

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 103:020. Decommissioning standards.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, 224.43-345, 278.710(3), (4), (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285 requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation set for in KRS 278.710(3), (4), (5), (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations set forth in KRS 278.710(3), (4), (5), (7) through (10). This administrative regulation establishes procedures for decommissioning plan technical requirements, decommissioning plan updates, decommissioning cost estimate updates, and cases of abandonment.

Section 1. Technical Requirements of Decommissioning Plan. The owner-operator, or person who controls or owns right to control any MEGF are subject to decommissioning requirements and mitigation measures outlined in KRS 278.704 through 278.710.

(1) This plan shall be certified by an independent professional engineer prior to submission to the cabinet.

(2) Unless otherwise stated in an accommodation contained within a lease agreement with the affected landowner, the decommissioning plan shall be designed to return the land to a substantially similar state as it was prior to the commencement of construction.

(3) Decommissioning plans filed with the cabinet shall minimally meet the following technical requirements:

(a) Provide an estimated lifespan of the MEGF, including an estimated period of useful life for system components;

(b) Identify the party responsible for decommissioning;

(c) Define conditions upon which decommissioning will be initiated, including a statement defining how notification will be made of intent to start the decommissioning process;

(d) The timeframe for commencement and completion of decommissioning activities;

(e) Include a revegetation plan, with native seed mixes, excluding any invasive species;

(f) Cost itemization of all estimated costs that factor into decommissioning the MEGF;

(g) Include the financial assurance mechanisms, in accordance with KRS 278.706 and 401 KAR 103:030;

(h) Describe any agreement with landowners regarding decommissioning, including any special accommodations made to any affected landowner.

1. Incorporate the accommodations as requirements into the lease agreement with landowners and the decommissioning plan; or

2. Deny the request to accommodate and submit a detailed correspondence to the landowner, county or municipal government, and cabinet.

3. The owner-operator or person who controls or owns the right to control shall provide the landowner, county or municipal government, and cabinet with a timeline

of any agreed upon accommodated request from the landowner or county or municipal government in accordance with paragraph (h) of this subsection.

(i) Removal of any MEGF owned equipment and facilities, including:

1. Structures;
2. Fencing;
3. Roads;
4. Foundations or pads;
5. Erosion, sediment, and water control measures;
6. Modules or solar panels;
7. Racks;
8. Cables or wires;
9. Conduit;
10. Inverters; and
11. Transformers.

(j) Remove any underground components and foundations of above-ground facilities. Underground components and facilities under this paragraph shall be removed to a depth of three (3) feet below the surface grade of the land in or on which the component was installed.

Section 2. Decommissioning Plan Updates.

(1) Pursuant to KRS 278.710 all MEGFs shall submit an updated decommissioning plan at least once every five (5) years. Decommissioning plan updates shall be submitted no later than 180 days prior to the fifth anniversary of the commencement of generation of electricity unless permission for a later date has been granted in writing by the cabinet. The cabinet may, at any time, request updated information necessary for reevaluating the decommissioning plan updates. Requests for updates shall include:

- (a) Additional construction of equipment or facilities;
- (b) Removal of equipment or facilities; or
- (c) Changes in the facilities estimated decommissioning costs.

(2) Decommissioning plan updates shall:

- (a) Be submitted in conjunction with a notarized MEGF Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments;
- (b) Include an updated estimation of decommissioning costs in accordance with Section 3 of this administrative regulation and 401 KAR 103:030; and
- (c) Include any proposed measures to mitigate adverse impacts pursuant to KRS 278.710.

(3) Any engineering evaluation procured by the cabinet or at the cabinet's request and referred to the secretary to inform a final decision shall be considered preliminary, confidential, and not open for public inspection until after final action by the secretary.

(4) Decommissioning plan updates that require new construction will be subject to standards in KRS 278.704 through 278.714.

(5) Upon review and approval of the updated decommissioning plan by the cabinet, the owner-operator, or person who controls or owns the right to control the MEGF shall file with the cabinet an updated copy of the decommissioning bond or other similar security, in accordance with 401 KAR 103:030, to reflect changes to the estimated cost of effectuating the decommissioning plan or to the net present value or the net salvage value of the facility or its components.

Section 3. Decommissioning Cost Estimates.

(1) The applicants, owner-operator, or person who controls or owns the right to control a merchant electric generating facility shall have a detailed, written estimate, in current US dollar, of the cost to decommission the MEGF in accordance with KRS 278.706 and 278.710.

(2) The estimated cost shall equal the cost of completing the decommissioning plan of the MEGF at the end of the useful life pursuant to the approved decommissioning plan. The cost estimate shall include:

- (a) Itemized costs for implementing, dismantling, removing, or disposing of all structures, systems, components, and requirements described in Section 1 of this administrative regulation;
- (b) Incorporate an estimated decommissioning cost per megawatt valuation;
- (c) Be recalculated at least once every five (5) years to accommodate for inflation or depreciation;
- (d) Include a defined useful life period of the MEGF; and
- (e) Be certified by an independent, licensed engineer pursuant to KRS 278.706.

Section 4. Abandonment. In the event of abandonment or failure to complete decommissioning obligations by the responsible party, pursuant to KRS 224.10-100, the cabinet will draw upon the decommissioning bond and implement the decommissioning plan. Pursuant to KRS 278.706, if any party makes a successful claim on the approved financial assurance, that party shall be responsible for the requirements set forth in the decommissioning plan.

Section 5. Incorporation by Reference.

- (1) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, September 2023, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at eec.ky.gov/environmental-protection/waste.

JOHN LYONS, Deputy Secretary
For REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: September 27, 2023

FILED WITH LRC: September 27, 2023 at 2:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2023, at 10:00 a.m. Eastern Standard Time. The public hearing can be accessed at the following website address: <https://us05web.zoom.us/j/81334701532?pwd=eWjHA2kpT9I6PWurOirAnFpuYads2k.1> using access code M00m5c. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Tyler.Shields@ky.gov or mail this information to Tyler Shields, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "401 KAR 103:020" 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 register to speak by December 14, 2023. If no one registers to speak 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 December 31, 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. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.