

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

401 KAR 47:110. Registered permit-by-rule.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-105, 224.40-100, 224.40-110, 224.40-120, 224.40-305, 224.40-310, 224.40-315, 224.40-320, 224.40-325, 224.40-330, 224.40-340, 224.40-605, 224.40-650, 224.43-010, 224.43-020, 224.43-070, 224.43-310, 224.43-315, 224.43-330, 224.43-340, 224.43-345, 224.43-350, 224.70-100, 224.70-110, 224.99-010, 224.99-020

STATUTORY AUTHORITY: KRS 224.10-100(19)(c) ~~and~~ (24), 224.40-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19)(c) ~~and~~ (24), and 224.40-305 authorize the cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes requirements for registered permits-by-rule and the standards for the certification program.

Section 1. Issuance of Registered Permit-by-rule.

(1) Before accepting waste, the owner or operator of a solid waste site or facility ~~established~~~~specified~~ in 401 KAR 47:080, Section 2(6) shall notify the cabinet by submitting a registration. ~~For solid waste sites or facilities other than medical waste transfer stations,~~ The registration shall become effective thirty (30) calendar~~five (5) business~~ days after the cabinet receives it unless the cabinet approves or denies the registration within that time. A registration shall be denied if the registration is incomplete or the registration fails to demonstrate compliance with the requirements established in 401 KAR Chapters 47 and 48.~~For medical waste transfer stations, the registration shall become effective thirty (30) days after the cabinet receives it unless the cabinet denies the registration within that time.~~ The cabinet shall hold a public hearing in accordance with 401 KAR 47:140, Section 10, prior to accepting or denying the registration upon the request of any individual. The owner or operator of a registered permit-by-rule facility shall comply with the environmental performance standards in 401 KAR 30:031 in order for the registered permit-by-rule to remain effective.

(2) The registration for a registered permit-by-rule facility shall be submitted to the cabinet on one (1) of the following registration forms:

- (a) DEP 7059; Solid Waste Transfer Station, Convenience Center, and Recycling Center;
- (b) DEP 7059-A; Solid Waste Composting Facility;
- (c) DEP 7059-E; Class I Solid Waste Landfarm;
- (d) DEP 7059-H; Less-than-one-acre Construction/Demolition Debris (CDD) Landfill;
- or
- (e) DEP 7059-J; Solid Waste Incinerator.

(3) ~~A registration that is determined to be administratively incomplete may be denied within five (5) business days after receiving the registration. Thereafter,~~ If the cabinet determines that a registration that is not approved or denied pursuant to subsection 1 of this section fails to include all of the information required, the cabinet shall notify the operator that the registration is deficient. The owner or operator shall submit the requested information within thirty (30) calendar days of the date of the notice of

deficiency. The cabinet shall review the registration~~[cabinet's review shall be conducted]~~ in accordance with the requirements of 401 KAR 47:025.

(4) Prior to submission of the registration, the owner or operator shall prepare a groundwater protection plan in accordance with 401 KAR 5:037.

(5) The owner or operator shall publish a notice two (2) weeks prior to submission of the registration in a daily or weekly newspaper of general circulation where the proposed facility is located. Public notices shall be of a size to include not less than two (2) column widths for advertising and shall be in a display format. The public notice shall contain~~[the following]~~:

- (a) Name and address of the owner or operator;
- (b) The type of facility;
- (c) A brief description of the business to be conducted; and
- (d) Name and address of the facility.

Section 2. Operating Requirements for Registered Permit-by-rule Facilities.

(1) The owner or operator of a facility operating under a registered permit-by-rule, except as established~~[provided]~~ in Section 3 of this administrative regulation, shall not:

- (a) Store, treat, or dispose of solid waste not specified in the registration; or
- (b) Exceed the design capacities specified in the registration.

(2) The owner or operator of a facility operating under a registered permit-by-rule shall comply with the environmental performance standards in 401 KAR 30:031.

(3) The owner or operator of a registered permit-by-rule facility shall keep records as established~~[provided]~~ in this section.

(a) The owner or operator of a less-than-one (1) acre or expanded less-than-two (2) acre construction or ~~[a]~~ demolition debris landfill or solid waste incinerator shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7046, Annual Waste Quantity Report, to the cabinet annually and upon closure of the facility.

(b) The owner or operator of a composting facility shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7108, Annual Report for a Solid Waste Composting Facility, to the cabinet annually and upon closure of the facility.

(c) The owner or operator of a landfarming facility shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7064, Annual Report for a Class I Solid Waste Landfarm, to the cabinet annually and upon closure of the facility.

(d) The owner or operator of a registered permit-by-rule convenience center, transfer station or commercial recycling center shall document records on DEP 7046, Annual Waste Quantity Report. Records shall be kept on site and available for inspection for at least three (3) years.

