

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

401 KAR 45:030. Obtaining a special waste site or facility permit.

RELATES TO: KRS 146.200 - 146.990, 224.1, 224.10, 224.40, 224.50, 224.70, 224.99, Chapter 350, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-210, 224.40-305, 224.40-330, 224.50-760(1)(d), 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management, processing, and disposal of special 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 procedures for obtaining a permit for a special waste site or facility. This administrative regulation does not establish permitting or permit application standards for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility because those requirements are contained in 401 KAR 45:105.

Section 1. The Objective and Requirements of the Application for a Special Waste Formal Permit.

- (1) All applicants for a special waste formal permit shall submit an application, on the designated application form, that contains all of the information required by this administrative regulation. Engineering drawings, specifications, and studies shall be certified by a professional engineer registered in Kentucky.
- (2) The contents of the application shall be accurate and complete before the cabinet makes a preliminary determination as established in 401 KAR 45:050, Section 4, to issue a special waste formal permit.

Section 2. Scope of the Permit Requirements.

- (1) Except as otherwise established in this section, any person managing special waste shall maintain a special waste site or facility permit as established in 401 KAR 45:020, Section 2.
- (2) Specific exclusions.
 - (a) The disposal of mining overburden, coal mining wastes, refuse, and coal mining by-products returned to the mine site of generation, including any nonhazardous waste generated directly as a result of the mining operation, shall not require a special waste site or facility permit. Owners or operators disposing of the materials in this subsection shall obtain and be regulated by the appropriate permit issued pursuant to KRS Chapter 350.
 - (b) Persons managing special waste during emergency situations shall be excluded, including:
 1. A spill of a special waste;
 2. An imminent and substantial threat of a spill of special waste; or
 3. A spill of a material that, if spilled, becomes a special waste.
- (3) Specific inclusions. Any person who initiates or continues special waste containment or disposal activities after emergency actions are complete shall comply with all applicable requirements of this chapter for those activities.
- (4)
 - (a) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit

to all of the units at the facility.

(b) A permit-by-rule for any unit for which a permit has not been issued or denied shall not be affected by the issuance or denial of a permit to any other unit at the facility.

Section 3. Considerations of State and Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable state and federal laws. These laws include:

- (1) 16 USC 661 et seq. (the Fish and Wildlife Coordination Act of 1958, as amended);
- (2) 16 USC 1273 et seq. (the National Wild and Scenic Rivers System);
- (3) 16 USC 1531 et seq. (the Endangered Species Act of 1983, as amended) and 50 CFR Part 402;
- (4) KRS 146.200 through 146.360 and 400 KAR Chapter 4 (the Wild Rivers system); and
- (5) KRS 146.410 through 146.990 and 400 Chapters 2 and 3.

Section 4. Limitations of a Permit.

- (1) A permit may be modified or revoked during its term for cause as established in 401 KAR 45:040 and in 401 KAR Chapter 40.
- (2) The issuance of a permit shall not convey any property rights or any exclusive privilege.
- (3) The issuance of a permit shall not authorize any injury to persons or property or invasion of other private property rights, or any infringement of state or local laws or administrative regulations.

Section 5. Prohibition of Use of Unpermitted Facilities. A person shall not deliver, or cause to be delivered, special waste to a site or facility unless the owner or operator has:

- (1) Qualified for a permit-by-rule in accordance with 401 KAR 45:060;
- (2) Obtained for a registered permit-by-rule in accordance with 401 KAR 45:070 or 401 KAR 45:100, Section 8;
- (3) Obtained a solid waste facility permit providing for the disposal of special waste in accordance with 401 KAR Chapters 47 and 48; or
- (4) Obtained a special waste formal permit in accordance with 401 KAR Chapter 45.

Section 6. Permit Required.

