal to or better than that in this administrative regulation to determine that the site and design comply with 401 KAR 30:031 and this chapter.

(3) Persons applying for a special waste formal permit shall submit to the cabinet, as part of the application, ~~[form DEP 7094J entitled]~~ "Past Performance Information" form DEP 7094J[(November 2016). The requirements contained in form DEP 7094J are incorporated in this administrative regulation by reference.]The past performance information is collected in accordance with the requirements of KRS 224.40-330(1) and

(3).~~[The information form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at ee.ky.gov/environmental-protection/waste].~~

(4) The cabinet shall not begin the processing of a formal permit application until the applicant has fully complied with the application requirements for a permit pursuant to this administrative regulation, 401 KAR 45:025 and 401 KAR 45:100 or 401 KAR 45:110, and 401 KAR 45:160.

(5) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing waste site or facility, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information in accordance with the timetables established in 401 KAR 45:025. The cabinet shall notify the applicant in writing when the application is deemed complete after receiving any required additional information. The notification of completeness shall also contain any public notice required under Section 4 of 401 KAR 45:050.

(6) If an applicant fails or refuses to correct deficiencies in the application or submit additional information, the permit shall be denied and, if applicable, enforcement actions taken~~[under the appropriate statutory regulatory provisions]~~.

(7) If the cabinet determines that a site investigation or visit is necessary for any reason in conjunction with the processing of an application, the applicant or an authorized representative of the applicant shall accompany the cabinet representative on a site investigation or visit if requested by the cabinet.

(8) The cabinet may require such additional information as it deems necessary in order to make a final determination to issue a permit or deny the permit application as provided in paragraph (1)(a) of this section.

Section 9. Formal Permit Issuance.

(1) The cabinet shall make a preliminary determination to issue or deny the permit application after review of the complete application. In making this preliminary determination, the cabinet shall consider the requirements specified in this chapter and KRS 224.50-760~~[Chapter 224]~~.

(2)

- (a) If the cabinet makes a preliminary decision to deny the permit application, it shall issue a notice of intent to deny ~~and~~ ~~[A notice of intent to deny the permit application]~~ shall be subject to the public information process as specified in 401 KAR 45:050.
- (b) If the cabinet's final decision reverses the preliminary decision to deny the permit application, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.
- (3) If the cabinet makes a preliminary determination to issue the permit, a draft construction permit shall be prepared containing the following information:
- (a) The proposed design and specifications; and
 - (b) Any conditions in accordance with Section 2 of 401 KAR 45:140.
- (4) The draft construction permit shall be based on the administrative record outlined in Section 3 of 401 KAR 45:050.
- (5) All draft construction permits prepared by the cabinet under this section, including those applications for horizontal expansions under Section 1 of 401 KAR 45:040, shall be subject to the public information process as specified in 401 KAR 45:050.
- (6) After the close of the public comment period, the cabinet shall issue a final permit decision to issue or deny the construction permit.
- (7) A final permit decision shall become effective on the date of issuance of the construction permit by the cabinet.
- (8) The cabinet shall document the disposition of significant comments received, and, within thirty (30) days of a final permit decision, make this documentation available to the public by supplying it to the repository established in the county in which the facility is proposed.
- (9) The cabinet shall issue a construction permit if it finds that the applicant for the permit has met all the requirements for application, ~~and~~ the requirements of this chapter, and KRS 224.50-760 ~~[Chapter 224]~~.
- (10) The applicant shall maintain a construction permit in full force and effect until the construction and operation ~~[construction/operation]~~ permit is issued by the cabinet.
- (11) A construction and operation ~~[construction/operation]~~ permit shall be issued by the cabinet when:
- (a) The applicant has notified the cabinet, in writing, that the liner system, if required, has been constructed; and
 - (b) A representative of the cabinet has inspected the site and verified in writing to the applicant, within thirty (30) days of the inspection, that the site has been developed in accordance with plans approved by the cabinet;
 - (c) The required financial responsibility in 401 KAR 45:080 for closure has been established using any of the mechanisms required by 401 KAR 45:080 in an amount determined by an approved closure plan and cost estimate; and
 - (d) The applicant has submitted a certification by an engineer registered in Kentucky that the liner system, if required, and other features have been constructed in accordance with the approved plans and specifications.
- (12) The cabinet may issue a permit subject to specific conditions which include: ~~[, but are not limited to,]~~
- (a) Types of wastes ~~[which may be]~~ accepted or disposed: ~~[,]~~
 - (b) Special operating conditions: ~~[,]~~
 - (c) Schedules for compliance for corrective action: ~~[,]~~ and
 - (d) The issuance of other applicable permits of the cabinet.

