

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

401 KAR 45:040. Modification, transfer or revocation of special waste permits.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.40-330, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, or disposal of wastes. 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. 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 sets forth the requirements for modification, transfer and revocation of special waste permits but does not establish standards for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility that are regulated pursuant to 401 KAR 45:105.

Section 1. Modification of Permits.

(1) A special waste site or facility permit may be modified during its term in accordance with this administrative regulation.

(a) If a permit is modified, only the conditions subject to modification shall be reopened. A permit modification shall be subject to public notice unless the cabinet determines the modification does not present a threat to human health and the environment.

(b) An application to modify a permit for a horizontal expansion beyond the permitted waste boundary shall require a public notice in accordance with 401 KAR 45:050.

(2) Modification of formal permits. Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a complete application to the cabinet that is appropriate for the type of facility being modified. The permittee shall use:

(a) "Application for a Special Waste Landfill Permit," form DEP7094A;

(b) "Application for a Special Waste Landfarming Facility Permit" form DEP7021B;

(c) "Application for a Special Waste Composting Facility" form DEP 7094D; or

(d) "Application for a Research, Development, and Demonstration Permit" form DEP 7094B.

(3) Forms in paragraphs (a) through (c) of subsection (2) are incorporated by reference in 401 KAR 45:030. The form in paragraph (d) of subsection (2) is incorporated by reference in 401 KAR 45:135.

(4) Modification of a registered permit-by-rule. Registrants requesting a modification shall submit a new registration form in accordance with Section 4 of 401 KAR 45:070.

(5) Causes for modification. The following paragraphs list causes for modification of formal permits by the cabinet:

(a) Material and substantial alterations or additions to the permitted special waste site or facility are being contemplated that justify new permit conditions that are different or absent in the existing permit;

(b) The cabinet determines that the special waste site or facility, as previously permitted, is not likely to comply with 401 KAR 30:031;

(c) The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable available remedy;

- (d) Modification of a closure plan is required under this chapter;
- (e) The cabinet receives notification of expected closure and finds that one (1) or more of the permit conditions are no longer warranted;
- (f) The cabinet adjusts the level of financial responsibility required pursuant to 401 KAR 45:080;
- (g) The corrective action program specified in the permit has not brought the waste site or facility into compliance with the groundwater protection standards;
- (h) To include a monitoring program meeting the requirements of 401 KAR 45:160;
- (i) To approve a corrective action plan required by 401 KAR 45:160;
- (j) To include conditions applicable in new or amended statutes and administrative regulations;
- (k) Modification is necessary to protect human health or the environment;
- (l) To include conditions applicable as a result of a hearing or enforcement action as specified in 401 KAR Chapter 40;
- (m) Ownership of the special waste site or facility changes;
- (n) To expand the capacity of a special waste site or facility; or
- (o) To add a new waste that contains different chemical characteristics than the waste source previously permitted.

Section 2. Procedures for Permit Modification.

- (1) A permit for a special waste site or facility may be modified either at the request of the permittee or upon the cabinet's initiative.
- (2) If the permittee requests the modification, the cabinet shall determine whether the request is justified in accordance with Section 1 of this administrative regulation. If the cabinet determines not to modify the permit, it shall notify the permittee in writing and give a reason for the decision.
- (3) If the cabinet makes a preliminary decision to modify a permit under this administrative regulation, then the cabinet shall prepare a draft modified permit incorporating the proposed changes. If the permit modification is subject to public notice requirements, the permittee shall publish a notice in accordance with Section 4 of 401 KAR 45:050.
- (4) The cabinet shall provide the permittee with a copy of the draft modified permit and allow ten (10) working days for comment. Comments received from the permittee shall be considered in finalizing the draft modified permit.
- (5) The cabinet shall issue the modified permit after consideration of the comments or following the ten (10) day comment period if no comments are received.
- (6) The owners or operators of a special waste site or facility may request a hearing pursuant to KRS 224.10-420 within thirty (30) days of issuance of the permit modification by the cabinet.
- (7) All terms of an existing permit remain in effect during the permit modification request.
- (8) A permit modification requesting a horizontal expansion shall be subject to the requirements of public notice in accordance with 401 KAR 45:050. All draft permits for horizontal expansions shall be prepared under Sections 8 and 9 of 401 KAR 45:030, and shall be based on the administrative record required by Section 3 of 401 KAR 45:050.

Section 3. Transfer of Permits.

- (1) A permit is not transferable to any person without prior approval of the cabinet. For purposes of this section, a permit transfer application is required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.

- (2) A person requesting to transfer a formal permit for an existing special waste site or facility shall submit "Application To Transfer Special Waste Permit" form DEP 7094C.
- (3) The cabinet shall make a preliminary determination to approve or disapprove a formal permit transfer within 180 calendar days from the initial receipt of the application.
- (4) If the transfer application is incomplete, the cabinet shall notify the applicant in writing of all the deficiencies. Periods of deficiency shall not be counted against the review time frame specified in subsection (3) of this section. Failure to submit information noted by the cabinet related to the deficiencies within ninety (90) calendar days of receipt of the notice of deficiency is grounds for disapproval of the transfer application.
- (5) If the cabinet makes a preliminary determination to approve the transfer application, the applicant shall publish a public notice in accordance with Section 4 of 401 KAR 45:050.
- (6) After the public notice has been published by the applicant, the cabinet shall provide a public comment period in accordance with Sections 5 to 8 of 401 KAR 45:050.
- (7) After the close of the public comment period, the cabinet shall make a final decision on the transfer application.
- (8) A person requesting to transfer a registered permit-by-rule shall submit a registration in accordance with Section 2 of 401 KAR 45:070.

Section 4. Modification, Suspension and Revocation of a Permit. The cabinet may modify, suspend, or revoke a permit issued under this chapter for the items listed in subsections (1) through (7).

- (1) Violation of any requirement of KRS Chapter 224, this chapter, or 401 KAR 30:031.
- (2) Aiding, abetting, or permitting the violation of KRS Chapter 224, this chapter, or 401 KAR 30:031.
- (3) Any action or omission associated with maintenance and operation of the facility that could or does create a threat to public health or the environment.
- (4) Violations of a condition or a variance of the special waste site or facility permit.
- (5) Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet.
- (6) Failure to comply with an order issued by the cabinet.
- (7) The facility is transferred to another person without prior approval of the cabinet.
- (8) The cabinet shall follow the applicable procedures in this administrative regulation and 401 KAR Chapter 40 in revoking any permit under this section.
- (9) If a permit is revoked, the owner or operator may reapply.
- (10) Owners or operators of special waste sites or facilities may file a request for a hearing pursuant to KRS 224.10-420 upon revocation of the permit.

Section 5. Incorporation by Reference.

- (1) "Application To Transfer Special Waste Permit", form DEP 7094C (November 2016), is incorporated by reference.
- (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.