- (1) A person shall not engage in the management, processing, or disposal of special waste at a waste site or facility without first obtaining a permit from the cabinet as established in 401 KAR Chapter 45.
- (2) A person shall not engage in the management, processing, or disposal of special waste and solid waste without first obtaining a permit from the cabinet as established in 401 KAR Chapters 47 and 48.
- (3) A person shall not engage in the management, processing, or disposal of special waste and hazardous waste without first obtaining a permit from the cabinet as established in 401 KAR Chapter 39.
- (4) An owner or operator shall maintain a valid permit during the active life of the special waste site or facility, including the closure and postclosure periods required under 401 KAR 45:100 and 45:110.

Section 7. New Special Waste Sites or Facilities.

- (1) A person shall not begin physical construction of a new special waste site or facility without having received a special waste permit.
- (2) An applicant for a special waste formal permit shall submit to the cabinet an application that contains the information established in Section 8 of this administrative regulation.
- (3) The site shall be designed in accordance with the applicable requirements of 401 KAR Chapter 45.

(4) If the cabinet determines during the review of the application that the proposed site cannot meet the requirements of this chapter, the cabinet shall deny the permit.

Section 8. Application for a Special Waste Formal Permit.

(1) Any person who is required to have a special waste site or facility permit under 401 KAR Chapter 45 shall sign and submit a complete application to the cabinet.

(a) Persons applying for a special waste landfill permit shall use form Application for a Special Waste Landfill Permit, form DEP 7094A. The cabinet may require that additional information be included in the application to ensure that a draft permit conforms with the requirements of 401 KAR Chapter 45.

(b) Persons applying for a special waste landfarming facility permit for the land application of special waste other than biosolids shall use "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" form DEP 7021A and "Application for a Special Waste Landfarming Facility Permit" form DEP 7021B.

(c) Persons applying for a special waste composting facility permit shall use Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit, form DEP 7021A and Application for a Special Waste Composting Facility Permit, form DEP 7094D.

(2) Alternative application information may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer in accordance with 401 KAR 30:020, Section 2, that the alternative information results in information equal to or better than that in this administrative regulation to determine that the site and design comply with 401 KAR 30:031 and 401 KAR Chapter 45.

(3) Persons applying for a special waste formal permit shall submit to the cabinet, as part of the application, Past Performance Information, form DEP 7094J. The past performance information shall be collected in accordance with the requirements of KRS 224.40-330(1) and (3).

(4) The cabinet shall not begin the processing of a formal permit application until the applicant has fully complied with the application requirements for a permit pursuant to this administrative regulation, 401 KAR 45:025, and:

(a) 401 KAR 45:100; or

(b) 401 KAR 45:110 and 45:160.

(5) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing waste site or facility, the cabinet shall state in the notice of deficiency, a date for submitting the necessary information in accordance with the timetables established in 401 KAR 45:025. The cabinet shall notify the applicant in writing if the application is deemed complete after receiving any required additional information. The notification of completeness shall also contain any public notice required under 401 KAR 45:050, Section 4.

(6) If an applicant fails or refuses to correct deficiencies in the application or submit additional information, the permit shall be denied and, if applicable, enforcement actions shall be taken.

(7) If a site investigation or visit is necessary for any reason in conjunction with the processing of an application, the applicant or an authorized representative of the applicant shall accompany the cabinet representative on a site investigation or visit if requested by the cabinet.

(8) The cabinet may require additional information necessary in order to make a final determination to issue a permit or deny the permit application as established in paragraph (1)(a) of this section.

Section 9. Formal Permit Issuance.

(1) The cabinet shall make a preliminary determination to issue or deny the permit application after review of the complete application. In making this preliminary determination, the cabinet shall consider the requirements established in 401 KAR Chapter 45 and KRS 224.50-760.

(2)

(a) If the cabinet makes a preliminary decision to deny the permit application, it shall issue a notice of intent to deny, and the permit applicant shall comply with the public information process as established in 401 KAR 45:050.