Section 10. Signatures to Permit Applications and Reports.

- (1) Applications. All permit applications and modifications shall be signed as follows:
- (a) A responsible corporate officer shall sign permit applications and modification on behalf of a corporation. If the signature is by a person that meets the requirements of

401 KAR 45:010 Section 1(17)(c) then a copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification. ~~{For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:}~~

~~{1.} [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;}~~

~~{2.} [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}~~

~~{3.} [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. A copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification.]~~

(b) A general partner or the proprietor for a partnership or sole proprietorship~~, by a general partner or the proprietor, respectively~~;

(c) A general partner for a limited partnership~~, by a general partner~~; or

(d) A principal executive officer for a municipality or state, federal, or other public agency~~, by a principal executive officer~~. For purposes of this paragraph, a principal executive officer shall include~~[includes]~~:

1. The ranking elected official;
2. The chief executive officer of the agency;
3. A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or
4. A person authorized, in writing, to sign on behalf of a person described in subparagraphs 1, 2, and 3 of this paragraph. The written authorization shall specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a position of equivalent responsibility. A duly authorized representative must thus be either a named individual or any individual occupying a named position.

(2) Reports.

(a). All reports required by permits, and other information requested by the cabinet, shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person.

(b) A person shall be a duly authorized representative only if:

1. ~~{(a)}~~ The authorization is made in writing by a person described in subsection (1) of this section;
2. ~~{(b)}~~ The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative must thus be either a named individual or any individual occupying a named position; and
3. ~~{(c)}~~ The written authorization is submitted to the cabinet prior to or together with any reports.

(3) Changes to authorization. If an authorization under subsection (2)(b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, then a new authorization satisfying the requirements of subsection (2)(b) of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this

document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."

Section 11. Past Performance Considered in Review. Past performance of the owner, operator, and key personnel, as defined in KRS ~~224.1-010(43)~~~~224.01-010(44)~~, of the special waste site or facility shall be considered in the review for issuance or denial of the permit application and in the determination of any requirement for specialized conditions in accordance with KRS 224.40-330(1) and (3).

Section 12. Term and Expiration of Permits.

- (1)
 - (a) Permits-by-rule and registered permits-by-rule shall be perpetual unless modified or revoked by the cabinet.
 - (b) Permits-by-rule and registered permits-by-rule may be automatically revoked by the cabinet if the site or facility fails to meet the requirements of 401 KAR 30:031 or this chapter.
- (2) Special waste site or facility construction permits shall be effective for a fixed term ~~of not to exceed~~ five (5) years.
- (3) Special waste landfill construction and operation~~construction/operation~~ permits shall be issued for the anticipated life of the facility.~~[A shorter period may be specified by the cabinet.]~~
- (4) Special waste landfarming facility construction and operation~~construction/operation~~ permits shall be effective for a fixed term not to exceed ten (10) years. The cabinet shall review the conditions of the permit after five (5) years and modify the permit as necessary to maintain compliance with this chapter.
- (5) For registered permit by rule or permits by rule~~permits~~ issued under this administrative regulation for a term greater than five (5) years, the cabinet may reevaluate the terms and conditions of those permits~~the permit~~ any time prior to their~~the~~ expiration date~~[of the permit]~~. Issued permits shall~~may~~ be reevaluated in accordance with the requirements of this chapter~~[and KRS Chapter 224]~~, including reevaluation of the bond. After reevaluation of the permit, the cabinet may require modifications of the permit pursuant to Section 1 of 401 KAR 45:040.
- (6) Modification of term of permit. Except as provided in Section 14 of this administrative regulation, the term of a permit shall not be extended by modification beyond the maximum duration specified in subsections (2) to (4) of this section.
- (7) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsections (2) to (4) of this section.