(4) The owner or operator of a solid waste incinerator shall conduct the Toxicity Characteristic Leaching Procedure (TCLP) test established~~[described]~~ in 401 KAR 31:030, Section 5, before the initial disposal of any ash and if~~[whenever]~~ the characteristics of the waste accepted by the incinerator significantly change. The owner or operator shall keep a record of the current TCLP laboratory analysis report required by this section available for inspection by the cabinet for at least three (3) years. The owner or operator of a solid waste incinerator shall report the volume of ash generated to the cabinet annually and upon closure of the facility. The report shall be submitted no later than January 31 for the preceding calendar year.

Section 3. Changes to a Registered Permit-by-rule.

(1) A revised registration shall be submitted as established in paragraphs (a) through (c) of this subsection~~[follows]~~:

(a) Solid wastes not previously identified in the registration may be stored, treated, or disposed at a facility operating under a registered permit-by-rule if the owner or operator submits a revised registration to the cabinet prior to that change.

(b) The owner or operator of a facility operating under a registered permit-by-rule shall submit a revised registration to the cabinet prior to increasing the design capacity of processes used at a facility.

(c) The owner or operator of a facility operating under a registered permit-by-rule shall submit a revised registration to the cabinet prior to changing the processes for the storage, treatment, or disposal of solid waste, using additional processes, or changing the owner or operator.

(2) The revised registration shall become effective thirty (30) calendar~~[five (5) business]~~ days after the cabinet receives it, unless the cabinet approves or denies the registration within that time. The cabinet shall review the registration in accordance with Section 1 of this administrative regulation.

Section 4. Revocation of a Registered Permit by Rule. The cabinet may revoke a registered permit-by-rule for the following causes:

(1) Noncompliance by the owner or operator with a condition of the registration;

(2) The owner, operator, or key personnel fail~~[owners, operator's, or key personnel's failure during the registration process]~~ to disclose all information required by the cabinet during the registration process;

(3) The owner, operator, or key personnel misrepresent~~[owner's, operator's, or key personnel's misrepresentation of]~~ any information required by the cabinet at any time;

(4) The cabinet determines~~[cabinet's determination]~~ that the operation endangers human health, safety, or the environment;

(5) The owner, operator, or key personnel violate~~[owner's, operator's or key personnel's violation of]~~ any requirement of KRS Chapter 224 or 401 KAR Chapters 30 through 49~~[the administrative regulations promulgated pursuant thereto]~~; or

(6) A change to the registered-permit-by-rule that was made without complying with Section 3 of this administrative regulation.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) DEP 7059; "Solid Waste Transfer Station, Convenience Center, and Recycling Center", November 2016;

(b) DEP 7059-A; "Solid Waste Composting Facility", November 2016;

(c) DEP 7059-E; "Class I Solid Waste Landfarm", November 2016;

(d) DEP 7059-H; "Less-than-one-acre Construction/Demolition Debris", July 2024~~[November 2016]~~;

(e) DEP 7059-J; "Solid Waste Incinerator", November 2016;

(f) DEP 7064; "Annual Report for a Class I Solid Waste Landfarm", November 2016;

(g) DEP 7108; "Annual Report for a Solid Waste Composting Facility", November 2016; and

(h) DEP 7046; "Annual Waste Quantity Report", November 2016.

(2) This material may be inspected, copied, or obtained at the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or at any of the division's field offices Monday through Friday, 8 a.m. to 4:30 p.m.; 2642 Russellville~~[Russelville]~~ Road, Bowling Green, Kentucky 42101; 2751 Campbellsville Road, Columbia, Kentucky 42728; 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042; 1332 State Highway 15, Hazard, Kentucky 41701; 875 South Main Street, London, Kentucky 40741; 9116 Leesgate Road, Louisville, Kentucky 40222-4925; Madisonville State Office Building, 625 Hospital

Drive, Madisonville, Kentucky 42431; 525 Hecks Plaza Drive, Morehead, Kentucky 40351; 130 Eagle Nest Drive, Paducah, Kentucky 42003.

(2) This material is also available at the division Web site at eec.ky.gov/environmental-protection/waste.

*JOHN LYONS, Deputy Secretary
For REBECCA GOODMAN, Secretary*

APPROVED BY AGENCY: September 13, 2024

FILED WITH LRC: September 13, 2024 at 11:45 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2024, 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 47:110” 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 November 14, 2024. 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 November 30, 2024. 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 (Subject line: “401 KAR 47:110”).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tyler Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes requirements for registered permits-by-rule and the standards for the certification program.

(b) The necessity of this administrative regulation:

KRS 224.10-100(19)(c) and (24), and 224.40-305 authorize the Cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes requirements for registered permits-by-rule and the standards for the certification program.