(b) If the cabinet's final decision reverses the preliminary decision to deny the permit application, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

(3) If the cabinet makes a preliminary determination to issue the permit, a draft construction permit shall be prepared containing:

(a) The proposed design and specifications; and

(b) Any conditions in accordance with 401 KAR 45:140, Section 2.

(4) The draft construction permit shall be based on the administrative record established in 401 KAR 45:050, Section 3.

(5) All draft construction permits prepared by the cabinet under this section, including those applications for horizontal expansions under 401 KAR 45:040, Section 1(2), shall comply with the public information process as established in 401 KAR 45:050.

(6) After the close of the public comment period, the cabinet shall issue a final permit decision, based on the submitted application, to issue or deny the construction permit.

(7) A final permit decision shall become effective on the date of issuance of the construction permit by the cabinet.

(8) The cabinet shall document the disposition of significant comments received, and, within thirty (30) days of a final permit decision, make this documentation available to the public by supplying it to the repository established in the county in which the facility is proposed.

(9) The cabinet shall issue a construction permit if it finds that the applicant for the permit has met all the requirements for application, the requirements of 401 KAR Chapter 45, and KRS 224.50-760.

(10) The applicant shall maintain a construction permit in full force and effect until the construction and operation permit is issued by the cabinet.

(11) A construction and operation permit shall be issued by the cabinet if:

(a) The applicant has notified the cabinet, in writing, that the liner system, if required, has been constructed;

(b) A representative of the cabinet has inspected the site and verified in writing to the applicant, within thirty (30) days of the inspection, that the site has been developed in accordance with plans approved by the cabinet;

(c) The required financial responsibility in 401 KAR 45:080 for closure has been established using any of the mechanisms required by 401 KAR 45:080 in an amount determined by an approved closure plan and cost estimate; and

(d) The applicant has submitted a certification by an engineer registered in Kentucky that the liner system, if required, and other features have been constructed in accordance with the approved plans and specifications.

(12) The cabinet may issue a permit that includes:

(a) Types of wastes accepted or disposed;

(b) Special operating conditions;

(c) Schedules for compliance for corrective action; and

(d) The issuance of other applicable permits of the cabinet.

Section 10. Signatures to Permit Applications and Reports.

(1) Applications. All permit applications and modifications shall be signed as established in paragraphs (a) through (d) of this section.

(a) A responsible corporate officer shall sign permit applications and modification on behalf of a corporation. If the signature is by a person that meets the requirements of 401 KAR 45:010, Section 1(17)(c), then a copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification.

(b) A general partner or the proprietor shall sign for a partnership or sole proprietorship.

(c) A general partner shall sign for a limited partnership.

(d) A principal executive officer shall sign for a municipality or state, federal, or other public agency. A principal executive officer shall include:

1. The ranking elected official;
2. The chief executive officer of the agency;
3. A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or
4. A person authorized, in writing, to sign on behalf of a person established in subparagraphs 1, 2, or 3 of this paragraph. The written authorization shall state either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a position of equivalent responsibility. A duly authorized representative shall be either a named individual or any individual occupying a named position.

(2) Reports.

(a) All reports required by permits, and other information requested by the cabinet, shall be signed by a person established in subsection (1) of this section, or by a duly authorized representative of that person.

(b) A person shall be a duly authorized representative only if:

1. The authorization is made in writing by a person established in subsection (1) of this section;
2. The authorization states either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative shall be either a named individual or any individual occupying a named position; and
3. The written authorization is submitted to the cabinet prior to or together with any reports.

(3) Changes to authorization. If an authorization under subsection (2)(b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, then a new authorization satisfying the requirements of subsection (2)(b) of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."

Section 11. Past Performance Considered in Review. Past performance of the owner, operator, and "key personnel", as defined by KRS 224.1-010(43), of the special waste site or facility shall be considered in the review for issuance or denial of the permit application and in the determination of any requirement for specialized conditions in accordance with KRS 224.40-330(1) and (3).

Section 12. Term and Expiration of Permits.

(1)

(a) Permits-by-rule and registered permits-by-rule shall be perpetual unless modified or revoked by the cabinet.

