

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 45:105. Land application of biosolids.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760, 224.50-765, 40 C.F.R. Part 503

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the treatment, management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow the use of a waste site or facility to obtain a permit. This administrative regulation establishes the standards and requirements for the application of biosolids, in accordance with 40 C.F.R. Part 503 and as required by KRS 224.50-765 from the treatment of domestic sewage or sewage sludge from a treatment facility. This administrative regulation is no more stringent than the corresponding federal rules but in order to comply with KRS 224.50-765(3), does have additional requirements that are not in 40 C.F.R. Part 503 related to a permitting program and siting criteria.

Section 1. Definitions.

- (1) "Karst feature" means sinkholes, sinking streams, cave openings, fensters, and springs.
- (2) "Ordinary high-water mark" means the line on the shore of a body of water established by the fluctuations of water and indicated by physical characteristics, such as defined, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, and the presence of litter and debris.
- (3) "Seasonal high-water table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in years with normal rainfall.
- (4) "Sinkhole" means a depression in the land surface resulting from the chemical dissolution of the underlying carbonate rocks that create a potential direct conduit from surface water flow into the underlying groundwater system. This includes the immediately adjacent catchment area that could direct surface water flow into the underlying groundwater system.

Section 2. General Provisions.

(1) The general provisions related to the land application of biosolids shall be as established in 40 C.F.R. 503.5 through 40 C.F.R. 503.9.

(2)

(a) If a biosolid material is exempt from regulation pursuant to 40 C.F.R. 503.10 then the provisions of this administrative regulation shall not apply to the biosolid material, except as required in paragraph (b) of this subsection.

(b) The exemptions established in 40 C.F.R. 503.10 shall not exempt biosolids given away from the requirement to obtain a registered permit by rule established in 401 KAR 45:070.

Section 3. Land Application of Biosolids.

(1) Except for additional siting criteria standards established in Section 5 of this administrative regulation, the requirements related to the application of biosolids to the land shall be as established in 40 C.F.R. 503.10 through 40 C.F.R. 503.18.

(2) An operator certified in accordance with 401 KAR 45:090 shall be available ~~to~~ the land application site while biosolids are being applied to the land. All sludge land

application operations shall be accomplished under the direction of a certified landfarming operator.

(3) The reports required by 40 C.F.R. 503.18 shall also be sent to the Kentucky Division of Waste Management.

(4) Permittees shall submit to the cabinet "Annual Biosolids Land Application Report", form DEP 4506 by March 31st of each year on the land application activity that occurred in the previous year. Permittees shall submit the report for years with no land application activity.

(5) In addition to the notification requirements in 40 C.F.R. 503.12, the person who prepares the biosolids shall notify the persons applying the biosolids or owner or operator of a biosolids land application site that the biosolids may contain constituents from an industrial pretreatment program.

(6) The notifications provided pursuant to subsection (5) of this section shall be given to adjoining landowners by the persons applying the biosolids or owner or operator of a biosolids land application site.

(7) The additional notifications in subsections (5) and (6) of this section shall be in writing and occur prior to submitting a biosolids application to the cabinet.

Section 4. Pathogens and Vector Attraction Reduction. The requirements related to the reduction of pathogens and the vectors that could transport those pathogens shall be as established in 40 C.F.R. 503.30 through 40 C.F.R. 503.33.

Section 5. Siting Criteria for Land Application of Biosolids. The land application of biosolids shall comply with the siting criteria in subsections (1) through (4) of this section.

(1) Biosolids shall not be applied in the 100-year floodplain.

(2)

(a) Applicants shall use the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document when determining their aquifer type. [A minimum of four (4) feet of soil between the soil surface and the seasonal high-water table shall be maintained for land application in areas comprised of the Granular-unconsolidated and alluvial (Ohio River Alluvium) aquifers. The aquifer type determination shall be made by using the map in the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document. Buffers located in subsection (4) of this section shall be maintained for aquifer types in this paragraph.]

(b) A minimum of four (4) feet of soil between the soil surface and the seasonal high-water table shall be maintained for land application in areas comprised of the Granular-unconsolidated, karst, and alluvial (Ohio River Alluvium) aquifers. [Buffers located in the table in subsection (4) of this section shall be maintained for land application in areas comprised of karst, shallow fracture and deep granular-consolidated, and localized fracture and minor karst aquifer types. The aquifer type determination shall be made by using the map in the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document.]

(3) A land application unit shall not be located on land with a slope greater than fifteen (15) percent.