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

KRS 224.10-100(19)(c) and (24), and 224.40-305 authorize the Cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit.

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

This administrative regulation assists in the effective administration of the statutes by establishing requirements for registered permits-by-rule and the standards for the certification program.

(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 will change multiple sections of the existing administrative regulation. Sections of this administrative regulation are amended to revise the registration review period from five (5) business days to thirty (30) calendar days unless the Cabinet approves or denies the registration within that time. The exception for medical waste transfer station in Section 1(1) is being removed as those facilities currently adhere to a thirty (30) day review period. Section 2 of the administrative regulation is amended to include expanded less than two (2) acre construction or demolition and debris landfills to conform with KRS 224.40-120 and 224.43-330. Sections 5 and 6 of this administrative regulation are amended to update the edition of a form incorporated by reference to correct the address of the Bowling Green Regional Office, respectively. The administrative regulation is amended throughout in accordance with KRS Chapter 13A.

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

The current review period established in the administrative regulation does not allow adequate review time for staff to address deficiencies, thus requiring staff to deny an entire registration instead of working with the registrant to revise deficient documentation. The amendment to include language referencing expanded less than two (2) acre construction or demolition debris landfills is necessary to comply with KRS 224.40-120 and KRS 224.43-330.

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

KRS 224.10-100(19)(c) and (24), and 224.40-305 authorize the Cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. (d) How the amendment will assist in the effective administration of statutes: The amendments to the administrative regulation will allow the division to implement and enforce requirements of registered permit-by-rules and the standards for the certification program.

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

No answer provided.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

∴ This administrative regulation will affect existing and new owners or operators of: recycling centers (101), convenience centers (50), solid waste transfer stations (133), solid waste composting facilities (28), solid waste incinerator facilities (0), class one (1) solid waste landfills (2), less than one (1) acre construction or demolition debris landfills (82) or expanded less than two (2) acre construction or demolition debris landfills (0), and medical waste transfer stations (11). Additionally, the administrative regulation will affect any local government or municipality who have a specified facility within their jurisdiction. Landowners where the specified facility is located or is proposed to be located will also be affected by this administrative regulation.

(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 entities identified will have to comply with the established requirements and standards when submitting or modifying registration for a registered permit-by-rule and comply with operating requirements in accordance with this administrative regulation.

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

This administrative regulation does not establish fees for a registered permit-by-rule, however indirect fees are established in 401 KAR 47:090 for registration, modification, and annual permit renewal of a registered permit-by-rule.

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

As a result of compliance with this administrative regulation, registrants will be certified to own and operate a registered permit-by-rule facility established in this administrative regulation. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The agency will not incur any initial costs for the implementation of this administrative regulation as this certification program is already established within the Solid Waste Branch of the Division of Waste Management.

(b) On a continuing basis:

The agency will not incur any additional costs for the implementation of this administrative regulation as this certification program is already established within the Solid Waste Branch of the Division of Waste Management.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

This administrative regulation utilizes the General Fund (0100) to pay the Division of Waste Management personnel template (AP0175/AP0179).

(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:

No increase in fees or funding is necessary to implement this administrative regulation. This administrative regulation has established indirect fees for registration, modification, and annual permit renewal of a registered permit-by-rule which are established in 401 KAR 47:090.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

While this administrative regulation package does not establish new fees, this administrative regulation has established indirect fees for registration, modification, and annual permit renewal of a registered permit-by-rule which are established in 401 KAR 47:090.

(9) TIERING: Is tiering applied?

No, this administrative regulation establishes requirements for registered permits-by-rule and the standards for the certification program.

FEDERAL MANDATE ANALYSIS COMPARISON

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

40 CFR Part 257 describes the criteria for classification of solid waste disposal facilities and practices excluding municipal solid waste landfill units, under authority of 42 U.S.C. 6907(a)(3), 6912(a)(1) and (d); 33 U.S.C. 1345(d) and (e).

(2) State compliance standards.

: KRS 224.40-100(19)(c) and (24), and KRS 224.40-305.

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

: 40 CFR Part 257 Subpart A describes classifications of solid waste disposal facilities and practices, while 40 CFR Part 257 Subpart B sets disposal standards for the receipt of very small quantity generator waste at non-municipal non-hazardous waste disposal units. Pursuant to this administrative regulation amendment package, 40 CFR 248.2 defines construction and demolition (C&D) landfills, subject to the requirements in part 257, subparts A and B. Only C&D landfills that meet the requirements of 40 CFR Part 257, subpart B may receive very small generator waste (defined in 40 CFR 260.1).

(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 broader in scope as it establishes requirements for registered permits-by-rule and the standards for the certification program, while the federal regulations reference general disposal requirements.

