

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

401 KAR 45:050. Public information procedures for special waste site or facility permits.

RELATES TO: KRS ~~224.1~~[~~224.01~~], 224.10, 224.40, 224.46, 224.50, 224.90

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, and 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 public information procedures. This administrative regulation does not establish the public information procedures for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility.

Section 1. Applicability.

(1) Public information procedures shall apply to applicants for the following permits~~each person seeking~~:

- (a) A new special waste landfill permit;
- (b) A horizontal expansion of a special waste landfill;
- (c) A Type A special waste landfarming or composting site or facility permit;
- (d) A research, development, and demonstration permit;
- (e) A transfer of ownership of a site facility with a formal special waste permit that originally required a public notice; and
- (f) Approval of a new waste that contains different chemical characteristics than the waste source previously permitted.

(2) The cabinet may require public information procedures for other permit actions or modifications if it determines that a significant degree of public interest exists with respect to an application or modification.

Section 2. Fact Sheet.

(1) A fact sheet shall be prepared by the cabinet for every draft permit. The fact sheet shall briefly ~~state~~~~set forth~~ the principal facts and the significant factual, legal, methodological, and policy questions considered in processing the permit application.~~The cabinet shall send this fact sheet to the applicant and, on request, to any other person.~~

(2) The fact sheet shall include:

- (a) A brief description of the type of facility or activity that is the subject of the draft permit;
- (b) The type and quantity of wastes that are proposed to be or are being stored, treated, or disposed;
- (c) A brief summary of the basis for the proposed permit conditions, including reference to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Section 3 of this administrative regulation;
- (d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments shall be received;
2. Procedures for requesting a hearing and the nature of that hearing; and
3. Any other procedures including public participation in the final decision; and

(f) Name and telephone number of a cabinet representative to contact for additional information.

Section 3. Administrative Record for Proposed Permits.

(1) The provisions of a draft permit prepared by the cabinet under Section 9 of 401 KAR 45:030 shall be based on the administrative record.

(2) The administrative record shall consist of:

- (a) The application and any supporting data furnished by the applicant;
- (b) The draft permit or notice of intent to deny the application;
- (c) The fact sheet prepared in accordance with Section 2 of this administrative regulation;
- (d) All documents cited in the fact sheet; and
- (e) Other documents contained in the supporting file for the proposed permit.

(3) Material readily available at the cabinet's office need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet. This includes published material that is generally available, and that is included in the administrative record.

Section 4. Public Notice.

(1)

(a) Upon notification by the cabinet that the application is complete, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly major local newspaper of general circulation where the proposed site or facility is located.

(b) Verification of publication shall be provided to the cabinet within thirty (30) calendar days of the publication date. The notice shall contain the following information:

1. ~~[(a)]~~ Name and address of the cabinet's office processing the permit action for which notice is being given;
2. ~~[(b)]~~ Name and address of the permit applicant and, if different, of the facility or site regulated by the permit;
3. ~~[(c)]~~ A brief description of the business conducted or activity described in the permit application;
4. ~~[(d)]~~ A description of the proposed location of the special waste site or facility, including a description of the primary access roads;
5. ~~[(e)]~~ Name, address, and telephone number of a person from whom interested persons may obtain further information; and
6. ~~[(f)]~~ The following statement: "Within thirty (30) days of the publication of this notice, any person who wishes to comment on the application may submit written comments and, if desired, request from the cabinet, a public meeting" ~~[-and]~~

~~[(g)] [Any additional information required by the cabinet].~~

(2) The cabinet may schedule a public meeting if a significant degree of public interest exists as a result of a public notice published under this section.

(3) Upon notification by the cabinet that a draft permit has been prepared, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly, major, local newspaper of general circulation where the proposed site or facility is

located. Verification of publication shall be provided to the cabinet within thirty (30) days of the publication date. The notice shall contain the following:

- (a) The information required by subsection ~~(1)(b)~~ 1. ~~to 6. [(1)(a) to (e)]~~ of this section;
- (b) The location of a repository for documents in the county in which the site or facility is proposed, including copies of the proposed permit, fact sheet, and application;
- (c) The time and place of any hearing already scheduled and procedures by which the public may participate in the public comment period and public hearing;
- (d) The location of the administrative record required by Section 3 of this administrative regulation, including:
 1. A local repository in the county in which the site or facility is proposed; ~~;~~
 2. The times at which the record is open for public inspection; ~~;~~ and
 3. A statement that all data submitted by the applicant is available as part of the administrative record; and
- (e) The following statement: "Any person who wishes to comment on the draft permit decision for this special waste site or facility may file comments with the cabinet and, if desired, request a public hearing within thirty (30) days of the publication of this notice pursuant to Section 6 of 401 KAR 45:050." ~~;~~ ~~and~~
~~[(f)] [Any additional information required by the cabinet.]~~
- (4) Public notices may describe more than one (1) permit or permit action.
- (5) Public notices shall be of a size to include not less than two (2) columns widths for advertising and shall be in a display format.
- (6) The cabinet shall distribute the public notice specified in subsection (1) of this section to the following:
 - (a) The Kentucky Department of Fish and Wildlife Resources; ~~;~~
 - (b) The U.S. Fish and Wildlife Agency; ~~;~~
 - (c) The Advisory Council on Historic Preservation; ~~;~~
 - (d) The State Historic Preservation Officer; ~~;~~ ~~and~~
 - (e) Other appropriate government authorities, including any other affected states;
 - (f) ~~[(b)]~~ Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
 - (g) ~~[(e)]~~ Each state agency, division, or department having any authority under state law with respect to the construction or operation of the proposed site or facility.
- (7) The cabinet shall use any other public notice method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- (8) In addition to the published public notices required in this section, an applicant shall deliver a notice that has been prepared by the cabinet to the following individuals:
 - (a) Landowners of all adjacent and abutting properties surrounding the proposed special waste site or facility; and
 - (b) Occupants of all buildings or units within a building on adjacent and abutting properties surrounding the proposed special waste site or facility.

Section 5. Public Comment Period. The public comment period shall allow at least thirty (30) days for public comment during which any interested person may submit written comments on the application or permit decision, and may request a public hearing if a hearing has not already been scheduled. The comment period shall commence on the date of publication of the public notice.

Section 6. Public Hearings.

- (1) The cabinet may hold a public hearing on the basis of written request or when a significant degree of public interest exists concerning a special waste site or facility permit decision. The cabinet may hold a public hearing to clarify one (1) or more issues involved in the permit decision.

- (2) Whenever a public hearing is held, a presiding officer shall be designated by the cabinet for the hearing who shall be responsible for its scheduling and orderly conduct.
- (3) Any person may submit oral or written statements and data. Reasonable limits may be set upon the time allowed for oral statement, and the submission of statements in writing may be required.
- (4) A written transcript of the hearing shall be made available to any person upon payment of the actual cost of reproducing the original.

Section 7. Reopening of the Public Comment Period.

- (1) If any data, information, or arguments submitted during the public comment period, including information or arguments that any condition of the proposed permit or permit denial is inappropriate, appear to raise substantial new questions concerning a permit, the cabinet may:
 - (a) Prepare a new draft permit; or
 - (b) Reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted.
- (2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. A public notice shall define the scope of the reopening.
- (3) The cabinet may also, in the circumstances described in subsection (1) of this section, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in subsection (1) of this section.

Section 8. Response to Comments.

- (1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments. This response shall:
 - (a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - (b) Briefly describe and respond to all ~~significant~~ comments on the draft permit raised during the public comment period, or during any public hearing.
- (2) The response to comments shall be available to the public and shall be deposited in an appropriate facility in the county which the site or facility is proposed.

Section 9. Adjudicatory Hearing. An aggrieved person's right to an adjudicatory hearing pursuant to KRS 224.10-420 commences upon the completion of the public comment and hearing period as provided in Sections 5, 6, and 7 of this administrative regulation and upon the cabinet's rendering of a final permit decision in accordance with Section 9 of 401 KAR 45:030.

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 public information procedures for 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 public notice procedures for permits in 401 KAR Chapter 45.

(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 contains the information for public notice for special wastes 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 detailing public information procedures 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 public information procedures do not apply to biosolid land application. KRS 224.50-765 directs the cabinet to regulate biosolid land application in conformance with 40 C.F.R. Part 503. 40 C.F.R. Part 503 doesn't have broad public notice requirements. 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 identify that the public notice requirements associated with this administrative regulation do not apply to 401 KAR 45:105.

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

The amendment conforms to the authorizing statutes by clarifying that there are not public notice requirements for the land application of biosolids contained in this administrative regulation.

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

This amendment provides clarity to the permitting process by letting the regulated community know that the public notice provisions in 401 KAR 45:050 do not apply to the land application of biosolids.

(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. However, this amendment lets the regulated entity know that the public notice requirements have not changed for anything other than the biosolids (sludges from wastewater treatment plants).

(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 there will be no public notice requirements.

(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) as well as a more streamlined approach.

(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, 224.50-760.

(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 as it relates only to the public notice process. 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 the public notice provisions in this administrative regulation do 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 the public notice provisions in this administrative regulation do not apply to the permitting of the land application of biosolids. That permitting 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).