(b) Permits-by-rule and registered permits-by-rule may be automatically revoked by the cabinet if the site or facility fails to meet the requirements of 401 KAR 30:031 or 401 KAR Chapter 45.

(2) Special waste site or facility construction permits shall be effective for a fixed term of five (5) years.

(3) Special waste landfill construction and operation permits shall be issued for the anticipated life of the facility.

(4) Special waste landfarming facility construction and operation permits shall be effective for a fixed term not to exceed ten (10) years. The cabinet shall review the conditions of the permit after five (5) years and modify the permit as necessary to maintain compliance with 401 KAR Chapter 45.

(5) For registered permits-by-rule or permit-by-rule issued under this administrative regulation for a term greater than five (5) years, the cabinet may reevaluate the terms and conditions of those permits any time prior to their expiration date. Issued permits shall be reevaluated in accordance with the requirements of 401 KAR Chapter 45, including reevaluation of the bond. After reevaluation of the permit, the cabinet may require modifications of the permit pursuant to 401 KAR 45:040, Section 1.

(6) Modification of term of permit. Except as established in Section 14 of this administrative regulation, the term of a permit shall not be extended by modification beyond the maximum duration established in subsections (2) through (4) of this section.

(7) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsections (2) through (4) of this section.

Section 13. Renewal of Formal Permits.

(1) Any application to renew a construction or construction and operation permit shall be submitted to the cabinet at least 180 days before the expiration date of the current permit. Persons applying for the renewal of a permit shall use Application for Renewal of a Formal Permit, form DEP 7095 (November 2016).

(2) Applications to renew a construction or construction and operation permit shall be reviewed in accordance with the requirements of 401 KAR Chapter 45.

(3) The cabinet, in issuing a renewal, shall consider if all conditions of prior permit conditions and agreed orders have been met. The cabinet may request updated information and impose additional or modified permit conditions to ensure compliance with 401 KAR Chapter 45.

Section 14. Continuation of Expiring Permits.

(1) The conditions of an expired permit shall continue in force to ensure the safe disposal of waste until the effective date of a new permit if:

(a) The permittee has submitted an application for renewal of a permit pursuant to Section 13 of this administrative regulation. These applications shall be complete and the applicant shall have paid the appropriate fees due under 401 KAR 45:250;

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit; and

(c) The cabinet has not given written notice of permit expiration due to enforcement actions or other reasons pursuant to the requirements of 401 KAR Chapter 45.

(2) Effect. Permits continued under this section shall remain in full force and effect until the renewal application has been issued.

Section 15. Termination of Permits. Special waste site or facility permits shall automatically terminate on the expiration date unless the cabinet has reissued the permit or issued a continuation in accordance with Section 14 of this administrative regulation.

Section 16. Confidentiality of Information.

(1) Claims of confidentiality. Any information submitted to the cabinet pursuant to this chapter may be claimed as confidential by the applicant. Any claim of confidentiality shall be asserted at the time of submission in accordance with KRS 224.10-210 and 400 KAR 1:060. If a claim is not made in accordance with 400 KAR 1:060, the cabinet may make the information available to the public without further notice.

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential shall be denied.

Section 17. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application For a Special Waste Landfill Permit", form DEP 7094A, February 2023;

(b) "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit", form DEP 7021A, February 2023;

(c) "Application for a Special Waste Landfarming Facility Permit", form DEP 7021B, February 2023;

(d) "Application for a Special Waste Composting Facility Permit", form DEP 7094D, August 2023;

(e) "Past Performance Information", form DEP 7094J, November 2016; and

(f) "Application for Renewal of a Formal Permit", form DEP 7095, November 2016.

(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.

(18 Ky.R. 3080; 3433; eff. 6-24-1992; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 9-5-2018; TAm eff. 10-15-2018; TAm eff. 5-7-2019; 50 Ky.R. 921, 2026; eff. 6-6-32024

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