Section 13. Renewal of Formal Permits.

- (1) Any application to renew a construction or construction and operation~~construction/operation~~ permit shall be submitted to the cabinet at least 180 days before the expiration date of the current permit. Persons applying for the renewal of a permit shall use ~~[form DEP 7095 entitled "Application for Renewal of a Formal Permit"]~~ form DEP 7095 (November 2016).~~[The requirements contained in the renewal application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that a renewed permit conforms to the requirements of this chapter and KRS Chapter 224. The renewal application forms may be obtained from the Division of Waste Management, 300~~

~~Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at ee.ky.gov/environmental-protection/waste.~~

(2) Applications to renew a construction or construction and operation~~[construction/operation]~~ permit shall be subject to a review in accordance with the requirements of this chapter.

(3) The cabinet, in issuing a renewal, shall consider whether all conditions of prior permit conditions and agreed orders have been met. The cabinet may request updated information and impose additional or modified permit conditions to ensure compliance with this chapter~~[when deemed appropriate]~~.

Section 14. Continuation of Expiring Permits.

(1) The conditions of an expired permit shall continue in force to ensure the safe disposal of waste until the effective date of a new permit if:

(a) The permittee has submitted an~~[a timely]~~ application for renewal of a permit pursuant to~~[under]~~ Section 13 of this administrative regulation. These applications shall be complete and the applicant shall have paid the appropriate fees due under 401 KAR 45:250;

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit; and

(c) The cabinet has not given written notice of permit expiration due to enforcement actions or other reasons pursuant to the requirements of this chapter.

(2) Effect. Permits continued under this section shall remain in full force and effect until the renewal application has been issued.

Section 15. Termination of Permits. Special waste site or facility permits shall automatically terminate on the expiration date unless the cabinet has reissued the permit or issued a continuation in accordance with Section 14 of this administrative regulation.

Section 16. Confidentiality of Information.

(1) Claims of confidentiality. Any information submitted to the cabinet pursuant to this chapter may be claimed as confidential by the applicant. Any such claim shall be asserted at the time of submission in accordance with KRS 224.10-210 and 400 KAR 1:060. If no claim is made in accordance with 400 KAR 1:060, the cabinet may make the information available to the public without further notice.

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential shall be denied.

Section 17. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application For a Special Waste Landfill Permit", form DEP 7094A, February 2023;

(b) "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit", form DEP 7021A, February 2023;

(c) "Application for a Special Waste Landfarming Facility Permit", form DEP 7021B, February 2023;

(d) "Application for a Special Waste Composting Facility Permit", form DEP 7094D, August 2023;

(e) "Past Performance Information", form DEP 7094J, November 2016; and

(f) "Application for Renewal of a Formal Permit", form DEP 7095, November 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

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 establishes the permit review process for the special waste permits in 401 KAR Chapter 45.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary for the regulated community to know the permitting process and the expectations associated with the process.

(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 establishes the permitting process for all special waste permitting types in Chapter 45.

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

This administrative regulation assists in the administration of the statutes by establishing the permitting process for special waste permits.

(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 permitting processes that are established in this administrative regulation do not apply to wastewater treatment plant sludges. The amendments make 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 direct interested individuals to 401 KAR 45:105 where the permitting process is established for biosolids.

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

The amendment conforms to the authorizing statutes by establishing a formal permitting process for biosolids as required by KRS 224.50-765.

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

This amendment clarifies that the permitting process for the management of biosolids is established in 401 KAR 45:105.

(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 need to refer to 401 KAR 45:105 to find the permitting process for biosolids.

(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 the current 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 having all of the information related to biosolid management in the new administrative regulation (401 KAR 45:105).

(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 the new process 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, 224.10-210, 224.40-305, 224.40-330, 224.50-760, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402.

(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 and will be applied to the biosolids application.

(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 will use the same personnel and equipment to review permits under the current structure and the new biosolids permitting process.

(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.

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 to the regulated entity 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 to the regulated entity with the implementation of these amendments.

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

The addition of language clarifying that this permitting administrative regulation does not apply to the permitting of the land application 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 clarifying language stated in (c) 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.

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 language clarifying that this permitting administrative regulation does not apply to the permitting of the land application of biosolids. That process is established 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).