(4)

(a) The ten (10) meter buffer zone for surface waters listed in 40 C.F.R. 503.14(c) shall not be used. All biosolid land application facilities shall maintain the following buffer zones:

Required Buffer Zones Minimum Distance in Feet from the Boundary of
the Application Zone

Structure or Object	Application Buffer
Residences and Occupied Buildings	200
Water Well	200
Surface Water including Perennial Streams	100
Karst Feature	100
Intermittent Stream	50
Ephemeral Stream	30
Property Line and Public Roads	30

(b) The distances measured for buffer zones shall be as established in subparagraphs 1. through 7. of this paragraph:

1. Residences and occupied buildings shall be measured from the building or residence to the closest boundary of the area that land application will occur.
2. Water wells buffer shall be measured from the well to the closest boundary of the area that land application will occur.
3. Surface Water including perennial streams buffer shall be measured from the baseline stream bank to the closest boundary of the area that land application will occur.
4. Karst features buffer shall be measured from the feature to the closest boundary of the area that land application will occur.
5. Ephemeral streams buffer shall be measured from the ordinary high-water mark to the closest boundary of the area that land application will occur.
6. Property line buffers shall be measured from the property line to the closest boundary of the area that land application will occur.
7. Public roads buffer shall be measured from the edge of the road to the closest boundary of the area that land application will occur.

Section 6. Biosolids Land Application Permit Required.

- (1) All persons operating under a permit issued prior to June 29, 2023 for the land application of biosolids shall operate in accordance with that permit until a renewal permit is issued by the cabinet. At the time for renewal, the applicant shall apply for a new permit under this administrative regulation.
- (2) All persons seeking to engage in the land application of biosolids after June 29, 2023 shall first obtain a permit issued in accordance with this administrative regulation from the cabinet prior to land application.

Section 7. Biosolid Land Application Permit Review.

- (1) Persons applying for a biosolids land application permit shall submit "Application for a Biosolid Land Application Facility Permit" form DEP 4505. The completed permit application shall be submitted to the cabinet and include all of the attachments that are required by the application form. The attachments in the application shall include:
 - (a) Copies of property deeds or land application agreements;
 - (b) Lists of landfills receiving biosolids;
 - (c) Laboratory analysis of the biosolids;
 - (d) An enlargement of a current United States Geological Survey topographic map. The map shall have a minimum scale of one (1) inch equals 400 feet and the contour interval as published; and
 - (e) A certification statement.
- (2) A fee in the amount specified in 401 KAR 45:250 shall accompany the permit application, unless the applicant is a municipality.

(3) The cabinet shall not require additional information that is not in the permit application. Any additional information requests shall be in the form of a notice of deficiency or in response to a variance request from the applicant pursuant to 401 KAR 30:020.

(4) The cabinet shall not review a permit application until the application has been deemed complete. An application for a biosolids land application permit shall be considered complete unless the forms submitted are incomplete or otherwise missing information which is necessary for review.

(5) If the application is determined to be incomplete, the cabinet shall notify the applicant of all the deficiencies that render it incomplete and the applicant shall have the right to correct deficiencies identified by the cabinet. If the cabinet determines that the application is incomplete two or more times, that determination shall be considered final and the applicant shall have the right to file a petition pursuant to KRS 224.10-420.

(6)

(a) The cabinet shall review complete applications and issue a final determination within 120 calendar days of the official day the permit application was received.

(b) The official date of receipt for a permit application shall be:

1. The date the paper document is stamped received by the Division of Waste Management; or
2. The submission date created by electronic submittal portal.

(c) The cabinet's review timeframe shall be paused from the date:

1. The cabinet mails, hand delivers, or electronically sends a notice of deficiency until the date the Division of Waste Management receives the response to the deficiencies as established in paragraph (b) of this subsection; and
2. A permit application is subject to an adjudicatory process that prevents the cabinet from making a determination to the date the administrative or judicial hearings are final and the parties are in compliance with the final orders resulting from those hearings.

(d) The timetables established in this section may be extended at the initiative of either the cabinet or the applicant. The purpose and period of the extension shall be in writing and, if agreed to by both parties, shall be signed by both the cabinet and the applicant. The agreement to extend the timetable shall become part of the cabinet's permit file.

(7)

(a) Upon final approval of the permit application the cabinet shall post on its Web page, a public notice of permit issuance.

(b) Persons aggrieved by the final determination of the cabinet shall be afforded an opportunity to appeal the decision pursuant to KRS 224.10-420(2).

(c) Land application of biosolids under the approved permit shall not begin until thirty (30) days from the date the public notice established in paragraph (a) of this subsection.

Section 8. Modification of Permits. A biosolids land application permit may be modified during its term. The modification shall be in accordance with this section.

(1) If a permit is modified, only the conditions subject to modification shall be reopened.

