

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~~~~[224.01]~~, 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~~[may be subject to public notice if the cabinet believes a significant degree of public interest exists with respect to an application].~~

(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) ~~{(1)}~~ 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. ~~{form DEP 7094A entitled "Application for a Special Waste Landfill Permit," form DEP 7021B entitled "Application for a Special Waste Landfarming Facility Permit" or form DEP 7094D entitled "Application for a Special Waste Composting Facility" which are incorporated by reference in Section 2 of 401 KAR 45:030, or has submitted form DEP 7094B entitled "Application for a Research, Development, and Demonstration Permit" that is incorporated by reference in Section 2 of 401 KAR 45:135. The permittee shall complete the applicable sections of the application as directed by the cabinet.}~~

(4) ~~{(2)}~~ 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) ~~[(3)]~~ Causes for modification. The following paragraphs list~~[are]~~ 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~~[any]~~ 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~~[within a reasonable period of time]~~;
- (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~~[decides]~~ whether the request is justified in accordance with Section 1 of this administrative regulation~~[or for other good cause shown]~~. 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 use form DEP 7094C entitled~~ "Application To Transfer Special Waste Permit" ~~form DEP 7094C.~~ ~~(November 2016). The requirements contained in the transfer application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that the prospective owner or operator complies with the requirements of this chapter. The transfer 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.~~

(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 ~~any required~~ 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).~~(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.

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 process for the modification, transfer, and revocation of 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 process to modify, transfer, and revoke special waste permits and the expectations associated with those processes.

(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 process for the modification, transfer, and revocation of special waste permits in 401 KAR 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 providing the regulated community the information to properly modify and transfer a permit. It also provides information on the revocation of permits by the cabinet.

(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 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 modification, transfer, and revocation information for biosolid permits can be found.

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

The amendment conforms to the authorizing statutes by establishing procedures for the modification, transfer and revocation of a formal permit of 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 process to modify, transfer, or revoke biosolid permits 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 information on modification, transferring, or having biosolid permits revoked.

(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, 224.40-305, 224.40-330, 224.50-760, 224.50-765.

(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.

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.

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 regulation does not apply to the land application of biosolids. Those processes are 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).