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

This administrative regulation is broader in scope as it establishes requirements for registered permits-by-rule and the standards for the certification program, while the federal regulations reference general disposal requirements. Solid waste disposal, including nonhazardous industrial waste, is overseen by the states.

FISCAL IMPACT STATEMENT

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

: KRS 224.40-100(19)(c) and (24), 224.40-305 and 40 CFR Part 257, Subpart A and B.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management.

(a) Estimate the following for the first year:

Expenditures:The Cabinet estimates current program expenditures to total \$623,095.

Revenues:The Cabinet estimates the revenue generated from annual permit renewal fees, pursuant to 401 KAR 47:090, to total \$359,250. An additional source of revenue is generated from registration and modification fees for a registered permit-by-rule, established in 401 KAR 47:090. The registration and modification fees for registered permit-by rule facilities include a \$2,500 fee for transfer stations or convenience centers, \$4,500 for less than one-acre construction or demolition debris landfills, \$3,000 for compost facilities, \$4,000 for Class I landfarm facilities, and \$20,000 for solid waste incinerators.

Cost Savings:By extending application review periods the Cabinet will have additional time to work with regulated entities to address deficiencies to avoid denial of the registration or modification, resulting in potential cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

: The Cabinet does not anticipate the expenditures, revenues, or cost savings to differ in subsequent years. It should be noted that registration and modification fee submissions fluctuate pursuant to new applicants and requests for modification which could potentially impact revenues generated by this program.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

Local entities that will be affected by this administrative regulation include any local municipality that owns or operates a registered permit-by-rule facility established in this administrative regulation.

(a) Estimate the following for the first year:

Expenditures:Pursuant to 401 KAR 47:090, publicly owned facilities are not required to pay the indirect fees associated with this administrative regulation. Expenditures for local entities would include construction or modification costs relating to their registered permit-by-rule facility.

Revenues:The Cabinet cannot estimate the revenues generated by the local entities.

Cost Savings:Pursuant to 401 KAR 47:090, publicly owned facilities are not required to pay the indirect fees associated with this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The Cabinet does not anticipate the expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Entities affected by the amendments in this administrative regulation package include owners or operators of a registered permit-by-rule facility established in this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: Owners or operators of facilities operating under a registered permit-by-rule will be subject to a registration, modification, and annual permit renewal fees as established in 401 KAR 47:090. Pursuant to KRS 224.40-120 an owner or operator of a less than one-acre construction or demolition debris landfill registered permit-by-rule is required to post a \$10,000 bond as financial assurance. Pursuant to KRS 224.40-120, an owner or operator of a less than one-acre construction or demolition debris landfill requesting an expansion in capacity to a less than two-acre construction or demolition debris landfill is required to post an additional \$10,000 bond for the additional acre.

Revenues: The Cabinet cannot estimate the revenues generated by the regulated entities.

Cost Savings: Pursuant to the amendments of this administrative regulation, by extending application review periods the Cabinet will have additional time to work with regulated entities to address deficiencies to avoid denial of the registration or modification, resulting in potential cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The Cabinet does not anticipate the expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

This administrative regulation has indirect fees for the registration, modification, and annual permit renewal for facilities operating under a registered permit-by-rule, as established in 401 KAR 47:090. Pursuant to 401 KAR 47:090, public-owned facilities are not subject to the established fees.

(b) Methodology and resources used to determine the fiscal impact:

The fees associated with the fiscal impact of this administrative regulation are established in 401 KAR 47:090.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

: This proposed administrative regulation will not have a major economic impact as the indirect fees established in 401 KAR 47:090 are not being amended.

(b) The methodology and resources used to reach this conclusion:

While this administrative regulation does not include fees, indirect fees are established in 401 KAR 47:090, registration or modification fees for registered permit-by rule facilities include a \$2,500 fee for transfer stations or convenience centers, \$4,500 for less than one-acre construction or demolition debris landfills, \$3,000 for compost facilities, \$4,000 for Class I landfarm facilities, and \$20,000 for solid waste incinerators. Additionally, these facilities are required to submit an annual permit renewal fee, pursuant to 401 KAR 47:090. The annual permit renewal

fee for each facility specified in this administrative regulation are as follows: \$2,500 fee for transfer stations or convenience centers; \$500 for less than one-acre construction or demolition debris landfills receiving 1,000 or less tons of waste per year, \$1,500 for less than one-acre construction or demolition debris landfills receiving more than 1,000 and less than 5,000 tons of waste per year, and \$3,000 for less than one-acre construction or demolition debris landfills receiving 5,000 or more tons of waste per year; \$3,000 for compost facilities; \$4,000 for Class I landfarm facilities; and \$1,000 for solid waste incinerators. Pursuant to 401 KAR 47:090, public-owned facilities are not subject to the established fees.