(2) Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a completed "Application for a Biosolid Land Application Facility Permit" form DEP 4505, to the cabinet.

(3) Causes for modification. Causes for modification of permits shall include:

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

- (b) 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;
 - (c) The cabinet receiving notification of expected closure and finds that one (1) or more of the permit conditions are no longer warranted;
 - (d) The corrective action program established in the permit has not brought the site into compliance with the groundwater protection standards;
 - (e) To approve a corrective action plan required by 401 KAR 45:160;
 - (f) To include conditions applicable in new or amended statutes or administrative regulations;
 - (g) To include conditions applicable as a result of a hearing or enforcement action as established in 401 KAR Chapter 40;
 - (h) Ownership of the special waste site or facility changes;
 - (i) To expand the capacity of a special waste site or facility; or
 - (j) To add a new special waste source.
- (4) All terms of an existing permit shall remain in effect during the permit modification request.
- (5) The cabinet shall make a final determination to approve or disapprove a permit modification within ninety (90) calendar days.

Section 9. Permit Transfers. A permit shall not be transferable to any person without prior approval of the cabinet. For purposes of this section, a permit transfer application shall be 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.

- (1) A person requesting to transfer a permit for an existing special waste site or facility shall submit to the cabinet a completed Application to Transfer a Special Waste Permit form DEP 7094C, incorporated by reference in 401 KAR 45:040.
- (2) The cabinet shall make a final determination to approve or disapprove a formal permit transfer within sixty (60) calendar days.
- (3) 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. Failure to submit information noted by the cabinet related to the deficiencies within fifteen (15) calendar days of receipt of the notice of deficiency is grounds for disapproval of the transfer application.

Section 10. Suspension and Revocation of Biosolid Land Application Permits.

- (1) The cabinet may modify, suspend, or revoke a permit issued under this chapter for:
 - (a) Violation of any requirement of KRS Chapter 224, this chapter, or 401 KAR 30:031;
 - (b) Aiding, abetting, or allowing the violation of KRS Chapter 224, this chapter, or 401 KAR 30:031;
 - (c) A Violation of a condition or a variance of the special waste site or facility permit;
 - (d) 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;
 - (e) Failure to comply with an order issued by the cabinet; or
 - (f) The facility is transferred to another person without prior approval of the cabinet.
- (2) The cabinet shall follow the applicable procedures in this administrative regulation and 401 KAR Chapter 40 in revoking any permit under this section.
- (3) If a permit is revoked, the owner or operator may reapply.

(4) Upon revocation of a permit, an owner or operator of a special waste site or facility may file a request for a hearing. A hearing request shall be pursuant to KRS 224.10-420 upon revocation of the permit.

Section 11. Permit Renewals.

- (1) Applications for renewal shall be submitted to the cabinet ninety (90) calendar days prior to the expiration of the permit. Persons applying for a renewal shall submit a completed Application for a Biosolid Land Application Facility Permit form DEP 4505, to the cabinet.
- (2) Applications for renewal shall be subject to the review requirements in this administrative regulation.
- (3) The cabinet shall consider whether all conditions of prior permit conditions have been met.

Section 12. Closure of a Biosolid Landfarming Site or Facility.

- (1) A landfarming site or facility shall send a letter of closure to the cabinet if:
 - (a) An owner or operator determines to permanently cease accepting biosolid at a special waste landfarming site or facility and does not exceed limits pursuant to Section 3 of this administrative regulation; or
 - (b) The landfarming site or facility has reached the limits in 40 C.F.R. 503.13 and is required to cease accepting biosolid at that location.
- (2) The notification shall be a letter to the cabinet indicating the special waste landfarming site or facility is in compliance with regulatory requirements and is no longer accepting biosolid at the location.

Section 13. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for a Biosolid Land Application Facility Permit", Form DEP 4505, (~~December/July~~ 2023);
 - (b) "Annual Biosolids Land Application Report", Form DEP 4506, (~~December/July~~ 2023); and
 - (c) "Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers", (July 2023).
- (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: January 10, 2024

FILED WITH LRC: January 10, 2024 at 3:30 p.m.

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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 procedures and requirements for the land application of biosolids in conformance with 40 C.F.R. Part 503.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to comply with the requirements of SB 213 (KRS 224.50-765).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This new administrative regulation conforms to the authorizing statutes by referencing 40 C.F.R. Part 503 as the means to land apply biosolids. The statute also requires the cabinet to establish siting criteria and a permitting program. This administrative regulation establishes a permitting program and siting criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This new administrative regulation assists in the effective administration of the statutes by following the requirements of the statute to set up a land application program that is in conformance with 40 C.F.R. Part 503 with a permitting program and siting criteria.

