

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amended at ARRS Committee)

401 KAR 45:025. Permit review and determination timetables.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.10-220, 224.40-305, 224.50-760(1)(d).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) ~~authorizes Chapter 224 requires~~ the cabinet to promulgate~~[adopt]~~ administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow~~[permit]~~ the use of a waste site or facility to obtain a permit. ~~[This chapter establishes standards applicable to all special waste sites or facilities.]~~ KRS 224.10-220 requires the cabinet to promulgate administrative regulations to establish timetables for the review and determination of permit applications. This administrative regulation establishes~~[sets forth]~~ timetables for the review and determination of special waste permit applications and registrations but does not establish permitting timetables for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility pursuant to 401 KAR 45:105.

Section 1. Submittal of Permit Applications and Registrations.

- (1) The official date of receipt for documents associated with a special permit application or registration shall be the date the document is stamped received by the Division of Waste Management.
- (2) The applicant or registrant shall submit all information required in the applicable permit application~~[have the burden of establishing that the application or registration is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30 and 45].~~

Section 2. Administrative Completeness Determination.

- (1)
 - (a) A ~~[Not]~~ application or registration shall not be reviewed until the cabinet has determined that the application or registration is administratively complete. A determination by the cabinet that an application or registration is administratively complete means that the application or registration contains the major elements required by the applicable forms~~[KRS Chapter 224 and 401 KAR Chapters 30 and 45 that are necessary to allow meaningful review by the cabinet].~~
 - (b) An application or registration shall not be deemed administratively complete if one (1) or more major components are found to be absent from the application or registration, which, by virtue of their absence, would require that the permit be denied. A determination that an application or registration is administratively complete shall not mean ~~[that the application is complete in every detail, nor shall it mean]~~ that any aspect of the application is technically sufficient~~[or approvable]~~.
- (2) Within forty-five (45) calendar days of receipt of the application or registration, the cabinet shall provide written notice to the applicant or registrant as to the administrative completeness of the application or registration.
 - (a) ~~[If the application or registration is determined to be administratively complete, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.]~~

~~[(b)]~~ If the application or registration is determined to be incomplete, the cabinet shall notify the applicant or registrant of all the deficiencies that render it administratively incomplete. The applicant or registrant shall have thirty (30) calendar days from mailing or hand delivery of the cabinet's notice of deficiency to correct the deficiencies and render the application or registration administratively complete, unless the cabinet and applicant approve/approves a longer time period in writing~~[is approved by the cabinet]~~.

~~[(c)]~~ The cabinet shall have thirty (30) calendar days from receipt of the applicant's or registrant's submittal of a complete response to a notice of deficiency to determine if the application or registration is administratively complete.

1. If the applicant or registrant submits/renders the application or registration administratively complete within the established/specified timetable, the cabinet shall notify the applicant or registrant in writing that the review and determination period established/provided by Section 3 of this administrative regulation has commenced.

2.

a. If the cabinet determines that the application or registration is not administratively complete at the end of the established timetable/period specified in this subsection, the cabinet shall make a written determination to deny the permit. The reason the application or registration~~[with the stated reason that the application or registration, in its current form,]~~ fails to comply with the requirement to submit a complete application shall be submitted/provided to the applicant or registrant.

b. This action shall not preclude the submission of a new application or registration for the same site or facility in the future. Submission of a new application or registration shall be considered a new submittal~~[as if not previously submitted]~~ for the purpose of fees and review timetables.

Section 3. Timetables for Permit or Registration Review and Determination.

(1) All administratively complete permit applications and registrations shall be reviewed and a determination made to issue, acknowledge, or deny the permit within the ~~following~~ timetables established in paragraphs (a) through (h) of this subsection.~~f~~

(a) Special Waste Formal Permit: 180 calendar days.

(b) Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit: ninety (90) calendar days.

(c) Registered Permit-by-rule: ninety (90) calendar days.

(d) Research, Development, and Demonstration Permit: 180 calendar days.

(e) Special Waste Permit modifications: 180 calendar days.

(f) Permit transfer: 180 calendar days.

(g) Permit renewal: ninety (90) calendar days.

(h) Permit-by-rule ~~Permit-by-rule~~ applicability determinations: ~~[Any other permit action not specifically set forth in this section:]~~ ninety (90) calendar days.

(2) The timetables established/specified in subsection (1) ~~[of this section]~~ may be extended at the initiative of either the cabinet or the applicant or registrant. 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 or registrant. The agreement to extend the timetable shall become part of the cabinet's permit or registration file.

Section 4. Timetable Exclusions. The time periods established/specified in Section 3 of this administrative regulation shall not run ~~during the following intervals~~:

(1) From the date the cabinet mails or hand delivers a notice of deficiency until the date the Division of Waste Management stamps as received a completed~~[complete]~~ response to the deficiencies. If a notice of deficiency is sent to an applicant or registrant, the

applicant or registrant shall have 180 calendar days to respond to the notice of deficiency. Failure to respond to a notice of deficiency within 180 calendar days shall be grounds for denial of the permit;

(2) Sixty (60) days from the date of any public hearing on the application or registration to allow the cabinet time to consider public comments; and

(3) From the date a permit application or registration is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings.

Section 5. Timetable Extensions.

(1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant.

(2) If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate actions and final permit actions shall be accomplished.

(3) The established time frame for final action shall not exceed the last date for action that is provided for under applicable statutes and ***401 KAR Chapter 45***~~administrative regulations~~, based on all applications being considered and their filing dates.

~~[Section 6.] [Applicability Dates.]~~

~~[(1)] [The provisions of this administrative regulation shall apply to applications and registrations received after April 28, 1993.]~~

~~[(2)]~~

~~[(a)] [The provisions of this administrative regulation shall not apply to applications and registration pending on April 28, 1993 unless, within ninety (90) days of April 28, 1993, the applicant or registrant submits written notification to the cabinet that the applicant or registrant desires to have the application or registration subject to this administrative regulation.]~~

~~[(b)] [If the applicant or registrant fails to notify the cabinet in accordance with paragraph (a) of this subsection, the application or registration shall not be subject to the provisions of this administrative regulation.]~~

~~[(c)] [Applications and registrations for which the cabinet has mailed or hand delivered a notice of deficiency prior to the cabinet's receipt of the letter provided for in paragraph (a) of this subsection shall not be subject to the provisions of Section 2 of this administrative regulation. All other provisions of this administrative regulation shall apply beginning on the date the cabinet receives the notice provided for in paragraph (a) of this subsection.]~~

(19 Ky.R. 1950; 2253; 2404; eff. 4-28-1993; Cert eff. 9-5-2018; TAm eff. 10-15-2018; 50 Ky.R. 919, 20258; eff. 6-6-2024.)

FILED WITH LRC: March 11, 2024

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.