

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

401 KAR 45:140. Conditions applicable to all 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, 224.50-760

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 conditions applicable to all special waste permits.

Section 1. Conditions Applicable to All Permits. The conditions applicable to a special waste site or facility shall be incorporated into the permit either expressly or by reference.

(1) Duty to comply. The owner or operator shall comply with all conditions of the permit and all approved plans in the permit application. Any permit noncompliance constitutes a violation of the appropriate requirement in KRS Chapter 224~~[Kentucky Revised Statute]~~ and is grounds for enforcement action that may result in revocation, modification, or denial of a permit application.

(2) Duty to reapply. If the owner or operator wishes to continue an activity regulated by the permit after the expiration date of the permit, ~~then~~~~[if applicable,]~~ the owner or operator shall apply for and obtain a new permit.

(3) Duty to halt or reduce activity. It shall not be a defense for an owner or operator in an enforcement action to claim necessity to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. The owner or operator shall comply with this chapter before commencing operations.

(4) Duty to mitigate. In the event of noncompliance with the permit, the owner or operator shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent additional releases or other noncompliances with 401 KAR Chapter 45 and KRS 224.50-760~~[significant adverse impacts on human health and the environment]~~.

(5) Proper operation and maintenance. The owner or operator shall at all times properly operate and maintain all facilities and systems of treatment and control that are installed or used by the owner or operator to achieve compliance with the conditions of the permit. Proper operation and maintenance includes:

(a) Effective performance;~~[;]~~

(b) Adequate funding;~~[;]~~

(c) Adequate operator staffing and training;~~[;]~~ and

(d) Process controls, including appropriate quality assurance procedures.

(6) Permit actions. The permit may be modified or revoked due to non-compliances with the provisions of this chapter and KRS Chapter 50~~[for cause.]~~ The filing of a request by the owner or operator for a permit modification, revocation, or termination, or a notification of planned changes or anticipated noncompliance, shall not stay any permit condition.

(7) Property rights. The permit shall not convey any property rights or any exclusive privilege.

(8) Duty to provide information. The owner or operator shall furnish the cabinet with ~~any~~ information that the cabinet reasonably requests to determine whether cause exists for modifying, revoking, or terminating the permit, or to determine compliance with the permit or ~~any provision of KRS Chapter 224 or~~ this chapter. The owner or operator shall ~~also~~ furnish to the cabinet upon request copies of records required to be kept by the permittee.

(9) Inspection and entry. The owner or operator shall allow the cabinet or its authorized representative to:

(a) Enter upon the owner's or operator's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of the permit;

(b) Have access to and copy at reasonable times any records that are kept under the conditions of the permit;

(c) Inspect any facility's equipment, including monitoring and control equipment, practices, or operations regulated or required under the permit; and

(d) Sample or monitor, for the purposes of assuring permit compliance or determining compliance with KRS Chapter 224 or this chapter, any substances or parameters within the boundaries of the permitted area and outside the boundaries of the permitted area if necessary to determine the environmental impacts resulting from a permitted activity~~[at any location]~~.

(10) Signatory requirement. All applications, reports, and information submitted to the cabinet shall be signed and certified in accordance with Section 10 of 401 KAR 45:030.

(11) Authorization to operate. For a new special waste site or facility, or a facility undergoing an expansion or modification as stated in 401 KAR 45:040, the owner or operator shall not commence storage, treatment, or disposal of special waste in the modified portion of the facility until:

(a) The owner or operator has submitted to the cabinet, by certified mail or hand delivery, a request for the issuance of a construction and operation~~[construction/operation]~~ permit signed by the owner or operator stating that the facility has been constructed or modified in compliance with the construction permit. The request shall be accompanied by a fee specified in Section 2(1)(d) of 401 KAR 45:250; and

(b) The cabinet has inspected the newly constructed or modified facility and issued a special waste construction and operation~~[construction/operation]~~ permit or modified construction/operation permit.

(12) Transfers. The permit shall not be transferable to any person without prior approval of the cabinet. Proposed new owners or operators shall submit a complete transfer permit application to the cabinet in accordance with Section 3 of 401 KAR 45:040.

(13) Monitoring reports. Monitoring results shall be reported at the intervals specified in the approved permit application.

(14) Compliance schedules. Reports of compliance with, or any progress reports on, requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen (14) days following each scheduled date.

(15) Reports. Periodic reports as required in this chapter or in the permit shall be submitted to the cabinet on the dates required in this chapter or in the permit~~[on a timely basis]~~.

(16) Other information. If the owner or operator fails to submit any relevant facts in a permit application, or submits incorrect information in a permit application or in any report to the cabinet, the owner or operator~~[he]~~ shall promptly submit the facts or correct information.

Section 2.

(1) Establishing Permit Conditions. In addition to conditions required for all permits in Section 1 of this administrative regulation, the cabinet shall establish conditions on a case-by-case basis in permits to ensure compliance with the requirements of this chapter.

(2) The cabinet may incorporate applicable requirements directly into the permit. Each special waste permit issued by the cabinet shall contain conditions as the cabinet determines necessary to assist in compliance with the approved application and this chapter~~[protect human health and the environment]~~.

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 sets forth the conditions applicable to all special waste permits.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary as it sets standards and duties of the applicant/permittee for all special waste permits.

(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. 401 KAR Chapter 45 establishes different permitting options for entities that manage special waste. This administrative regulation provides applicants and permittees information that applies to all special waste permit types.

(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 information that is applicable to all special waste permit types.

(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 (biosolids). The amendments make corrections to clarify the meaning of parts of the administrative regulation and comply with the drafting requirements of KRS Chapter 13A.

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

This amendment is necessary to correct KRS Chapter 13A deficiencies as well as clarifying the language related to all special waste permit types.

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

The amendment conforms to the authorizing statutes by clarifying language that is related to all special waste permit types and make changes that conform to the drafting requirements of KRS Chapter 13A.

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

This amendment will assist in the effective administration of the statutes by providing clear and concise language that is compliant with the drafting requirements of KRS Chapter 13A.

(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 comply with the administrative regulation. There are no additional requirements. However, the requirements that are there are easier to understand, and citations are more concise.

(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 requirements in the administrative regulation have not changed. The only changes were in an effort to clarify the requirements for regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The entities will benefit by having clear and concise requirements to follow related to all special waste permit types.

(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 no 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 special waste permit will have their permits reviewed in accordance with the application information submitted and will not be treated differently.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation will impact not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.10-100, 224.40-305, 224.50-760.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate any additional revenue. The administrative regulation provides general information related to all special waste permits. Those requirements have not been changed but simply clarified.

(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 in subsequent years.

(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 these amendments.

(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:

(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 in subsequent years related to the implementation of these amendments.

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

The addition of language clarifying language in the administrative regulation and making amendments to comply with drafting requirements of KRS Chapter 13A will not result in additional costs.

(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 clarify the administrative regulation and make it easier to interpret. 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).