(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 amendments made were in response to comment received during the public comment period. The amendments clarified that exemption of materials in 40 C.F.R. Part 503 are exempt from the provisions of the administrative regulation except for the registered permit-by-rule provision. Also, language was inserted to clarify that the notification provisions in the administrative regulation are to occur prior to land application. The section on buffer zones was amended to make the requirements more understandable. The administrative regulation was amended to include a public notice to issued by the cabinet upon final approval of a permit application. There were also amendments to the forms incorporated by reference that necessitated a new edition date.

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

The amendments were necessary to respond to comments during the public comment period.

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

The amendments conform to the authorizing statutes by maintaining compliance with KRS 224.50-765 and the requirement to be in conformance with 40 C.F.R. Part 503.

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

The amendments assist in the administration of the statutes by providing clarifications and correcting exemption concerns in the administrative regulation.

(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. There are 15 registered permit-by-rule for wastewater treatment plants in the Commonwealth.

(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:

Each entity mentioned in question (3) will need to follow the referenced portions of 40 C.F.R. Part 503 as well as obtain a permit from the cabinet prior to applying biosolids to the land. The applicant will also need to comply with the siting criteria that is established in the administrative regulation. In order to comply with the amendments to the administrative regulation the entities will need to complete land owner notification prior to applying for a permit, comply with the registered permit by rule process for sludge giveaway, and use the revised forms that are incorporated by reference with a new edition date of December 2023.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There will not be an additional cost to the regulated entities in complying with this administrative regulation. A permit was required prior to this proposed administrative regulation that had a permit application listed on 401 KAR 45:250. This administrative regulation requires the same permitting fee in 401 KAR 45:250 as did the older permitting program.

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

The regulated entities will have a streamlined process for the land application of biosolids that is in conformance with the corresponding federal regulation.

(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 new administrative regulation.

(b) On a continuing basis:

There will not be a cost to the agency to implement this new administrative regulation 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 new administrative regulation. The agency currently regulates wastewater treatment plant

sludges and will simply use the current personnel and funding to implement the new process.

(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. 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 have their application 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, KRS 224.50-765, 40 C.F.R. Part 503

(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 fee in 401 KAR 45:250 will apply to the applications in this administrative regulation. There will not be any additional applications they are just shifted to the new process under this administrative regulation.

(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 new administrative regulation will not generate any additional revenue for the agency.

(c) How much will it cost to administer this program for the first year?

There will be no additional costs associated with this new biosolids process. The agency will use existing staff and funding to accomplish the goals of the statute.

(d) How much will it cost to administer this program for subsequent years?

Currently the agency does not believe there will be an increase in costs to run the program in the future.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):This new administrative regulation will not generate any new revenues due to the biosolids being mainly regulated by 40 C.F.R. Part 503. The cabinet will charge the same for this new permitting process as it did for the existing permitting process for the regulation of these materials.

Expenditures (+/-):The cabinet will use existing staff and the same funding source to process and regulate biosolids under this new material.

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?

Regulated entities will save \$500 per application. The current process is to charge \$500 for a notice of intent and then an additional \$5,000 for a formal application. This new process does not have a notice of intent and therefore the applicant will not be required to pay the \$500.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

The savings in subsequent years will depend on the number of applications received by the agency. The applicant will still save \$500 per application due to the notice of intent not being required.

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

There will not be a cost increase to regulated entities related to this proposal. This material is currently permitted and regulated by the cabinet and a fee of \$5,500 (for new formal permits) will be reduced to \$5,000 with this new proposal.

(d) How much will it cost the regulated entities for subsequent years?

The cost in subsequent years will depend on the number of applications submitted by regulated entities.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):The cost savings will be \$500 per application. However, a definite cost savings cannot be provided as it will depend on the number of applications received.

Expenditures (+/-):The expenditures will be relatively the same except for the cost savings mentioned above.

Other Explanation:

(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).

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

40 C.F.R. Part 503.

(2) State compliance standards.

KRS 224.50.760 and KRS 224.50-765.

(3) Minimum or uniform standards contained in the federal mandate.

The federal citation sets standards for the management of sewage sludge. 40 C.F.R. Part 503 covers landfilling, composting, incinerating, and land applying this material. The cabinet is required by KRS 224.50-765 to promulgate administrative regulations that are in conformance with Part 503 related to the land application of those sludges (biosolids as defined in KRS 224.765(1)).

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation is not more stringent than the corresponding federal requirements. However, as required by KRS 224.50-765(3), the administrative regulation does include additional siting criteria and a formal permitting program.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

KRS 224.50-765 (SB 213 from the 2023 Legislative Session) required the cabinet to establish these additional items.